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COMPILATION OF SELECTED ACTS WITHIN
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VOLUME III

ENVIRONMENT LAW
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LEAD-BASED PAINT POISONING PREVENTION ACT
OCCUPATIONAL SAFETY AND HEALTH ACT
PUBLIC HEALTH SERVICE ACT
NATIONAL ENVIRONMENTAL POLICY ACT

PREPARED FOR THE USE OF THE

HOUSE COMMITTEE ON INTERSTATE AND
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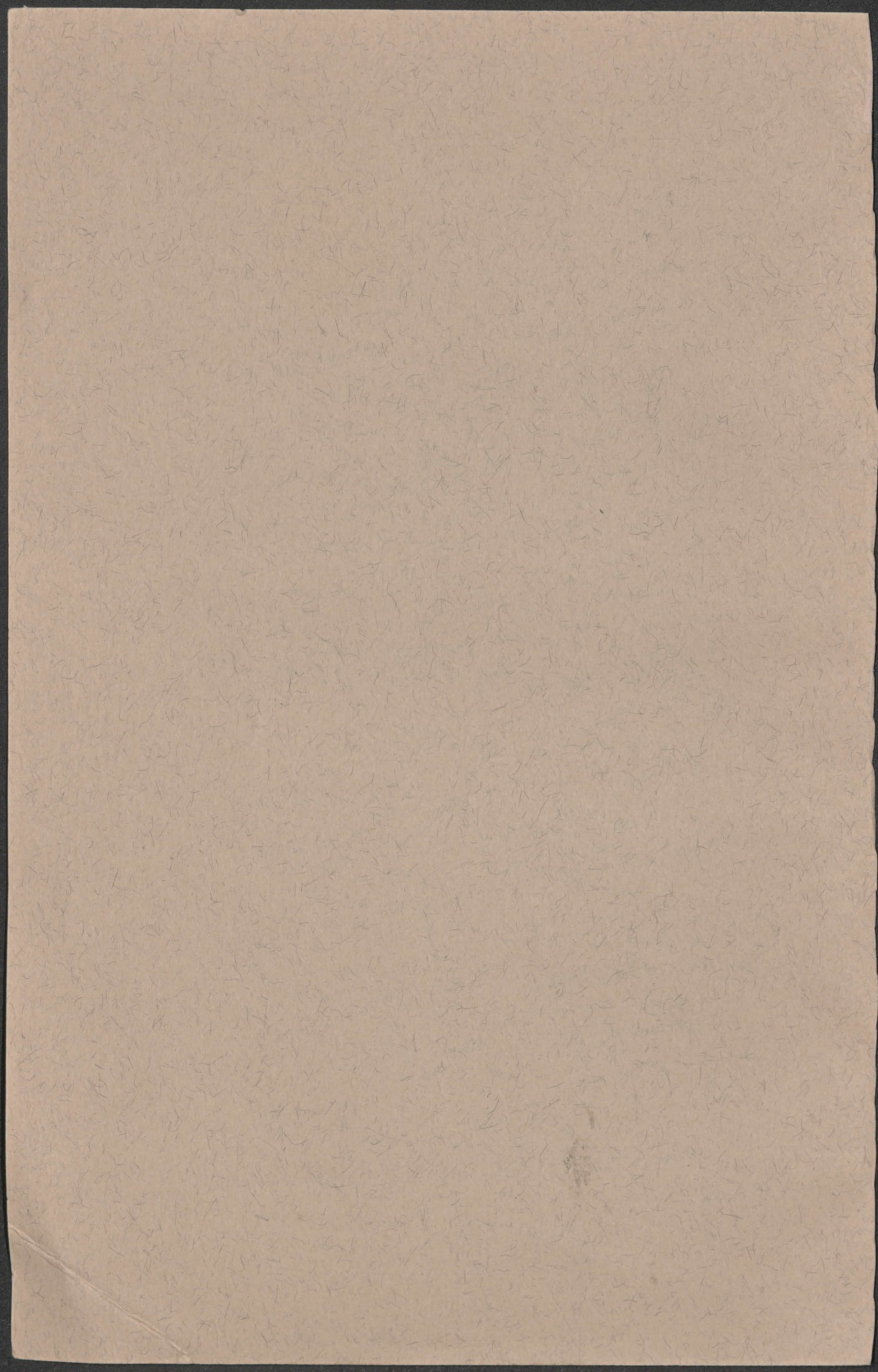
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95th Congress }
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THE CLEAN AIR ACT

(1)

THE CLEAN AIR ACT¹

TITLE I—AIR POLLUTION PREVENTION AND CONTROL

FINDINGS AND PURPOSES

42 U.S.C. 1857

Sec. 101. (a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this title are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

COOPERATIVE ACTIVITIES AND UNIFORM LAWS

SEC. 102. (a) The Administrator shall encourage cooperative activities by the States and local governments

42 U.S.C. 1857a

¹ Clean Air Act (42 U.S.C. 1857 et seq.) includes the Clean Air Act of 1963 (P.L. 88-206), and amendments made by the "Motor Vehicle Air Pollution Control Act"—P.L. 89-272 (October 20, 1965), the "Clean Air Act Amendments of 1966"—P.L. 89-675 (October 15, 1966), the "Air Quality Act of 1967"—P.L. 90-148 (November 21, 1967), the "Clean Air Act Amendments of 1970"—P.L. 91-604 (December 31, 1970), section 302 of P.L. 92-157 (November 18, 1971), and P.L. 93-15 (April 9, 1973).

for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

RESEARCH, INVESTIGATION, TRAINING, AND OTHER ACTIVITIES

42 U.S.C. 1857b

SEC. 103. (a) The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.

(b) In carrying out the provisions of the preceding subsection the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a) (1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5);

(5) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications;

(6) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(7) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(8) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

(c) In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollutants.

(d) The Administrator is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this Act.

(e) If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 115, he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 115.

(f) (1) In carrying out research pursuant to this Act, the Administrator shall give special emphasis to research on the short- and long-term effects of air pollutants on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program—

(A) to improve knowledge of the contribution of air pollutants to the occurrence of adverse effects on health, including, but not limited to, behavioral physiological, toxicological, and biochemical effects; and

(B) to improve knowledge of the short- and long-term effects of air pollutants on welfare.

(2) In carrying out the provisions of this subsection the Administrator may—

(A) conduct epidemiological studies of the effects of air pollutants on mortality and morbidity;

(B) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including carcinogenic, teratogenic, and mutagenic effects of air pollutants;

(C) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers;

(D) utilize the authority contained in paragraphs (1) through (4) of subsection (b); and

(E) consult with other appropriate Federal agencies to assure that research of studies conducted pursuant to this subsection will be coordinated with research and studies of such other Federal agencies.

(3) In entering into contracts under this subsection, the Administrator is authorized to contract for a term not to exceed 10 years in duration. For the purposes of this paragraph, there are authorized to be appropriated \$15,000,000. Such amounts as are appropriated shall remain available until expended and shall be in addition to any other appropriations under this Act.

RESEARCH RELATING TO FUELS AND VEHICLES

SEC. 104. (a) The Administrator shall give special emphasis to research and development into new and improved methods, having industrywide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

42 U.S.C.
1857b-1

(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for—

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions.

(2) provide for Federal grants to public or non-profit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion

engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) : *Provided*, That research or demonstration contracts awarded pursuant to this subsection or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, United States Code, except that the determination, approval, and certification required thereby shall be made by the Administrator: *Provided further*, That no grant may be made under this paragraph in excess of \$1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this Act;

(5) study new or improved methods for the recovery and marketing of commercially valuable by-products resulting from the removal of pollutants.

(b) In carrying out the provisions of this section, the Administrator may—

(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programing necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the Act will be served thereby.

(c) For the purposes of this section there are authorized to be appropriated \$75,000,000 for the fiscal year ending June 30, 1971, \$125,000,000 for the fiscal year ending June 30, 1972, and \$150,000,000 for the fiscal year ending June 30, 1973, \$150,000,000 for the fiscal year ending June 30, 1974, and \$150,000,000 for the fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended.

GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING
AND CONTROL PROGRAMS

SEC. 105. (a) (1) (A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. 42 U.S.C. 1857c

(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 302(b) in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 110, grants under subparagraph (B) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 302(b) (2) and 302(b) (4) the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 302(b) (2) and 302(b) (4), the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, in-

cluding the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(b) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(c) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

(d) The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 301 of this Act, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this Act. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

INTERSTATE AIR QUALITY AGENCIES OR COMMISSIONS

SEC. 106. For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 107, the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of such agency.

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AIR QUALITY CONTROL REGIONS

SEC. 107. (a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

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1857c-2

(b) For purposes of developing and carrying out implementation plans under section 110—

(1) an air quality control region designated under this section before the date of enactment of the Clean Air Amendments of 1970, or a region designated after such date under subsection (c), shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the governors of the affected States of any designation made under this subsection.

AIR QUALITY CRITERIA AND CONTROL TECHNIQUES

SEC. 108. (a) (1) For the purpose of establishing national primary and secondary ambient air quality stand-

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1857c-3

ards, the Administrator shall within 30 days after the date of enactment of the Clean Air Amendments of 1970 publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) which in his judgment has an adverse effect on public health and welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before the date of enactment of the Clean Air Amendments of 1970, but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) (1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the technology and costs of emission control. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a) (1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community.

Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section.

(d) The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

NATIONAL AMBIENT AIR QUALITY STANDARDS

SEC. 109. (a) (1) The Administrator—

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1857c-4

(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date of enactment; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1) (B) of this subsection shall apply to the promulgation of such standards.

(b) (1) National primary ambient air quality standards, prescribed, under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed, under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such

secondary standards may be revised in the same manner as promulgated.

IMPLEMENTATION PLANS

42 U.S.C.
1857c-5

SEC. 110. (a) (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan for each portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) (i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls;

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii)

upon request, make such data available to the Administrator;

(D) it includes a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection; and (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards; and

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements.

(3) (A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974,

review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(4) The procedure referred to in paragraph (2) (D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 111 will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed eighteen months from the date otherwise required for submission of such plan.

(c) (1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(A) The State fails to submit an implementation plan for any national ambient air quality primary or secondary standard within the time prescribed,

(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as

he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a) (2) (H).

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section.

(2) (A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this paragraph on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Admin-

istrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

(D) For purposes of this paragraph—

(i) The term “parking surcharge regulation” means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term “management of parking supply” shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term “preferential bus/carpool lane” shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment of this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(d) For purposes of this Act, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) or promulgated under subsection (c) and which implements a national primary or secondary ambient air quality standard in a State.

(e)(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A) (i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f)(1) Prior to the date on which any stationary source or class of moving sources is required to comply with any requirement of an applicable implementation plan the Governor of the State to which such plan applies may apply to the Administrator to postpone the applicability of such requirement to such source (or class) for not more than one year. If the Administrator determines that—

(A) good faith efforts have been made to comply with such requirement before such date,

(B) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time,

(C) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health, and

(D) the continued operation of such source is essential to national security or to the public health or welfare,

then the Administrator shall grant a postponement of such requirement.

(2) (A) Any determination under paragraph (1) shall (i) be made on the record after notice to interested persons and opportunity for hearing, (ii) be based upon a fair evaluation of the entire record at such hearing, and (iii) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

(B) Any determination made pursuant to this paragraph shall be subject to judicial review by the United States court of appeals for the circuit which includes such State upon the filing in such court within 30 days from the date of such decision of a petition by any interested person praying that the decision be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the Administrator and thereupon the Administrator shall certify and file in such court the record upon which the final decision complained of was issued, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have jurisdiction to affirm or set aside the determination complained of in whole or in part. The findings of the Administrator with respect to questions of fact (including each determination made under subparagraphs (A), (B), (C), and (D) of paragraph (1)) shall be sustained if based upon a fair evaluation of the entire record at such hearing.

(C) Proceedings before the court under this paragraph shall take precedence over all the other causes of action on the docket and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.

(D) Section 307(a) (relating to subpoenas) shall be applicable to any proceeding under this subsection.

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

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1857c-6

SEC. 111. (a) For purposes of this section:

(1) The term "standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) the Administrator determines has been adequately demonstrated.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(b) (1) (A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare.

(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publication, such standards with such modifications as he deems appropriate. The Administrator may, from time to time, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance or revisions thereof shall become effective upon promulgation.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) (1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 110 under which each State shall submit to the Administrator a plan which (A) establishes emission standards for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or 112(b) (1) (A) but (ii) to which a standard of performance under subsection (b) would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such emission standards.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 110(c) in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 113 and 114 with respect to an implementation plan.

(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

42 U.S.C.
1857c-7

SEC. 112. (a) For purposes of this section—

(1) The term “hazardous air pollutant” means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term “new source” means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The terms “stationary source,” “modification,” “owner or operator” and “existing source” shall have the same meaning as such terms have under section 111(a).

(b) (1) (A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutants subject to the provisions of this section.

(c) (1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraph (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(d) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for

stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards (except with respect to stationary sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section.

FEDERAL ENFORCEMENT

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1857c-8

SEC. 113. (a) (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of Federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b).

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111(e) (relating to new source performance standards), 112(c) (relating to standards for hazardous emissions), or 119(g) (relating to energy-related authorities), or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator con-

cerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(b) The Administrator may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person—

(1) violates or fails or refuses to comply with any order issued under subsection (a); or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administration under subsection (a) (1) that such person is violating such requirement; or

(3) violates section 111(e), 112(c) or section 119 (g); or

(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.

(c) (1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administration under subsection (a) (1) that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order issued by the Administrator under subsection (a), or

(C) violates section 111(e), section 112(c), or section 119(g)

shall be punished by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

INSPECTIONS, MONITORING, AND ENTRY

42 U.S.C.
1857c-9

SEC. 114. (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, or any emission standard under section 112(ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out section 119 or 303—

(1) the Administrator may require the owner or operator of any emission source to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information, as he may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises in which an emission source is located or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which the owner or operator of such source is required to sample under paragraph (1).

(b) (1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section (except with respect to new sources owned or operated by the United States).

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Any records, reports, or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Admin-

istrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

ABATEMENT BY MEANS OF CONFERENCE PROCEDURE IN
CERTAIN CASES

SEC. 115. (a) The pollution of the air in any State or States which endangers the health or welfare of any persons and which is covered by subsection (b) or (c) shall be subject to abatement as provided in this section.

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(b) (1) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to air pollution which is alleged to endanger the health or welfare of persons in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in whose jurisdictional area such municipality is located, and shall call promptly a conference of such agency or agencies and of the air pollution control agencies of the municipalities which may be adversely affected by such pollution, and the air pollution control agency, if any, of each State, or for each area, in which any such municipality is located.

(2) Whenever requested by the Governor of any State, a State air pollution control agency, or (with the concurrence of the Governor and the State air pollution control agency for the State in which the municipality is situated) the governing body of any municipality, the Administrator shall, if such request refers to alleged air pollution which is endangering the health or welfare of persons only in the State in which the discharge or discharges (causing or contributing to such pollution) originate and if a municipality affected by such air pollution, or the municipality in which such pollution originates, has

either made or concurred in such request, give formal notification thereof to the State air pollution control agency, to the air pollution control agencies of the municipality where such discharge or discharges originate, and of the municipality or municipalities alleged to be adversely affected thereby, and to any interstate air pollution control agency, whose jurisdictional area includes any such municipality and shall promptly call a conference of such agency or agencies, unless in the judgment of the Administrator, the effect of such pollution is not of such significance as to warrant exercise of Federal jurisdiction under this section.

(3) The Administrator may, after consultation with State officials of all affected States, also call such a conference whenever, on the basis of reports, surveys, or studies, he has reason to believe that any pollution referred to in subsection (a) is occurring and is endangering the health and welfare of persons in a State other than that in which the discharge or discharges originate. The Administrator shall invite the cooperation of any municipal, State, or interstate air pollution control agencies having jurisdiction in the affected area on any surveys or studies forming the basis of conference action.

(4) A conference may not be called under this subsection with respect to an air pollutant for which (at the time the conference is called) a national primary or secondary ambient air quality standard is in effect under section 109.

(c) Whenever the Administrator, upon receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any pollution referred to in subsection (a) which endangers the health or welfare of persons in a foreign country is occurring, or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the air pollution control agency of the municipality where such discharge or discharges originate, to the air pollution control agency of the State in which such municipality is located, and to the interstate air pollution control agency, if any, in the jurisdictional area of which such municipality is located, and shall call promptly a conference of such agency or agencies. The Administrator shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the conference, and the representative of such country shall, for the purpose of the conference and any further proceeding resulting from such conference, have all the rights of a State air pollution control agency. This subsection shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control

of air pollution occurring in that country as is given that country by this subsection.

(d) (1) The agencies called to attend any conference under this section may bring such persons as they desire to the conference. The Administrator shall deliver to such agencies and make available to other interested parties, at least thirty days prior to any such conference, a Federal report with respect to the matters before the conference, including data and conclusions or findings (if any); and shall give at least thirty days' prior notice of the conference date to any such agency, and to the public by publication on at least three different days in a newspaper or newspapers of general circulation in the area. The chairman of the conference shall give interested parties an opportunity to present their views to the conference with respect to such Federal report, conclusions or findings (if any), and other pertinent information. The Administrator shall provide that a transcript be maintained of the proceedings of the conference and that a copy of such transcript be made available on request of any participant in the conference at the expense of such participant.

(2) Following this conference, the Administrator shall prepare and forward to all air pollution control agencies attending the conference a summary of conference discussions including (A) occurrence of air pollution subject to abatement under this Act; (B) adequacy of measures taken toward abatement of the pollution; and (C) nature of delays, if any, being encountered in abating the pollution.

(e) If the Administrator believes, upon the conclusion of the conference or thereafter, that effective progress toward abatement of such pollution is not being made and that the health or welfare of any persons is being endangered, he shall recommend to the appropriate State, interstate, or municipal air pollution control agency (or to all such agencies) that the necessary remedial action be taken. The Administrator shall allow at least six months from the date he makes such recommendations for the taking of such recommended action.

(f) (1) If, at the conclusion of the period so allowed, such remedial action or other action which in the judgment of the Administrator is reasonably calculated to secure abatement of such pollution has not been taken, the Administrator shall call a public hearing, to be held in or near one or more of the places where the discharge or discharges causing or contributing to such pollution originated, before a hearing board of five or more persons appointed by the Administrator. Each State in which any discharge causing or contributing to such pollution originates and each State claiming to be adversely affected by such pollution shall be given an opportunity to select one member of such hearing board and each

Federal department, agency, or instrumentality having a substantial interest in the subject matter as determined by the Administrator shall be given an opportunity to select one member of such hearing board, and one member shall be a representative of the appropriate interstate air pollution agency if one exists, and not less than a majority of such hearing board shall be persons other than officers or employees of the Environmental Protection Agency. At least three weeks' prior notice of such hearing shall be given to the State, interstate, and municipal air pollution control agencies called to attend such hearing and to the alleged polluter or polluters. All interested parties shall be given a reasonable opportunity to present evidence to such hearing board.

(2) On the basis of evidence presented at such hearing, the hearing board shall make findings as to whether pollution referred to in subsection (a) is occurring and whether effective progress toward abatement thereof is being made. If the hearing board finds such pollution is occurring and effective progress toward abatement thereof is not being made it shall make recommendations to the Administrator concerning the measures, if any, which it finds to be reasonable and suitable to secure abatement of such pollution.

(3) The Administrator shall send such findings and recommendations to the person or persons discharging any matter causing or contributing to such pollution; to air pollution control agencies of the State or States and of the municipality or municipalities where such discharge or discharges originate; and to any interstate air pollution control agency whose jurisdictional area includes any such municipality, together with a notice specifying a reasonable time (not less than six months) to secure abatement of such pollution.

(g) If action reasonably calculated to secure abatement of the pollution within the time specified in the notice following the public hearing is not taken the Administrator—

(1) in the case of pollution of air which is endangering the health or welfare of persons (A) in a State other than that in which the discharge or discharges (causing or contributing to such pollution) originate, or (B) in a foreign country which has participated in a conference called under subsection (c) of this section and in all proceedings under this section resulting from such conference, may request the Attorney General to bring a suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

(2) in the case of pollution of air which is endangering the health or welfare of persons only in the State in which the discharge or discharges (caus-

ing or contributing to such pollution) originate, at the request of the Governor of such State, shall provide such technical and other assistance as in his judgment is necessary to assist the State in judicial proceedings to secure abatement of the pollution under State or local law or, at the request of the Governor of such State, shall request the Attorney General to bring suit on behalf of the United States in the appropriate United States district court to secure abatement of the pollution.

(h) The court shall receive in evidence in any suit brought in a United States court under subsection (g) of this section a transcript of the proceedings before the board and a copy of the board's recommendations and shall receive such further evidence as the court in its discretion deems proper. The court, giving due consideration to the practicability of complying with such standards as may be applicable and to the physical and economic feasibility of securing abatement of any pollution proved, shall have jurisdiction to enter such judgment, and orders enforcing such judgment, as the public interest and the equities of the case may require.

(i) Members of any hearing board appointed pursuant to subsection (f) who are not regular full-time officers or employees of the United States shall, while participating in the hearing conducted by such board or otherwise engaged on the work of such board, be entitled to receive compensation at a rate fixed by the Administration, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

(j) (1) In connection with any conference called under this section, the Administrator is authorized to require any person whose activities result in the emission of air pollutants causing or contributing to air pollution to file with him, in such form as he may prescribe, a report, based on existing data, furnishing to the Administrator such information as may reasonably be required as to the character, kind, and quantity of pollutants discharged and the use of devices or other means to prevent or reduce the emission of pollutants by the person filing such a report. After a conference has been held with respect to any such pollution the Administrator shall require such reports from the person whose activities result in such pollution only to the extent recommended by such conference. Such report shall be made under oath or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as the Administrator may prescribe, unless additional time be granted by the Administrator. No person shall be required in such report to divulge trade

secrets or secret processes and all information reported shall be considered confidential for the purposes of section 1905 of title 18 of the United States Code.

(2) If any person required to file any report under this subsection shall fail to do so within the time fixed by the Administrator for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business: *Provided*, That the Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection and he shall have authority to determine the facts upon all such applications.

(3) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

(k) No order or judgment under this section, or settlement, compromise, or agreement respecting any action under this section (whether or not entered or made before the date of enactment of the Clean Air Amendments of 1970) shall relieve any person of any obligation to comply with any requirement of an applicable implementation plan, or with any standard prescribed under section 111 or 112.

RETENTION OF STATE AUTHORITY

42 U.S.C.
1857d-1

SEC. 116. Except as otherwise provided in sections 119 (c), (e), and (f), 209, 211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

PRESIDENT'S AIR QUALITY ADVISORY BOARD AND ADVISORY COMMITTEES

42 U.S.C. 1857e

SEC. 117. (a)(1) There is hereby established in the Environmental Protection Agency an Air Quality Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and fifteen members

appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with air pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of air pollution prevention and control, as well as other individuals who are expert in this field.

(2) Each member appointed by the President shall hold office for a term of three years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of office of the members first taking office pursuant to this subsection shall expire as follows: five at the end of one year after the date of appointment, five at the end of two years after such date, and five at the end of three years after such date, as designated by the President at the time of appointment, and (C) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members shall be eligible for reappointment within one year after the end of his preceding term, unless such term was for less than three years.

(b) The Board shall advise and consult with the Administrator on matters of policy relating to the activities and functions of the Administrator under this Act and make such recommendations as it deems necessary to the President.

(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board and such other advisory committees as hereinafter authorized shall be provided from the personnel of the Environmental Protection Agency.

(d) In order to obtain assistance in the development and implementation of the purposes of this Act including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

(e) The members of the Board and other advisory committees appointed pursuant to this Act who are not officers or employees of the United States while attending conferences or meetings of the Board or while other-

wise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding \$100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

(f) Prior to—

- (1) issuing criteria for an air pollutant under section 108(a)(2),
- (2) publishing any list under section 111(b)(1)(A) or 112(b)(1)(A),
- (3) publishing any standard under section 111(b)(1)(B) or section 112(b)(1)(B), or
- (4) publishing any regulation under section 202(a),

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts, and Federal departments and agencies.

CONTROL OF POLLUTION FROM FEDERAL FACILITIES

42 U.S.C. 1857f

SEC. 118. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements. The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 111, and an exemption from section 112 may be granted only in accordance with section 112(c). No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

ENERGY-RELATED AUTHORITY

SEC. 119. (a) For purposes of this section:

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1857 c-10

(1) The term "stationary source fuel or emission limitation" means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under this Act (other than this section, or section 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v)), and which limits, or is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.

(2) The term "air pollution requirement" means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including this Act (except for any requirement prescribed under subsection (c) or (d) of this section, section 110(a)(2)(F)(v), or section 303), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic).

(3) The terms "stationary source" and "source" have the same meaning as the term "stationary source" has under section 111(a)(3); except that such terms include any owner or operator (as defined in section 111(a)(5)) of such source.

(4) The term "coal" includes coal derivatives.

(5) The term "primary standard condition" means a limitation, requirement, or other measure, prescribed by the Administrator under subsection (d)(2)(A) of this section.

(6) The term "regional limitation" means the requirement of subsection (c)(2)(D) of this section.

(b)(1)(A) The Administrator may, for any period beginning on or after the date of enactment of this section and ending on or before June 30, 1975, temporarily suspend any stationary source fuel or emission limitation as it applies to any person—

(i) if the Administrator finds that such person will be unable to comply with any such limitation during such period solely because of unavailability of types or amounts of fuels (unless such unavailability results from an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974), or

(ii) if such person is a source which is described in subsection (c)(1)(A) or (B) of this section and which has converted to coal, and the Administrator

finds that the source will be able to comply during the period of the suspension with all primary standard conditions which will be applicable to such source.

Any suspension under this paragraph, the imposition of any interim requirement on which such suspension is conditioned under paragraph (3) of this subsection, and the imposition of any primary standard condition which relates to such suspension, shall be exempted from any procedural requirements set forth in this Act or in any other provision of Federal, State, or local law; except as provided in subparagraph (B) of this paragraph.

(B) The Administrator shall give notice to the public and afford interested persons an opportunity for written and oral presentations of data, views, and arguments prior to issuing a suspension under subparagraph (A), or denying an application for such a suspension, unless otherwise provided by the Administrator for good cause found and published in the Federal Register. In any case, before issuing such a suspension, he shall give actual notice to the Governor of the State in which the affected source or sources are located, and to appropriate local governmental officials (as determined by the Administrator). The issuing or denial of such a suspension, the imposition of an interim requirement, and the imposition of any primary standard condition shall be subject to judicial review only on the grounds specified in paragraph (2)(B), (2)(C), or (2)(D), of section 706 of title 5, United States Code, and shall not be subject to any proceeding under section 304(a)(2) or 307(b) and (c) of this Act.

(2) In issuing any suspension under paragraph (1), the Administrator is authorized to act on his own motion or upon application by any person (including a public officer or public agency).

(3) Any suspension under paragraph (1) shall be conditioned upon compliance with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to, (A) a requirement that the persons receiving the suspension comply with such reporting requirements as the Administrator determines may be necessary, (B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and (C) in the case of a suspension under paragraph (1)(A)(i), requirements that the suspension shall be inapplicable during any period during which fuels which would enable compliance with the suspended stationary source fuel or emission limitations are in fact reasonably available (as determined by the Administrator) to such person.

(c)(1) Except as provided in paragraph (2) of this subsection, the Administrator shall issue a compliance date extension to any fuel-burning stationary source—

(A) which is prohibited from using petroleum products or natural gas by reason of an order which is in effect under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or

(B) which the Administrator determines began conversion to the use of coal as its primary energy source during the period beginning on September 15, 1973, and ending on March 15, 1974,

and which, on or after September 15, 1973, converts to the use of coal as its primary energy source. If a compliance date extension is issued to a source, such source shall not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to such source, except as provided in subsection (d)(3). For purposes of this paragraph, the term "began conversion" means action by the source during the period beginning on September 15, 1973, and ending on March 15, 1974 (such as entering into a contract binding on such source for obtaining coal, or equipment or facilities to burn coal; expanding substantial sums to permit such source to burn coal; or applying for an air pollution variance to enable such source to burn coal) which the Administrator finds evidences a decision (made prior to March 15, 1974) to convert to burning coal as a result of the unavailability of an adequate supply of fuels required for compliance with the applicable implementation plan, and a good faith effort to expeditiously carry out such decision.

(2) (A) A compliance date extension under paragraph (1) of this subsection may be issued to a source only if—

(i) the Administrator finds that such source will not be able to burn coal which is available to such source in compliance with all applicable air pollution requirements without a compliance date extension.

(ii) the Administrator finds that the source will be able during the period of the compliance date extension to comply with all the primary standard conditions which are required under subsection (d)(2) to be applicable to such source, and with the regional limitation if applicable to such source, and

(iii) the source has submitted to the Administrator a plan for compliance for such source which the Administrator has approved.

A plan submitted under clause (iii) of the preceding sentence shall be approved only if it meets the requirements of regulations prescribed under subparagraph (B). The Administrator shall approve or disapprove any such plan within 60 days after such plan is submitted.

(B) Not later than 90 days after the date of enactment of this section, the Administrator shall prescribe regulations requiring that any source to which a compliance date extension applies submit and obtain approval of its

means for and schedule of compliance with the requirements of subparagraph (C) of this paragraph. Such regulations shall include requirements that such schedules shall include dates by which any such source must—

(i) enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining a long-term supply of coal which enables such source to achieve the emission reduction required by subparagraph (C), or

(ii) if coal which enables such source to achieve such emission reduction is not available to such source, enter into contracts (or other obligations enforceable against such source) which the Administrator has approved as being adequate to provide for obtaining (I) a long-term supply of other coal, and (II) continuous emission reduction systems necessary to permit such source to burn such coal, and to achieve the degree of emission reduction required by subparagraph (C).

Regulations under this subparagraph shall provide that contracts or other obligations required to be approved under this subparagraph must be approved before they are entered into (except that a contract or obligation which was entered into before the date of enactment of this section may be approved after such date).

(C) Regulations under subparagraph (B) shall require that the source achieve the most stringent degree of emission reduction that such source would have been required to achieve under the applicable implementation plan which was in effect on the date of submittal (under subparagraph (B) of this paragraph) of the means for and schedule of compliance (or if no applicable implementation plan was in effect on such date, under the first applicable implementation plan which takes effect after such date). Such degree of emission reduction shall be achieved as soon as practicable, but not later than December 31, 1978; except that, in the case of a source for which a continuous emission reduction system is required for sulfur-related emissions, reduction of such emissions shall be achieved on a date designated by the Administrator (but not later than January 1, 1979). Such regulations shall also include such interim requirements as the Administrator determines are reasonable and practicable, including requirements described in subparagraphs (A) and (B) of subsection (b)(3) and requirements to file progress reports.

(D) A source which is issued a compliance date extension under this subsection, and which is located in an air quality control region in which a national primary ambient air quality standard for an air pollutant is not being met, may not emit such pollutant in amounts which exceed any emission limitation (and may not violate any

other requirement) which applies to such source, under the applicable implementation plan for such pollutant. For purposes of this subparagraph, applicability of any such limitation or requirement to a source shall be determined without regard to this subsection or subsection (b).

(3) A source to which this subsection applies may, upon the expiration of a compliance date extension, receive a one-year postponement of the application of any requirement of an applicable implementation plan under the conditions and in the manner provided in section 110(f).

(4) The Administrator shall give notice to the public and afford an opportunity for oral and written presentations of data, views, and arguments before issuing any compliance date extension, prescribing any regulation under paragraph (2) of this subsection, making any finding under paragraph (2) (A) of this subsection, imposing any requirement on a source pursuant to paragraph (2) or any regulation thereunder, prescribing a primary standard condition under subsection (d) (2) which applies to a source to which an extension is issued under this subsection, or acting on any petition under subsection (d) (2) (C).

(d) (1) (A) Whenever the Federal Energy Administrator issues an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 which will not apply after June 30, 1975, the Administrator of the Environmental Protection Agency shall certify to him—

(i) in the case of a source to which no suspension will be issued under subsection (b), the earliest date on which such source will be able to burn coal and to comply with all applicable air pollution requirements, or

(ii) in the case of a source to which a suspension will be issued under subsection (b) of this section, the date determined under paragraph (2) (B) of this subsection.

(B) Whenever the Federal Energy Administrator issues an order under section 2(a) of such Act which will apply after June 30, 1975, the Administrator of the Environmental Protection Agency shall notify him if such source will be able, on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under subsection (c). If such notification is not given—

(i) in the case of a source which is eligible for a compliance date extension under subsection (c), the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the date determined under paragraph (2) (B) of this subsection, and

(ii) in the case of a source which is not eligible for such an extension, the Administrator of the Environmental Protection Agency shall certify to the Federal Energy Administrator the earliest date on which the source will be able to burn coal and to comply with all applicable air pollution requirements.

(2) (A) The Administrator of the Environmental Protection Agency, after consultation with appropriate States, shall prescribe (and may from time to time, after such consultation, modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions, for each source to which a suspension under subsection (b) (1) (A) (ii) will apply, and for each source to which a compliance date extension under subsection (c) (1) will apply. Such limitations, requirements, and measures shall be those which he determines must be complied with by the source in order to assure (throughout the period that the suspension or extension will be in effect) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

(B) Whenever the Administrator prescribes a limitation, requirement, or measure under subparagraph (A) of this paragraph with respect to a source, he shall determine the earliest date on which such source will be able to comply with such limitation, requirement, or measure, and with any regional limitation applicable to such source.

(C) An air pollution control agency may petition the Administrator (A) to modify any limitation, requirement, or other measure under this paragraph so as to assure compliance with the requirements of this paragraph, or (B) to issue to the Federal Energy Administration the certification described in paragraph (3) (B) on the grounds described in clause (iii) thereof. The Administrator shall take the action requested in the petition, or deny the petition, within 90 days after the date of receipt of the petition.

(3) (A) If the Administrator determines that a source to which a suspension under subsection (b) (1) (A) (ii) or to which a compliance date extension under subsection (c) (1) applies is not in compliance with any primary standard condition, or that a source to which a compliance date extension applies is not in compliance with a regional limitation applicable to it, he shall (except as provided in subparagraph (B)) either—

(i) enforce compliance with such condition or limitation under section 113, or

(ii) (after notice to the public and affording an opportunity for interested persons to present data, views, and arguments, including oral presentations,

to the extent practicable) revoke such suspension or compliance date extension.

(B) If the Administrator finds that for any period—

(i) a source, to which an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 applies, will be unable to comply with a primary standard condition or regional limitation,

(ii) such a source will not be compliance with such a condition or limitation, but such condition or limitation cannot be enforced because of a court order restraining its enforcement, or

(iii) the burning of coal by such a source will result in an increase in emissions of any air pollutant for which national ambient air quality standards have not been promulgated (or an air pollutant which is transformed in the atmosphere into an air pollutant for which such a standard has not been promulgated), and that such increase may cause (or materially contribute to) a significant risk to public health,

he shall notify the Federal Energy Administrator of his finding and certify the period for which such order under such section 2(a) shall not be in effect with respect to such source. Subject to the conditions of the preceding sentence, such certification may be modified from time to time. For purposes of this subsection, subsection (c), and section 2(a) or (b) of the Energy Supply and Environmental Coordination Act of 1974, a source shall be considered unable to comply with an air pollution requirement (including a primary standard condition or regional limitation) only if necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time.

(4) Nothing in this Act shall prohibit a State, political subdivision of a State, or agency or instrumentality of either, from enforcing any primary standard condition or regional limitation.

(5) A conversion to coal (A) to which a suspension under subsection (b) or a compliance date extension under subsection (c) applies or (B) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 shall not be deemed to be a modification for purposes of section 111(a) (2) and (4) of this Act.

(e) The Administrator may, by rule, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out subsection (c) shall provide such systems to users thereof, if he finds that priorities must be imposed in order to assure that such systems are first provided to sources in air quality control regions in which national primary ambient air quality standards have not been achieved. No rule under

this subsection may impair the obligation of any contract entered into before the date of enactment of this section. To the extent necessary to carry out this section, the Administrator may prohibit any State or political subdivision of a State, or an agency or instrumentality of either, from requiring any person to use a continuous emission reduction system for which priorities have been established under this subsection, except in accordance with such priorities.

(f) No State, political subdivision of a State, or agency or instrumentality of either, may require any person to whom a suspension has been issued under subsection (b)(1) to use any fuel the unavailability of which is the basis of such person's suspension (except that this subsection shall not apply to requirements identical to Federal requirements under subsection (b)(3) or subsection (d)(2)).

(g)(1) It shall be unlawful for any person to whom a suspension has been issued under subsection (b)(1) to violate any requirement on which the suspension is conditioned pursuant to subsection (b)(3) or any primary standard condition applicable to him.

(2) It shall be unlawful for any person to fail to comply with any requirement under subsection (c), or any regulation, plan, or schedule thereunder (including a primary standard condition or regional limitation), which is applicable to such person.

(3) It shall be unlawful for any person to violate any rule under subsection (e).

(4) It shall be unlawful for any person to fail to comply with an interim requirement under subsection (i)(3).

(h) Nothing in this section shall affect the power of the Administrator to deal with air pollution presenting an imminent and substantial endangerment to the health of persons under section 303 of this Act.

(i)(1) In order to reduce the likelihood of early phase-out of existing electric generating powerplants, any electric generating powerplant (A) which, because of the age and condition of the plant, is to be taken out of service permanently no later than January 1, 1980, according to the power supply plan (in existence on January 1, 1974) of the owner or operator of such plant, (B) for which a certification to that effect has been filed by the owner or operator of the plant with the Environmental Protection Agency and the Federal Power Commission, and (C) for which such Commission has determined that the certification has been made in good faith and that the plan to cease operations no later than January 1, 1980, will be carried out as planned in light of existing and prospective power supply requirements, shall be eligible for a single one-year postponement as provided in paragraph (2).

(2) Prior to the date on which any powerplant eligible under paragraph (1) is required to comply with any requirement of an applicable implementation plan, such plant may apply (with the concurrence of the Governor of the State in which such plant is located) to the Administrator to postpone the applicability of such requirement to such plant for not more than one year. If the Administrator determines, after considering the risk to public health and welfare which may be associated with a postponement, that compliance with any such requirement is not reasonable in light of the projected useful life of the plant, the availability of rate base increases to pay for the costs of such compliance and other appropriate factors, then the Administrator shall grant a postponement of any such requirement.

(3) The Administrator shall, as a condition of any postponement under paragraph (2), prescribe such interim requirements as are practicable and reasonable in light of the criteria in paragraph (2).

(j) (1) The Administrator may, after public notice and opportunity for presentation of data, views, and arguments in accordance with section 553 of title 5, United States Code, and after consultation with the Federal Energy Administrator, designate persons with respect to whom fuel exchange requirements should be imposed under paragraph (2) of this subsection. The purpose of such designation shall be to avoid or minimize the adverse impact on public health and welfare of any suspension under subsection (b) of this section or conversion to coal to which subsection (c) applies or of any allocation under section 2(d) of the Energy Supply and Environmental Coordination Act of 1974 or under the Emergency Petroleum Allocation Act of 1973.

(2) The Federal Energy Administrator shall exercise his authority under section 2(d) of the Energy Supply and Environmental Coordination Act of 1974 and under the Emergency Petroleum Allocation Act of 1973 with respect to persons designated by the Administrator of the Environmental Protection Agency under paragraph (1) in order to require the exchange of any fuel subject to allocation under such Acts effective no later than forty-five days after the date of such designation, unless the Federal Energy Administrator determines, after consultation with the Administrator of the Environmental Protection Agency, that the costs or consumption of fuel, resulting from requiring such exchange, will be excessive.

(k) (1) The Administrator shall study, and report to Congress not later than six months after the date of enactment of this section, with respect to—

(A) the present and projected impact of fuel shortages and fuel allocation programs on the program under this Act;

(B) availability of continuous emission reduction technology (including projections respecting the time, cost, and number of units available) and the effects that continuous emission reduction systems would have on the total environment and on supplies of fuel and electricity;

(C) the number of sources and locations which must use such technology based on projected fuel availability data;

(D) a priority schedule for installation of continuous emission reduction technology, based on public health or air quality;

(E) evaluation of availability of technology to burn municipal solid waste in electric powerplants or other major fuel burning installations, including time schedules, priorities, analysis of pollutants which may be emitted (including those for which national ambient air quality standards have not been promulgated), and a comparison of health benefits and detriments from burning solid waste and of economic costs;

(F) evaluation of alternative control strategies for the attainment and maintenance of national ambient air quality standards for sulfur oxides within the time for attainment prescribed in this Act, including associated considerations of cost, time for attainment, feasibility, and effectiveness of such alternative control strategies as compared to stationary source fuel and emission regulations;

(G) proposed priorities, for continuous emission reduction systems which do not produce solid waste, for sources which are least able to handle solid waste byproducts of such systems;

(H) plans for monitoring or requiring sources to which this section applies to monitor the impact of actions under this section on concentrations of sulfur dioxide in the ambient air; and

(I) steps taken pursuant to authority of section 110(a)(3)(B) of this Act.

(2) Beginning January 1, 1975, the Administrator shall publish in the Federal Register, at no less than one-hundred-and-eighty-day intervals, the following:

(A) A concise summary of progress reports which are required to be filed by any person or source owner or operator to which subsection (c) applies. Such progress reports shall report on the status of compliance with all requirements which have been imposed by the Administrator under such subsection.

(B) Up-to-date findings on the impact of this section upon—

- (i) applicable implementation plans, and
- (ii) ambient air quality.

TITLE II—EMISSION STANDARDS FOR MOVING SOURCES

SHORT TITLE

SEC. 201. This title may be cited as the “National Emission Standards Act.” 42 U.S.C.
1857f-1 note

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

ESTABLISHMENT OF STANDARDS

SEC. 202. (a) Except as otherwise provided in subsection (b)— 42 U.S.C.
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(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment causes or contributes to, or is likely to cause or to contribute to, air pollution which endangers the public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d)), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b)(1)(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1977 shall contain standards which require

a reduction of at least 90 percentum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model year 1977 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during or after model year 1978 shall contain standards which require a reduction of at least 90 per centum from the average of emissions of oxides of nitrogen actually measured from light-duty vehicles manufactured during model year 1971 which are not subject to any Federal or State emission standard for oxides of nitrogen. Such average of emissions shall be determined by the Administrator on the basis of measurements made by him.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to the date of enactment of the Clear Air Amendments of 1970), shall be prescribed by regulation within 180 days after such date.

(3) For purposes of this part—

(A) (i) The term “model year” with reference to any specific calendar year means the manufacturer’s annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term “model year” shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b), the Administrator may prescribe regulations defining “model year” otherwise than as provided in clause (i).

(B) The term “light duty vehicles and engines” means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this Act. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 307(a) (relating to subpoenas) shall apply.

(5) (A) At any time after January 1, 1975, any manufacturer may file with the Administrator an application requesting the suspension for one year only of the effective date of any emission standard required by paragraph (1) (A) with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977. The Administrator shall make his determination with respect to any such application within sixty days. If he determines, in accordance with the provisions of this subsection, that such suspension should be granted, he shall simultaneously with such determination prescribe by regulation interim emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1) (A) of this subsection) to emissions of carbon monoxide or hydrocarbons (or both) from such vehicles and engines manufactured during model year 1977.

(B) Any interim standards prescribed under this paragraph shall reflect the greatest degree of emission control which is achievable by application of technology which the Administrator determines is available, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers.

(C) Within 60 days after receipt of the application for any such suspension, and after public hearing, the Administrator shall issue a decision granting or refusing such suspension. The Administrator shall grant such suspension only if he determines that (i) such suspension is essential to the public interest or the public health and welfare of the United States, (ii) all good faith efforts have been made to meet the standards established by this subsection, (iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available for a sufficient period of time to achieve compliance prior to the effective date of such standards, and

(iv) the study and investigation of the National Academy of Sciences conducted pursuant to subsection (c) and other information available to him has not indicated that technology, processes, or other alternatives are available to meet such standards.

(D) Nothing in this paragraph shall extend the effective date of any emission standard required to be prescribed under this subsection for more than one year.

(c) (1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this Act (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a) (1) of this section and section 207. Such regulations shall provide that useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or of fifty thousand miles (or the equivalent), whichever first occurs; and

(2) in the case of any other motor vehicle or motor vehicle engine, be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate.

(e) In the event a new power source or propulsion system for new motor vehicles or new motor vehicle engines

is submitted for certification pursuant to section 206 (a), the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers the public health or welfare but for which standards have not been prescribed under subsection (a).

PROHIBITED ACTS

SEC. 203. (a) The following acts and the causing thereof are prohibited—

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(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part (except as provided in subsection (b));

(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 208;

(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 202—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with the requirements of section 207 (a) and (b) with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 207 (c) (3), or

(B) to fail or refuse to comply with the requirements of section 207 (c) or (e).

(b) (1) The Administrator may exempt any new motor vehicle or new motor vehicle engine from subsection (a), upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a), except that if the country of export has emission standards which differ from the standards prescribed under subsection (a), then such vehicle or engine shall comply with the standards of such country of export.

(c) Upon application therefor, the Administrator may exempt from section 203(a)(3) any vehicles (or class thereof) manufactured before the 1974 model year from section 203(a)(3)¹ for the purpose of permitting modifications to the emission control device or system of such vehicle in order to use fuels other than those specified in certification testing under section 206(a)(1), if the Administrator, on the basis of information submitted by the applicant, finds that such modification will not result in such vehicle or engine not complying with standards under section 202 applicable to such vehicle or engine. Any such exemption shall identify (1) the vehicle or vehicles so exempted, (2) the specific nature of the modification, and (3) the person or class of persons to whom the exemption shall apply.

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INJUNCTION PROCEEDINGS

SEC. 204. (a) The district courts of the United States shall have jurisdiction to restrain violations of paragraph (1), (2), (3), or (4) of section 203(a).

¹ So in original.

(b) Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

PENALTIES

SEC. 205. Any person who violates paragraph (1), (2), (3), or (4) of section 203(a) shall be subject to a civil penalty of not more than \$10,000. Any such violation with respect to paragraph (1), (2), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.

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MOTOR VEHICLE AND MOTOR VEHICLE ENGINE COMPLIANCE TESTING AND CERTIFICATION

SEC. 206. (a) (1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 202 of this Act. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe.

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(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 202(b) of this Act. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(b) (1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2) (A) (i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator

determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations, and he shall so notify the manufacturer.

(B) (i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28 of the United States Code.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such

terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter.

(c) For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturers, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

(d) The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) The Administrator shall announce in the Federal Register and make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) as promptly as possible after the enactment of the Clean Air Amendments of 1970 and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 202 of this Act.

COMPLIANCE BY VEHICLES AND ENGINES IN ACTUAL USE

SEC. 207. (a) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after the date of the enactment of the Clean Air Amendments of 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (1) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 202, and (2) free from defects in materials and workmanship which cause

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such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under sec. 202(d)).

(b) If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its useful life (as determined under section 202(d)), each vehicle and engine to which regulations under section 202 apply comply with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 206(a)(1), then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 202 applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph. The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3),

(B) it fails to conform at any time during its useful life (as determined under section 202(d)) to the regulations prescribed under section 202, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer.

(c) Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after the date of enactment of the Clean Air Amendments of 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under

section 202, when in actual use throughout their useful life (as determined under section 202(d)), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

(3) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine such written instructions for the maintenance and use of the vehicle or engine by the ultimate purchaser as may be reasonable and necessary to assure the proper functioning of emission control devices and systems. In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 202. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(d) Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(e) If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the

Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311.

(f) Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1), after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

RECORDS AND REPORTS

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SEC. 208. (a) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this part and regulations thereunder and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

(b) Any records, reports or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under his control from the duly authorized committees of the Congress.

STATE STANDARDS

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SEC. 209. (a) No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if

any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling and extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part.

(c) Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

STATE GRANTS

SEC. 210. The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

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(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23 of the United States Code; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

REGULATION OF FUELS

SEC. 211. (a) The Administrator may by regulation designate any fuel or fuel additive and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

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(b)(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manu-

facturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The results of such tests shall not be considered confidential.

(3) Upon compliance with the provisions of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

(c) (1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if any emission products of such fuel or fuel additive will endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2) (A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other tech-

nologically or economically feasible means of achieving emission standards under section 202.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3) (A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 307 (a) (relating to subpoenas) shall be applicable.

(4) (A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 209(a) has at any time been waived under section 209(b)

may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

(d) Any person who violates subsection (a) or the regulations prescribed under subsection (c) or who fails to furnish any information required by the Administrator under subsection (b) shall forfeit and pay to the United States a civil penalty of \$10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications.

DEVELOPMENT OF LOW-EMISSION VEHICLES

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SEC. 212 (a) For the purpose of this section—

(1) The term "Board" means the Low-Emission Vehicle Certification Board.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "motor vehicle" means any self-propelled vehicle designed for use in the United States on the highways, other than a vehicle designed or used for military field training, combat, or tactical purposes.

(4) The term "low-emission vehicle" means any motor vehicle which—

(A) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 202 at the time of procurement to that type of vehicle; and

(B) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 202 at the time of procurement to that type of vehicle.

(5) The term "retail price" means (A) the maximum statutory price applicable to any class or model of motor vehicle; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

(b) (1) There is established a Low-Emission Vehicle Certification Board to be composed of the Administrator or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Safety Bureau in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

(2) Any member of the Board not employed by the United States may receive compensation at the rate of \$125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(3) (A) The Chairman, with the concurrence of the members of the Board, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS-18 by section 5332 of title 5, United States Code.

(B) The Chairman may fix the time and place of such meetings as may be required, but a meeting of the Board shall be called whenever a majority of its members so request.

(C) The Board is granted all other powers necessary for meeting its responsibilities under this section.

(c) The Administrator shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

(d) (1) The Board shall certify any class or model of motor vehicles—

(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

(B) which is a low-emission vehicle as determined by the Administrator; and

(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In

making the determination under this subsection the Board shall consider the following criteria:

- (i) the safety of the vehicle;
- (ii) its performance characteristics;
- (iii) its reliability potential;
- (iv) its serviceability;
- (v) its fuel availability;
- (vi) its noise level; and
- (vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

(2) Certification under this section shall be effective for a period of one year from the date of issuance.

(3) (A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in accordance with regulations prescribed by the Board.

(B) The Board shall publish a notice of each application received in the Federal Register.

(C) The Administrator and the Board shall make determinations for the purpose of this section in accordance with procedures prescribed by regulation by the Administrator and the Board, respectively.

(D) The Administrator and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in regulations prescribed under subparagraph (A).

(E) The Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

(F) Within ninety days after the receipt of a properly filed certification application, the Administrator shall determine whether such class or model of vehicle is a low-emission vehicle, and within 180 days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board any dissenting views.

(e) (1) Certified low-emission vehicles shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are

no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

(2) In order to encourage development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an inherently low-polluting propulsion system.

(3) Data relied upon by the Board and the Administrator in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

(f) The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible certified low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

(g) For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

(h) The Administrator shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Administrator shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

(i) There are authorized to be appropriated for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section, \$5,000,000 for the fiscal year ending June 30, 1971, and \$25,000,000 for each of the two succeeding fiscal years.

(j) The Board shall promulgate the procedures required to implement this section within one hundred and

eighty days after the date of enactment of the Clean Air Amendments of 1970.

FUEL ECONOMY IMPROVEMENT FROM NEW MOTOR VEHICLES

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SEC. 213. (a) (1) The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Public Works and Commerce of the United States Senate within one hundred and twenty days following the date of enactment of this section, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to, the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standard, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to such committees of the Congress, but such Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 307 (a) of this Act to obtain necessary information.

(2) For the purpose of this section, the term "fuel economy improvement standard" means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for each manufacturer in accordance with test procedures established by the Administrator pursuant to this Act. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means.

DEFINITIONS FOR PART A

SEC. 214. As used in this part—

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(1) The term “manufacturer” as used in sections 202, 203, 206, 207, and 208 means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

(2) The term “motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term “new motor vehicle” means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term “new motor vehicle engine” means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 202 which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term “dealer” means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term “ultimate purchaser” means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term “commerce” means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

PART B—AIRCRAFT EMISSION STANDARDS

ESTABLISHMENT OF STANDARDS

SEC. 231. (a) (1) Within 90 days after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall commence a study and investigation of

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emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2) Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulation with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety.

ENFORCEMENT OF STANDARDS

SEC. 232. (a) The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 231 by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and, may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 231 or of a regulation prescribed under subsection (a) is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

STATE STANDARDS AND CONTROLS

SEC. 233. No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

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DEFINITIONS

SEC. 234. Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 101 of the Federal Aviation Act of 1958.

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TITLE III—GENERAL

ADMINISTRATION

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SEC. 301. (a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

(b) Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this Act.

(c) Payments under grants made under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

DEFINITIONS

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SEC. 302. When used in this Act—

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

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this Act;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, and political subdivision of a State.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term "air pollutant" means an air pollution agent or combination of such agents.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

EMERGENCY POWERS

SEC. 303. Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary.

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CITIZEN SUITS

SEC. 304. (a) Except as provided in subsection (b), any person may commence a civil action on his own behalf—

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(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

(b) No action may be commenced—

(1) under subsection (a) (1)—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a) (2) prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 112(c) (1) (B) or an order issued by the Administrator pursuant to section 113(a). Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) (1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) For purposes of this section, the term "emission standard or limitation under this Act" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard, or

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive,

which is in effect under this Act (including a requirement applicable by reason of section 118) or under an applicable implementation plan.

APPEARANCE

SEC. 305. The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

42 U.S.C.
1857h-3

FEDERAL PROCUREMENT

SEC. 306. (a) No Federal agency may enter into any contract with any person who is convicted of any offense under section 113(c)(1) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected.

42 U.S.C.
1857h-4

(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

GENERAL PROVISION RELATING TO ADMINISTRATIVE
PROCEEDINGS AND JUDICIAL REVIEW

42 U.S.C.
1857h-5

SEC. 307. (a) (1) In connection with any determination under section 110(f) or section 202(b)(5), or for purposes of obtaining information under section 202(b)(4) or 211(c)(3), the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be discussed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 202(c), or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) (1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard under section 112, any standard of performance under section 111, any standard under section 202 (other than a standard required to be prescribed under section 202(b)(1)), any determination under section 202(b)(5), any control or prohibition under section 211, or any standard under section 231 may be filed only in the United States Court of Appeals for the District of Columbia. A petition

for review of the Administrator's action in approving or promulgating any implementation plan under section 110 or section 111(d), or his action under section 119(c)(2)(A), (B), or (C) or under regulations thereunder, may be filed only in the United States Court of Appeals for the appropriate circuit. Any such petition shall be filed within 30 days from the date of such promulgation, approval, or action, or after such date if such petition is based solely on grounds arising after such 30th day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

MANDATORY LICENSING

SEC. 308. Whenever the Attorney General determines upon application of the Administrator—

42 U.S.C.
1857h-6

(1) that—

(A) in the implementation of the requirements of section 111, 112, or 202 of this Act, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such

reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

POLICY REVIEW

42 U.S.C.
1857h-7

SEC. 309. (a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action other than a project for construction to which section 102(2)(C) of Public Law 91-190 applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

OTHER AUTHORITY NOT AFFECTED

42 U.S.C. 1857i

SEC. 310. (a) Except as provided in subsection (b) of this section, this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) No appropriation shall be authorized or made under section 301, 311, or 314 of the Public Health Service Act for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this Act.

RECORDS AND AUDIT

42 U.S.C. 1857j

SEC. 311. (a) Each recipient of assistance under this Act shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit

and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.

COMPREHENSIVE ECONOMIC COST STUDIES

SEC. 312. (a) In order to provide the basis for evaluating programs authorized by this act and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Administrator, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standards of air quality as may be established pursuant to this Act or applicable State law. The Administrator shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

42 U.S.C.
1857j-1

(b) The Administrator shall also make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs assisted pursuant to this Act and other programs for the same purpose as this Act; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969.

ADDITIONAL REPORTS TO CONGRESS

SEC. 313. Not later than six months after the effective date of this section and not later than January 10 of each calendar year beginning after such date, the Administrator shall report to the Congress on measures taken toward implementing the purpose and intent of this Act including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended

42 U.S.C.
1857j-2

emission control requirements; (3) the status of enforcement actions taken pursuant to this Act; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to title II of this Act; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this Act; and (10) the reports and recommendations made by the President's Air Quality Advisory Board.

LABOR STANDARDS

42 U.S.C.
1857j-3

SEC. 314. The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

SEPARABILITY

42 U.S.C. 1857k

SEC. 315. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

APPROPRIATIONS

42 U.S.C. 1857l

SEC. 316. There are authorized to be appropriated to carry out this Act, other than sections 103(f)(3) and (d), 104, 212, and 403, \$125,000,000 for the fiscal year ending June 30, 1971, \$225,000,000 for the fiscal year ending June 30, 1972, \$300,000,000 for the fiscal year ending June 30, 1973, \$300,000,000 for fiscal year ending June 30, 1974, and \$300,000,000 for the fiscal year ending June 30, 1975.

TITLE IV—NOISE POLLUTION

SEC. 401. This title may be cited as the "Noise Pollution and Abatement Act of 1970".

42 U.S.C. 1858
note

SEC. 402. (a) The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

42 U.S.C. 1858

- (A) effects at various levels;
- (B) projected growth of noise levels in urban areas through the year 2000;
- (C) the psychological and physiological effect on humans;
- (D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;
- (E) effect on wildlife and property (including values);
- (F) effect of sonic booms on property (including values); and
- (G) such other matters as may be of interest in the public welfare.

(b) In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after the date of enactment of this title.

(c) In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

42 U.S.C. 1858a

SEC. 403. There is authorized to be appropriated such amount, not to exceed \$30,000,000, as may be necessary for the purposes of this title.

[EXCERPTS FROM P.L. 91-604 RELATING TO THE CLEAN AIR ACT AND THE FEDERAL AVIATION ACT OF 1958]

SAVINGS PROVISIONS

SEC. 16. (a) (1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act prior to enactment of this Act may be approved under section 110 of the Clean Air Act (as amended by this Act) and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with the applicable requirements of the Clean Air Act (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within ninety days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act, notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act.

(2) The amendments made by section 4(b) shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act before the date of enactment of this Act.

(b) Regulations or standards issued under title II of the Clean Air Act prior to the enactment of this Act shall continue in effect until revised by the Administrator consistent with the purposes of such Act.

SEC. 234(b) (1) Section 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1421) is amended by adding at the end thereof the following new subsection:

“AVIATION FUEL STANDARDS

“(d) The Administrator shall prescribe, and from time to time revise, regulations (1) establishing standards governing the composition or the chemical or physical properties of any aircraft fuel or fuel additive for the purpose of controlling or eliminating aircraft emissions which the Administrator of the Environmental Protection Agency (pursuant to section 231 of the Clean Air Act) determines endanger the public health or welfare, and (2) providing for the implementation and enforcement of such standards.”

(2) Section 610(a) of such Act (49 U.S.C. 1430(a)) is amended by striking out "and" at the end of paragraph (7); by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; and" and by adding after paragraph (8) the following new paragraph:

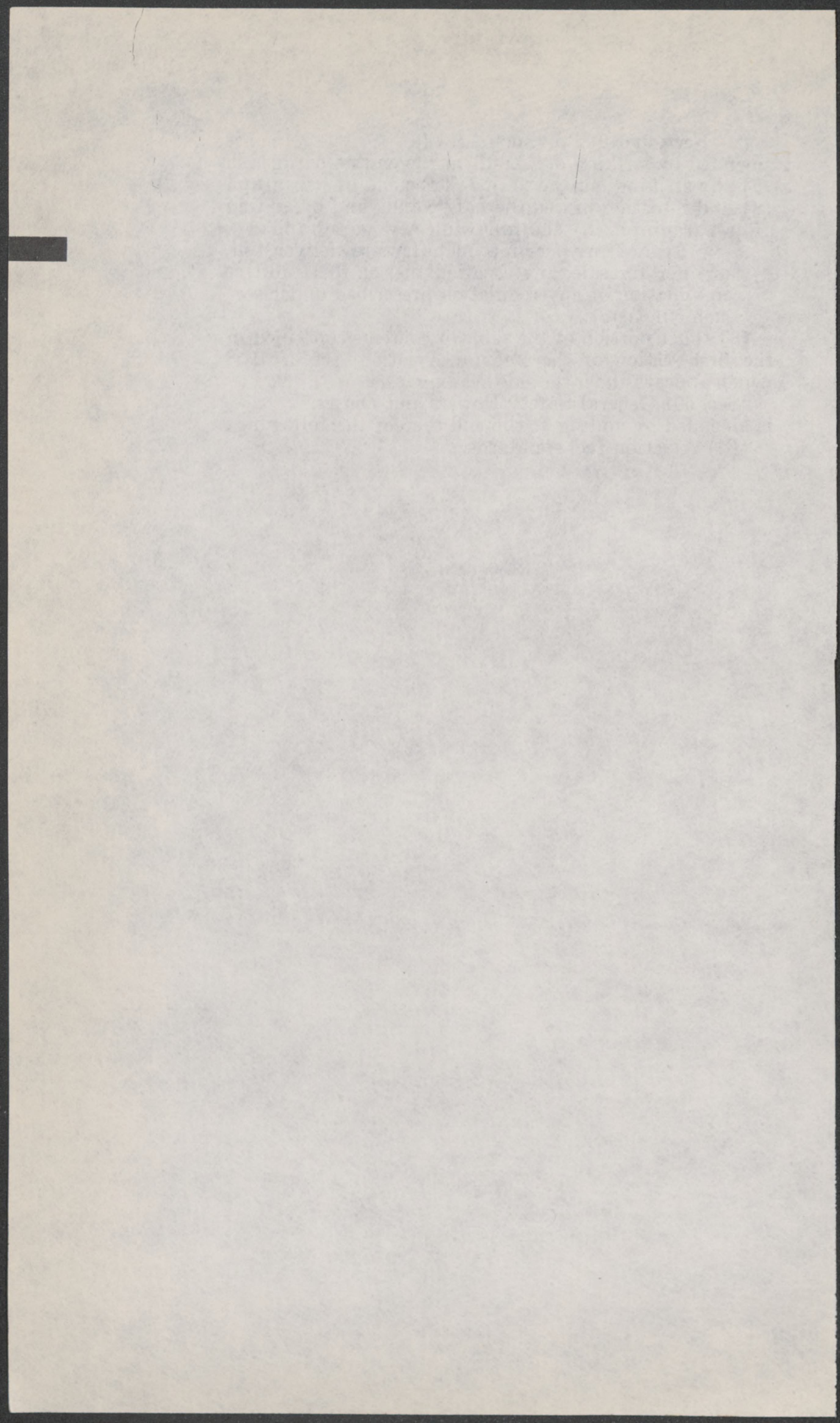
"(9) For any person to manufacture, deliver, sell, or offer for sale, any aviation fuel or fuel additive in violation of any regulation prescribed under section 601 (d)."

(3) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

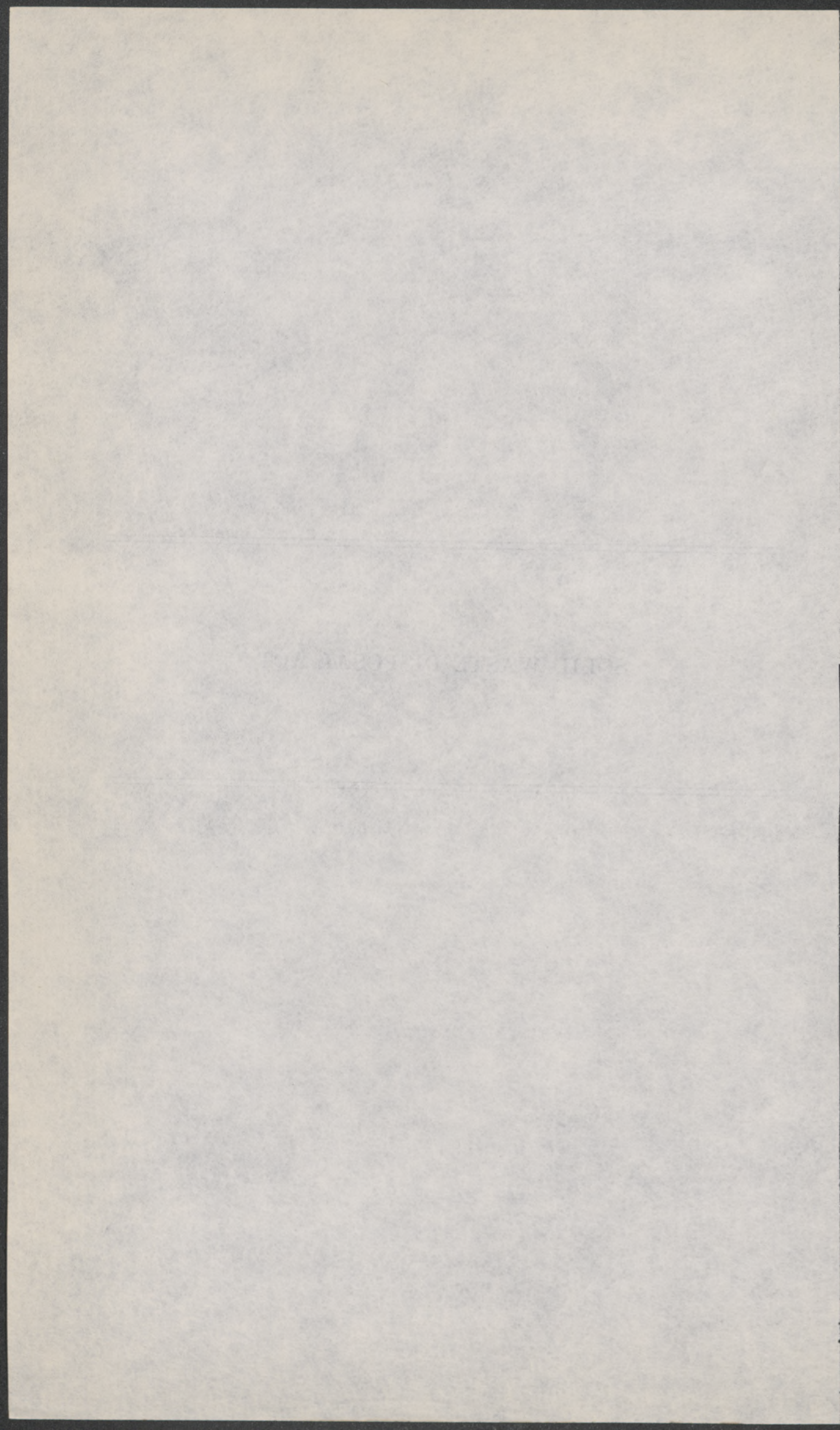
"Sec. 601 General Safety Powers and Duties."

is amended by adding at the end thereof the following:

"(d) Aviation fuel standards."



SOLID WASTE DISPOSAL ACT



SOLID WASTE DISPOSAL ACT

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this table referred to as “this Act”), together with the following table of contents, may be cited as the “Solid Waste Disposal Act”: 42 U.S.C. 6901

Subtitle A—General Provisions

- Sec. 1001. Short title and table of contents.
- Sec. 1002. Congressional findings.
- Sec. 1003. Objectives.
- Sec. 1004. Definitions.
- Sec. 1005. Governmental cooperation.
- Sec. 1006. Application of Act and integration with other Acts.
- Sec. 1007. Financial disclosure.
- Sec. 1008. Solid waste management information and guidelines.

Subtitle B—Office of Solid Waste; Authorities of the Administrator

- Sec. 2001. Office of Solid Waste.
- Sec. 2002. Authorities of Administrator.
- Sec. 2003. Resource recovery and conservation panels.
- Sec. 2004. Grants for discarded tire disposal.
- Sec. 2005. Annual report.
- Sec. 2006. General authorization.

Subtitle C—Hazardous Waste Management

- Sec. 3001. Identification and listing of hazardous waste.
- Sec. 3002. Standards applicable to generators of hazardous waste.
- Sec. 3003. Standards applicable to transporters of hazardous waste.
- Sec. 3004. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
- Sec. 3005. Permits for treatment, storage, or disposal of hazardous waste.
- Sec. 3006. Authorized State hazardous waste programs.
- Sec. 3007. Inspections.
- Sec. 3008. Federal enforcement.
- Sec. 3009. Retention of State authority.
- Sec. 3010. Effective date.
- Sec. 3011. Authorization of assistance to States.

Subtitle D—State or Regional Solid Waste Plans

- Sec. 4001. Objectives of subtitle.
- Sec. 4002. Federal guidelines for plans.
- Sec. 4003. Minimum requirements for approval of plans.
- Sec. 4004. Criteria for sanitary landfills; sanitary landfills required for all disposal.

- Sec. 4005. Upgrading of open dumps.
- Sec. 4006. Procedure for development and implementation of State plan.
- Sec. 4007. Approval of State plan; Federal assistance.
- Sec. 4008. Federal assistance.
- Sec. 4009. Rural communities assistance.

Subtitle E—Duties of the Secretary of Commerce in Resource and Recovery

- Sec. 5001. Functions.
- Sec. 5002. Development of specifications for secondary materials.
- Sec. 5003. Development of market for recovered materials.
- Sec. 5004. Technology promotion.

Subtitle F—Federal Responsibilities

- Sec. 6001. Application of Federal, State, and local law to Federal facilities.
- Sec. 6002. Federal procurement.
- Sec. 6003. Cooperation with Environmental Protection Agency.
- Sec. 6004. Applicability of solid waste disposal guidelines to executive agencies.

Subtitle G—Miscellaneous Provisions

- Sec. 7001. Employee protection.
- Sec. 7002. Citizen suits.
- Sec. 7003. Imminent hazard.
- Sec. 7004. Petition for regulations; public participation.
- Sec. 7005. Separability.
- Sec. 7006. Judicial review.
- Sec. 7007. Grants or contracts for training projects.
- Sec. 7008. Payments.
- Sec. 7009. Labor standards.

Subtitle H—Research, Development, Demonstration, and Information

- Sec. 8001. Research, demonstrations, training, and other activities.
- Sec. 8002. Special studies; plans for research, development, and demonstrations.
- Sec. 8003. Coordination, collection, and dissemination of information.
- Sec. 8004. Full-scale demonstration facilities.
- Sec. 8005. Special study and demonstration projects on recovery of useful energy and materials.
- Sec. 8006. Grants for resource recovery systems and improved solid waste disposal facilities.
- Sec. 8007. Authorization of appropriations.

CONGRESSIONAL FINDINGS

42 U.S.C. 6901

SEC. 1002. (a) SOLID WASTE.—The Congress finds with respect to solid waste—

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

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required

increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

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

(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid-waste disposal practices.

(b) ENVIRONMENT AND HEALTH.—The Congress finds with respect to the environment and health, that—

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

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

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

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

(5) hazardous waste presents, in addition to the problems associated with non-hazardous solid waste,

special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and

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

(c) **MATERIALS.**—The Congress finds with respect to materials, that—

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

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

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

(d) **ENERGY.**—The Congress finds with respect to energy, that—

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

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

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

OBJECTIVES

42 U.S.C. 6902

SEC. 1003. The objectives of this Act are to promote the protection of health and environment and to conserve valuable material and energy resources by—

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

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

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

(4) regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment;

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

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

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

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

DEFINITIONS

SEC. 1004. As used in this Act:

42 U.S.C. 6903

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

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

(2A) The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, proc-

esses or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

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

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

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

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

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

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

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

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land and after December 31, 1979, such term does not include salaries of employees due pursuant to subtitle D of this Act.

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

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

(11) The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient

duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

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

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

(14) The term "open dump" means a site for the disposal of solid waste which is not a sanitary landfill within the meaning of section 4004.

(15) The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

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

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

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

(19) The term "recovered material" means material which has been collected or recovered from solid waste.

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

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

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

(23) The term "resource recovery system" means a solid waste management system which provides for col-

lection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

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

(25) The term "regional authority" means the authority established or designated under section 4006.

(26) The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 4004.

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

(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

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

(29) The term "solid waste management facility" includes (A) any resource recovery system or component thereof, (B) any system, program, or facility for resource conservation, and (C) any facility for the treatment of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

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

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

the Commonwealth of the Northern Mariana Islands.

(32) The term "State authority" means the agency established or designated under section 4007.

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

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

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

GOVERNMENTAL COOPERATION

SEC. 1005. (a) INTERSTATE COOPERATION.—The provisions of this Act to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State. 42 U.S.C. 6904

(b) CONSENT OF CONGRESS TO COMPACTS.—The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

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

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

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

APPLICATION OF ACT AND INTEGRATION WITH OTHER ACTS

42 U.S.C. 6905

SEC. 1006. (a) APPLICATION OF ACT.—Nothing in this Act shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Safe Drinking Water Act (42 U.S.C. 300f and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) INTEGRATION WITH OTHER ACTS.—The Administrator shall integrate all provisions of this Act for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act (42 U.S.C. 1857 and following), the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 and following), the Safe Drinking Water Act (42 U.S.C. 300f and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following) and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this Act and in the other acts referred to in this subsection.

FINANCIAL DISCLOSURE

42 U.S.C. 6906

SEC. 1007. (a) STATEMENT.—Each officer or employee of the Administrator who—

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

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

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

(b) ACTION BY ADMINISTRATOR.—The Administrator shall—

(1) act within ninety days after the date of enactment of this Act—

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

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

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

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

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

SOLID WASTE MANAGEMENT INFORMATION AND GUIDELINES

SEC. 1008. (a) GUIDELINES.—Within one year of enactment of this section, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

42 U.S.C. 6907

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

(2) not later than two years after the enactment of this section, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended; (D) protection of ambient air

quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended; (E) disease and vector control; (F) safety; and (G) esthetics; and

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

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

(b) NOTICE.—The Administrator shall notify the Committee on Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines, pursuant to this section of the content of such proposed suggested guidelines.

Subtitle B—Office of Solid Waste; Authorities of the Administrator

OFFICE OF SOLID WASTE

42 U.S.C. 6911

SEC. 2001. The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the "Office") to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this Act (as modified by applicable reorganization plans) shall be carried out through the Office.

AUTHORITIES OF ADMINISTRATOR

42 U.S.C. 6912

SEC. 2002. (a) AUTHORITIES.—In carrying out this Act, the Administrator is authorized to—

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

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

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

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

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

(b) **REVISION OF REGULATIONS.**—Each regulation promulgated under this Act shall be reviewed and, where necessary, revised not less frequently than every three years.

RESOURCE RECOVERY AND CONSERVATION PANELS

SEC. 2003. The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as "Resource Conservation and Recovery Panels") to provide States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments. 42 U.S.C. 6913

GRANTS FOR DISCARDED TIRE DISPOSAL

SEC. 2004. (a) GRANTS.—The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body. 42 U.S.C. 6914

(b) **AUTHORIZATION.**—There is authorized to be appropriated \$750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

ANNUAL REPORT

42 U.S.C. 6915

SEC. 2005. The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

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

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

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

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

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

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

GENERAL AUTHORIZATION

42 U.S.C. 6916

SEC. 2006. (a) GENERAL ADMINISTRATION.—There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this Act, \$35,000,000 for the fiscal year ending September 30, 1977, \$38,000,000 for the fiscal year ending September 30, 1978, and \$42,000,000 for the fiscal year ending September 30, 1979.

(b) RESOURCE RECOVERY AND CONSERVATION PANELS.—Not less than 20 percent of the amount appropriated under subsection (a) shall be used only for purposes of Resource Recovery and Conservation Panels established under section 2003 (including travel expenses incurred by such panels in carrying out their functions under this Act).

(c) HAZARDOUS WASTE.—Not less than 30 percent of the amount appropriated under subsection (a) shall be used only for purposes of carrying out subtitle C of this Act (relating to hazardous waste) other than section 3011.

Subtitle C—Hazardous Waste Management

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SEC. 3001. (a) CRITERIA FOR IDENTIFICATION OR LISTING.—Not later than eighteen months after the date of the enactment of this Act, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subtitle, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate. 42 U.S.C. 6921

(b) IDENTIFICATION AND LISTING.—Not later than eighteen months after the date of enactment of this section, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 1004(5)), which shall be subject to the provisions of this subtitle. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate.

(c) PETITION BY STATE GOVERNOR.—At any time after the date eighteen months after the enactment of this title, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

SEC. 3002. Not later than eighteen months after the date of the enactment of this section, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting— 42 U.S.C. 6922

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

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

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

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

(5) use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subtitle; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subtitle at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

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

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

STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

42 U.S.C. 6923

SEC. 3003. (a) STANDARDS.—Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

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

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

(3) compliance with the manifest system referred to in section 3002(5); and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subtitle.

(b) COORDINATION WITH REGULATIONS OF SECRETARY OF TRANSPORTATION.—In case of any hazardous waste identified or listed under this subtitle which is subject to the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 and following), the regulations promulgated by the Administrator under this subtitle shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

SEC. 3004. Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting—

42 U.S.C. 6924

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

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 3002(5);

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

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

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

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

(7) compliance with the requirements of section 3005 respecting permits for treatment, storage, or disposal.

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

PERMITS FOR TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTE

42 U.S.C. 6925

SEC. 3005. (a) PERMIT REQUIREMENTS.—Not later than eighteen months after the date of the enactment of this section, the Administrator shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 3010 and upon and after such date the disposal of any such hazardous waste is prohibited except in accordance with such a permit.

(b) REQUIREMENTS OF PERMIT APPLICATION.—Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

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

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

(c) **PERMIT ISSUANCE.**—Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 3004, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 3004, the permit shall specify the time allowed to complete the modifications.

(d) **PERMIT REVOCATION.**—Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 3006) of noncompliance by a facility having a permit under this title with the requirements of this section or section 3004, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 3006) shall revoke such permit.

(e) **INTERIM STATUS.**—Any person who—

(1) owns or operates a facility required to have a permit under this section which facility is in existence on the date of enactment of this Act,

(2) has complied with the requirements of section 3010(a), and

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

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

AUTHORIZED STATE HAZARDOUS WASTE PROGRAMS

SEC. 3006. (a) FEDERAL GUIDELINES.—Not later than eighteen months after the date of enactment of this Act, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the development of State hazardous waste programs.

42 U.S.C. 6926

(b) **AUTHORIZATION OF STATE PROGRAM.**—Any State which seeks to administer and enforce a hazardous waste program pursuant to this subtitle may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his find-

ings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subtitle in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subtitle, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subtitle.

(c) **INTERIM AUTHORIZATION.**—Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date required for promulgation of regulations under sections 3002, 3003, 3004, and 3005, submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subtitle. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subtitle for a twenty-four month period beginning on the date six months after the date required for promulgation of regulations under sections 3002 through 3005.

(d) **EFFECT OF STATE PERMIT.**—Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subtitle.

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

INSPECTIONS

42 U.S.C. 6927

SEC. 3007. (a) ACCESS ENTRY.—For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this subtitle, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer or employee of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer employee of a State having an authorized hazardous waste program, furnish or permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, such officers or employees are authorized—

(1) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are generated, stored, treated, or disposed of;

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

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

(b) AVAILABILITY TO PUBLIC. —Any records, reports, or information obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, the Administrator (or the State, as the case may be) shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

FEDERAL ENFORCEMENT

42 U.S.C. 6928

SEC. 3008. (a) COMPLIANCE ORDERS.—(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subtitle where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 3006, the Administrator shall give notice to the State in which such violation has occurred thirty days prior to issuing an order or commencing a civil action under this section.

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

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

(c) REQUIREMENTS OF COMPLIANCE ORDERS.—Any order issued under this section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(d) CRIMINAL PENALTY.—Any person who knowingly—

(1) transports any hazardous waste listed under this subtitle to a facility which does not have a permit under section 3005 (or 3006 in the case of a State program),

(2) disposes of any hazardous waste listed under this subtitle without having obtained a permit therefor under this subtitle,

(3) makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of compliance with this subtitle.

shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed one year, or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

RETENTION OF STATE AUTHORITY

SEC. 3009. Upon the effective date of regulations under this subtitle no State or political subdivision may impose any requirements less stringent than those authorized under this subtitle respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subtitle is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect.

42 U.S.C. 6929

EFFECTIVE DATE

SEC. 3010. (a) PRELIMINARY NOTIFICATION.—Not later than ninety days after promulgation or revision of regulations under section 3001 identifying by its characteristics or listing any substance as hazardous waste subject to this subtitle, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subtitle may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

42 U.S.C. 6930

(b) EFFECTIVE DATE OF REGULATION.—The regulations under this subtitle respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months, after the

date of revision in the case of any regulation which is revised after the date required for promulgation thereof).

AUTHORIZATION OF ASSISTANCE TO STATES

42 U.S.C. 6931

SEC. 3011. (a) AUTHORIZATION.—There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

(b) ALLOCATION.—Amounts authorized to be appropriated under subsection (a) shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

Subtitle D—State or Regional Solid Waste Plans

OBJECTIVES OF SUBTITLE

42 U.S.C. 6941

SEC. 4001. The objectives of this subtitle are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry.

FEDERAL GUIDELINES FOR PLANS

42 U.S.C. 6942

SEC. 4002. (a) GUIDELINES FOR IDENTIFICATION OF REGIONS.—For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after the date of enactment of this section and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

(1) the size and location of areas which should be included,

(2) the volume of solid waste which should be included, and

(3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

(b) GUIDELINES FOR STATE PLANS.—Not later than eighteen months after the date of enactment of this section and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this title referred to as "State plans"). The guidelines shall contain methods for achieving the objectives specified in section 4001. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

(c) CONSIDERATIONS FOR STATE PLAN GUIDELINES.—The guidelines promulgated under subsection (b) shall consider—

(1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;

(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;

(4) population density, distribution, and projected growth;

(5) geographic, geologic, climatic, and hydrologic characteristics;

(6) the type and location of transportation;

(7) the profile of industries;

(8) the constituents and generation rates of waste;

(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;

(10) types of resource recovery facilities and resource conservation systems which are appropriate; and

(11) available new and additional markets for recovered material.

MINIMUM REQUIREMENTS FOR APPROVAL OF PLANS

42 U.S.C. 6943

SEC. 4003. In order to be approved under section 4007, each State plan must comply with the following minimum requirements—

(1) The plan shall identify (in accordance with section 4006(b)) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with section 4005 (c), prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 4004(a)) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 4005.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no local government within the State shall be prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

CRITERIA FOR SANITARY LANDFILLS; SANITARY LANDFILLS
REQUIRED FOR ALL DISPOSAL

42 U.S.C. 6944

SEC. 4004. (a) CRITERIA FOR SANITARY LANDFILLS.—Not later than one year after the date of enactment of this section, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this Act. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the

environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) DISPOSAL REQUIRED TO BE IN SANITARY LANDFILLS, ETC.—For purposes of complying with section 4003(2) each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 4003(2).

(c) EFFECTIVE DATE.—The prohibition contained in subsection (b) shall take effect on the date six months after the date of promulgation of regulations under subsection (a) or on the date of approval of the State plan, whichever is later.

UPGRADING OF OPEN DUMPS

SEC. 4005. (a) OPEN DUMPS.—For purposes of this Act, the term “open dump” means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 4004 and which is not a facility for disposal of hazardous waste.

42 U.S.C. 6945

(b) INVENTORY.—Not later than one year after promulgation of regulations under section 4004, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this Act.

(c) CLOSING OR UPGRADING OF EXISTING OPEN DUMPS.—Any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. For purposes of complying with section 4003(2), each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition of open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of the inventory under subsection (b)).

PROCEDURE FOR DEVELOPMENT AND IMPLEMENTATION OF
STATE PLAN

42 U.S.C. 6946

SEC. 4006. (a) IDENTIFICATION OF REGIONS.—Within one hundred and eighty days after publication of guidelines under section 4002(a) (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

(b) IDENTIFICATION OF STATE AND LOCAL AGENCIES AND RESPONSIBILITIES.—(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a), for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 4003, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste functions will, under such State plan, be planned for and carried out by the State and which such functions will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on the date of enactment of this Act, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 208 of the Federal Water Pollution Control Act (86 Stat. 839) shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a), establish or designate a State agency to develop and implement the State plan for such area.

(c) INTERSTATE REGIONS.—(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 4002(a) (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a).

(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single representative organization including elected officials of general purpose units of local government within such region.

(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

(4) For purposes of this subtitle, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.

APPROVAL OF STATE PLAN; FEDERAL ASSISTANCE

SEC. 4007. (a) PLAN APPROVAL.—The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

42 U.S.C. 6947

(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 4003; and

(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 4003 with which the State plan is not in compliance;

(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subtitle; or

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 4003 (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

(b) ELIGIBILITY OF STATES FOR FEDERAL FINANCIAL ASSISTANCE.—(1) The Administrator shall approve a State application for financial assistance under this subtitle, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 4006 within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subtitle.

(2) The Administrator shall approve a State application for financial assistance under this subtitle, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) and is being implemented by the State.

(3) Upon withdrawal of approval of a State plan under subsection (a), the Administrator shall withhold Federal financial and technical assistance under this subtitle (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(C) EXISTING ACTIVITIES.—Nothing in this subtitle shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subtitle.

FEDERAL ASSISTANCE

42 U.S.C. 6948

SEC. 4008. (a) AUTHORIZATION OF FEDERAL FINANCIAL ASSISTANCE.—(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1978 and \$40,000,000 for fiscal year 1979 for purposes of making grants to the States for the development and implementation of State plans under this subtitle.

(2) (A) The Administrator is authorized to provide financial assistance to States, counties, municipalities,

and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 4005 and Subtitle C of this Act and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 1008 of this Act. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program.

(C) There are authorized to be appropriated \$15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section.

(b) STATE ALLOTMENT.—The sums appropriated in any fiscal year under subsection (a) (1) shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

(c) DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE

WITHIN THE STATE.—The Federal assistance allotted to the States under subsection (b) shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 4006(b).

(d) TECHNICAL ASSISTANCE.—The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subtitle B, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

(e) SPECIAL COMMUNITIES.—(1) The Administrator, in cooperation with State and local officials, shall identify communities within the United States (A) having a population of less than twenty-five thousand persons, (B) having solid waste disposal facilities in which more than 75 per centum of the solid waste disposal of is from areas outside the jurisdiction of the communities, and (C) which have serious environmental problems resulting from the disposal of such solid waste.

(2) There is authorized to be appropriated to the Administrator \$2,500,000 for each of the fiscal years 1978 and 1979 to make grants to be used for the conversion, improvement, or consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants.

(3) Grants under this subsection shall be made only to projects which the Administrator determines will be consistent with an applicable State plan approved under this subtitle and which will assist in carrying out such plan.

RURAL COMMUNITIES ASSISTANCE

42 U.S.C. 6949

SEC. 4009. (a) IN GENERAL.—The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 4005 of this Act or restrictions on open

burning or other requirements arising under the Clean Air Act or the Federal Water Pollution Control Act. Such assistance shall only be available—

(1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 4005 of this Act; and

(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

(b) ALLOTMENT.—The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

(c) LIMIT.—The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

(d) APPROPRIATIONS.—There are authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section.

Subtitle E—Duties of the Secretary of Commerce in Resource and Recovery

FUNCTIONS

SEC. 5001. The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—

42 U.S.C. 6951

(1) accurate specifications for recovered materials;

(2) stimulation of development of markets for recovered materials;

(3) promotion of proven technology; and

(4) a forum for the exchange of technical and economic data relating to resource recovery facilities.

DEVELOPMENT OF SPECIFICATIONS FOR SECONDARY MATERIALS

42 U.S.C. 6952

SEC. 5002. The Secretary of Commerce, acting through the National Bureau of Standards, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after the date of the enactment of this Act, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

DEVELOPMENT OF MARKETS FOR RECOVERED MATERIALS

42 U.S.C. 6953

SEC. 5003. The Secretary of Commerce shall within two years after the enactment of this Act take such actions as may be necessary to—

- (1) identify the geographical location of existing or potential markets for recovered materials;
- (2) identify the economic and technical barriers to the use of recovered materials; and
- (3) encourage the development of new uses for recovered materials.

TECHNOLOGY PROMOTION

42 U.S.C. 6954

SEC. 5004. The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system.

Subtitle F—Federal Responsibilities

APPLICATION OF FEDERAL, STATE, AND LOCAL LAW TO FEDERAL FACILITIES

42 U.S.C. 6961

SEC. 6001. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or

(2) engaged in any activity resulting, or which may result, in the disposal of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

FEDERAL PROCUREMENT

SEC. 6002. (a) APPLICATION OF SECTION.—Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more. 42 U.S.C. 6962

(b) PROCUREMENT SUBJECT TO OTHER LAW.—Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6004 (as promulgated before the date of enactment of this section under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) REQUIREMENTS.—(1) (A) After two years after the date of enactment of this section, each procuring agency shall procure items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition. The decision not to procure such items shall be based on a determination that such procurement items—

(i) are not reasonably available within a reasonable period of time;

(ii) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(iii) are only available at an unreasonable price. Any determination under clause (ii) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which such material is covered by such guidelines.

(B) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using recovered material and recovered-material-derived fuel as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(C) Contracting offices shall require that vendors certify the percentage of the total material utilized for the performance of the contract which is recovered materials.

(d) SPECIFICATIONS.—(1) All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement item procured by Federal agencies shall, in reviewing those specifications, ascertain whether such specifications violate the prohibitions contained in subparagraphs (A) through (C) of paragraph (2). Such review shall be undertaken not later than eighteen months after the date of enactment of this section.

(2) In drafting or revising such specifications, after the date of enactment of this section—

(A) any exclusion of recovered materials shall be eliminated;

(B) such specification shall not require the item to be manufactured from virgin materials; and

(C) such specifications shall require reclaimed materials to the maximum extent possible without jeopardizing the intended end use of the item.

(e) GUIDELINES.—The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Bureau of Standards), and the Public Printer, shall prepare, and from time to time, revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall set forth recommended

practices with respect to the procurement of recovered materials and items containing such materials and shall provide information as to the availability, sources of supply, and potential uses of such materials and items.

(f) **PROCUREMENT OF SERVICES.**—A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) **EXECUTIVE OFFICE.**—The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the policy expressed in this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to annually report to the Congress on actions taken by Federal agencies and the progress made in the implementation of such policy.

COOPERATION WITH ENVIRONMENTAL PROTECTION AGENCY

SEC. 6003. All Federal agencies having functions relating to solid waste or hazardous waste shall cooperate to the maximum extent permitted by law with the Administrator in carrying out his functions under this Act and shall make all appropriate information, facilities, personnel, and other resources available, on a reimbursable basis, to the Administrator upon his request.

42 U.S.C. 6963

APPLICABILITY OF SOLID WASTE DISPOSAL GUIDELINES TO EXECUTIVE AGENCIES

SEC. 6004. (a) COMPLIANCE.—(1) If—

42 U.S.C. 6964

(A) an executive agency (as defined in section 105 of title 5, United States Code) has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste disposal activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste disposal activities,

then such agency shall insure compliance with the guidelines recommended under section 1008 and the purposes of this Act in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency which conducts any activity—

(A) which generates solid waste, and

(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste, shall insure compliance with such guidelines and the purposes of this Act in conducting such activity.

(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this Act in the disposal of such waste.

(4) The President shall prescribe regulations to carry out this subsection.

(b) **LICENSES AND PERMITS.**—Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Secretary to insure compliance with guidelines recommended under section 1008 and the purposes of this Act.

Subtitle G—Miscellaneous Provisions

EMPLOYEE PROTECTION

42 U.S.C. 6971

SEC. 7001. (a) GENERAL.—No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act or of any applicable implementation plan.

(b) **REMEDY.**—Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of

such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this Act.

(c) **COSTS.**—Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) **EXCEPTION.**—This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this Act.

(e) **EMPLOYMENT SHIFTS AND LOSS.**—The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this Act and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall

make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this Act or any applicable implementation plan.

CITIZEN SUITS

42 U.S.C. 6972

SEC. 7002. (a) IN GENERAL.—Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

Any action under paragraph (a) (1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under paragraph (a) (2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be.

(b) ACTIONS PROHIBITED.—No action may be commenced under paragraph (a) (1) of this section—

(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however,* That in any such action in a court of the United States, any person may intervene as a matter of right.

(c) NOTICE.—No action may be commenced under paragraph (a)(2) of this section prior to 60 days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 212 of this Act. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this Act may be brought under this section only in the judicial district in which such alleged violation occurs.

(d) INTERVENTION.—In any action under this section the Administrator, if not a party, may intervene as a matter of right.

(e) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, requiring the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) OTHER RIGHTS PRESERVED.—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

IMMINENT HAZARD

SEC. 7003. Notwithstanding any other provision of this Act, upon receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person for contributing to the alleged disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. The Administrator shall provide notice to the affected State of any such suit. 42 U.S.C. 6973

PETITION FOR REGULATIONS; PUBLIC PARTICIPATION

SEC. 7004. (a) PETITION.—Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this Act. Within a reason- 42 U.S.C. 6974

able time following receipt of such petition, the Administrator shall take action with respect to such petition, and shall publish notice of such action in the Federal Register, together with the reasons therefor.

(b) PUBLIC PARTICIPATION.—Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

SEPARABILITY

42 U.S.C. 6975

SEC. 7005. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

JUDICIAL REVIEW

42 U.S.C. 6976

SEC. 7006. Any judicial review of final regulations promulgated pursuant to this Act shall be in accordance with sections 701 through 706 of title 5 of the United States Code, except that—

(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this Act may be filed only in the United States Court of Appeals for the District of Columbia. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

(2) in any judicial proceeding brought under this section in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner

and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

GRANTS OR CONTRACTS FOR TRAINING PROJECTS

42 U.S.C. 6977

SEC. 7007. (a) GENERAL AUTHORITY.—The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term “eligible organization” means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

(b) PURPOSES.—(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste disposal and resources recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste disposal and resource recovery equipment and facilities.

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the safe procedures and reports (and access to such reports and to other records) as required by section 207 (b) (4) and (5) (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976) with respect to applications made under such section (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976).

(c) STUDY.—The Administrator shall make a complete investigation and study to determine—

(1) the need for additional trained State and local personnel to carry out plans assisted under this Act and other solid waste and resource recovery programs;

(2) means of using existing training programs to train such personnel; and

(3) the extent and nature of obstacles to employment and occupational advancement in the solid waste disposal and resource recovery field which may limit either available manpower or the advancement of personnel in such field.

He shall report the results of such investigation and study, including his recommendations to the President and the Congress.

PAYMENTS

42 U.S.C. 6978

SEC. 7008. (a) GENERAL RULE.—Payments of grants under this Act may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

(b) PROHIBITION.—No grant may be made under this Act to any private profitmaking organization.

LABOR STANDARDS

42 U.S.C. 6979

SEC. 7009. No grant for a project of construction under this Act shall be made unless the Secretary finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with that Act; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-5) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

Subtitle H—Research, Development, Demonstration, and Information

RESEARCH, DEMONSTRATIONS, TRAINING, AND OTHER ACTIVITIES

42 U.S.C. 6981

SEC. 8001. (a) GENERAL AUTHORITY.—The Administrator, alone or after consultation with the Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or

local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

(2) the operation and financing of solid waste disposal programs;

(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;

(4) the production of usable forms of recovered resources, including fuel, from solid waste;

(5) the reduction of the amount of such waste and unsalvageable waste materials;

(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;

(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;

(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;

(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;

(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;

(11) methods for the sound disposal of, or recovery of resources, including energy from sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);

(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and

(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of disposal or energy recovery.

(b) MANAGEMENT PROGRAM.—(1) (A) In carrying out his functions pursuant to this Act, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this Act or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

(2) Any energy-related research, development or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Energy Research and Development Administration pursuant to this or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the En-

ergy Research and Development Administration; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 1908, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 8002 and 8003 as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Energy Research and Development Administration.

(c) **AUTHORITIES.**—(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 8004(d), the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in title 10, United States Code, section 2353, except that the determination, approval, and certification required thereby shall be made by the Administrator.

(3) Any invention made or conceived in the course of, or under, any contract under this Act shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act, except that in applying such section, the Environmental Protection Agency shall be substituted for the Energy Research and Development Administration and the words "solid waste" shall be substituted for the word "energy" where appropriate.

(4) For carrying out the purpose of this Act the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.

SPECIAL STUDIES; PLANS FOR RESEARCH, DEVELOPMENT, AND DEMONSTRATIONS

SEC. 8002. (a) GLASS AND PLASTIC.—The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) **COMPOSITION OF WASTE STREAM.**—The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) **PRIORITIES STUDY.**—For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

(1) the degree of public need for the potential results of such research, development, or demonstration,

(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

(3) the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

(d) **SMALL-SCALE AND LOW TECHNOLOGY STUDY.**—The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) **FRONT-END SOURCE SEPARATION.**—The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) **MINING WASTE.**—The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans,

water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

- (1) the sources and volume of discarded material generated per year from mining;
- (2) present disposal practices;
- (3) potential dangers to human health and the environment from surface runoff to leachate and air pollution by dust;
- (4) alternatives to current disposal methods;
- (5) the cost of those alternatives in terms of the impact on mine product costs; and
- (6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

(g) **SLUDGE.**—The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

- (1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;
- (2) the effects of air and water pollution legislation on the creation of large volumes of sludge;
- (3) the amounts of sludge originating in each State and in each industry producing sludge;
- (4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;
- (5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and
- (6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) **TIRES.**—The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) **RESOURCE RECOVERY FACILITIES.**—The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) **RESOURCE CONSERVATION COMMITTEE.**—(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;

(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pick-up, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

(E) the need for further research, development, and demonstration in the area of resource conservation.

(2) The study required in paragraph (2) (D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

(A) the product categories on which such charges would be imposed;

(B) the appropriate state in the production of such consumer product at which to levy such charge;

(C) appropriate criteria for establishing such charges for each consumer product category;

(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

(3) The design for the study required in paragraph (2)(D) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following enactment of this section and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after enactment of this subsection.

(5) There are authorized to be appropriated not to exceed \$2,000,000 to carry out this subsection.

(k) AIRPORT LANDFILLS.—The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(l) COMPLETION OF RESEARCH AND STUDIES.—The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), (i), and (j) not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not to exceed \$8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j).

COORDINATION, COLLECTION, AND DISSEMINATION OF INFORMATION

SEC. 8003. (a) INFORMATION.—The Administrator shall develop, collect, evaluate, and coordinate information on— 42 U.S.C. 6983

(1) methods and costs of the collection of solid waste;

(2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;

(3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various discarded materials management practices and various technologies;

(4) methods available to reduce the amount of solid waste that is generated;

(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

(9) research and development projects respecting solid waste management.

(b) LIBRARY.—(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

(i) the various methods of energy and resource recovery from solid waste,

(ii) the various systems and means of resource conservation,

(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d), and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this Act and which may be of value to Federal, State, and local authorities and other persons.

(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified,

and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

(c) **MODEL ACCOUNTING SYSTEM.**—In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

(d) **MODEL CODES.**—The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

(e) **INFORMATION PROGRAMS.**—(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

(f) **COORDINATION.**—In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

(g) **SPECIAL RESTRICTION.**—Upon request, the full range or alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.

FULL-SCALE DEMONSTRATION FACILITIES

42 U.S.C. 6984

SEC. 8004. (a) AUTHORITY.—The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this Act, or provide financial assistance in the form of grants to a full-scale demonstration facility under this Act only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in discarded material management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this Act),

(2) such contract or assistance meets the requirements of section 8001 and meets other applicable requirements of the Act,

(3) such facility will be able to comply with the guidelines published under section 1008 and with other laws and regulations for the protection of health and the environment,

(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this Act.

(b) TIME LIMITATION.—No obligation may be made by the Administrator for financial assistance under this subtitle for any full-scale demonstration facility after the date ten years after the enactment of this section. No expenditure of funds for any such full-scale demonstration facility under this subtitle may be made by the Administrator after the date fourteen years after such date of enactment.

(c) COST SHARING.—Wherever practicable, in constructing, operating, or providing financial assistance under this subtitle to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this Act) for purposes of obtaining information concerning the performance, and other aspects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 8001(c)(3), title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(d) PROHIBITION.—After the date of enactment of this section, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).

SPECIAL STUDY AND DEMONSTRATION PROJECTS ON
RECOVERY OF USEFUL ENERGY AND MATERIALS

SEC. 8005. (a) STUDIES.—The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

42 U.S.C. 6985

(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

(4) the use of Federal procurement to develop market demand for recovered resources;

(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon

the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

(b) DEMONSTRATION.—The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a).

(c) APPLICATION OF OTHER SECTION.—Section 8001 (b) and (c) shall be applicable to investigations, studies, and projects carried out under this section.

GRANTS FOR RESOURCE RECOVERY SYSTEMS AND IMPROVED SOLID WASTE DISPOSAL FACILITIES

SEC. 8006. (a) AUTHORITY.—The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) CONDITIONS.—(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subtitle D of this Act; (B) is consistent with the guidelines recommended pursuant to section 1008 of this Act; (C) is designed to

provide areawide resource recovery systems consistent with the purposes of this Act, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) LIMITATIONS.—(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this Act, and (iii) is consistent with the guidelines recommended under section 1008, and

(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) REGULATIONS.—(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered; (C) to the potential of such project for general application to community solid waste

disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) **ADDITIONAL LIMITATIONS.**—A grant under this section—

(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) applies, the first-year operation and maintenance costs;

(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this Act.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

(f) **SINGLE STATE.**—(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

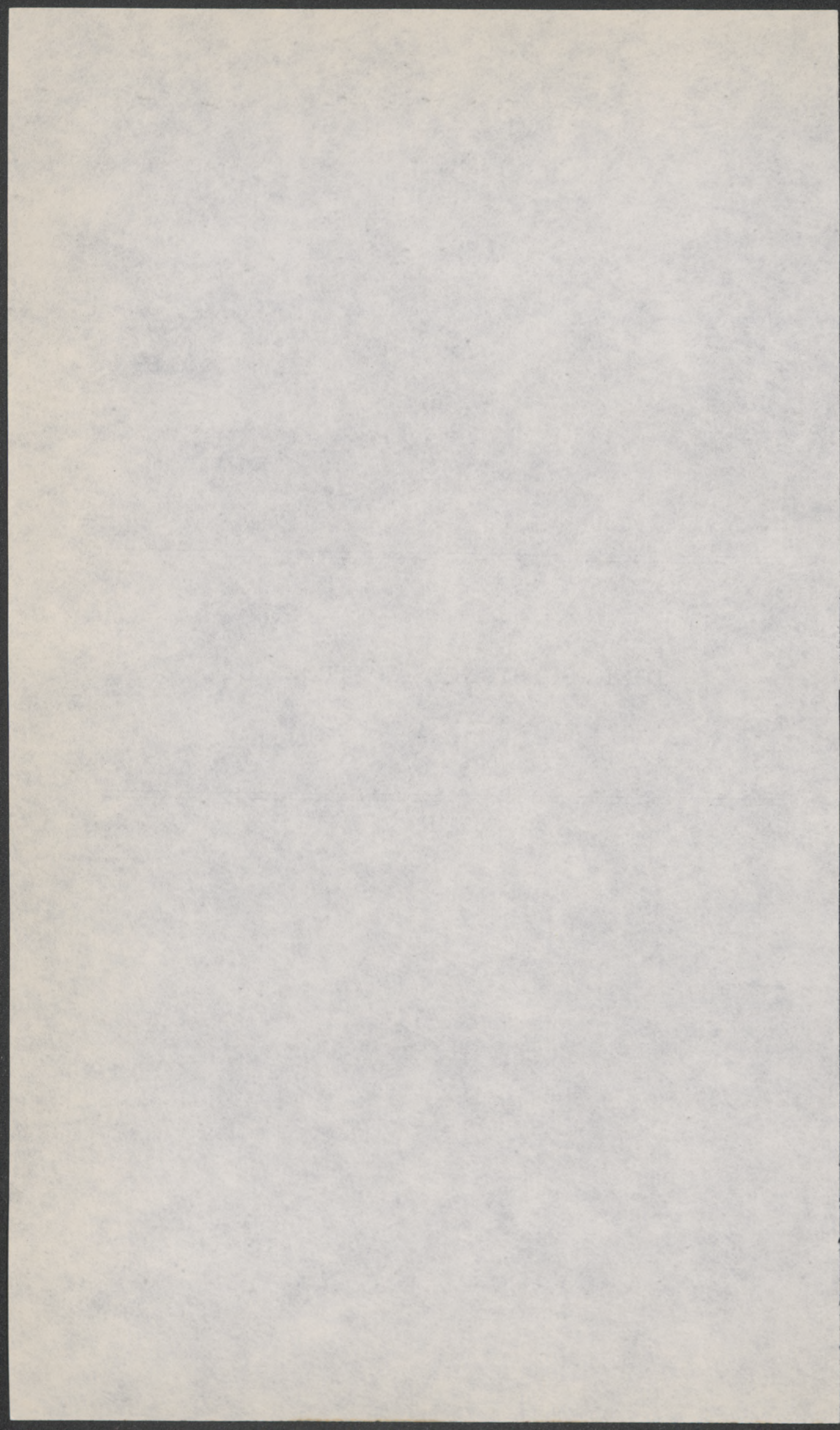
(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

AUTHORIZATION OF APPROPRIATIONS

42 U.S.C. 6987

SEC. 8007. There are authorized to be appropriated not to exceed \$35,000,000 for the fiscal year 1978 to carry out the purposes of this subtitle (except for section 8002).

TOXIC SUBSTANCES CONTROL ACT



TOXIC SUBSTANCES CONTROL ACT

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Toxic Substances Control Act".

TABLE OF CONTENTS

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SEC. 2. FINDINGS, POLICY, AND INTENT.

(a) FINDINGS.—The Congress finds that—

15 U.S.C. 2601

(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;

(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of intrastate commerce in such chemical substances and mixtures.

(b) **POLICY.**—It is the policy of the United States that—

(1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) **INTENT OF CONGRESS.**—It is the intent of Congress that the Administrator shall carry out this Act in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this Act.

SEC. 3. DEFINITIONS.

15 U.S.C. 2602

As used in this Act:

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

(2) (A) Except as provided in subparagraph (B), the term “chemical substance” means any organic or inorganic substance of a particular molecular identity, including—

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture,

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) tobacco or any tobacco product,

(iv) any source material, special nuclear material, or byproduct material (as such terms are defined in

the Atomic Energy Act of 1954 and regulations issued under such Act),

(v) any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code), and

(vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

The term "food" as used in clause (vi) of this subparagraph includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

(3) The term "commerce" means trade, traffic, transportation, or other commerce (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, transportation, or commerce described in clause (A).

(4) The terms "distribute in commerce" and "distribution in commerce" when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

(5) The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(6) The term "health and safety study" means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this Act.

(7) The term "manufacture" means to import into the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States), produce, or manufacture.

(8) The term "mixture" means any combination of two or more chemical substances if the combination does

not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

(9) The term "new chemical substance" means any chemical substance which is not included in the chemical substance list compiled and published under section 8(b).

(10) The term "process" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce—

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture.

(11) The term "processor" means any person who processes a chemical substance or mixture.

(12) The term "standards for the development of test data" means a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to toxicity, persistence, and other characteristics which affect health and the environment,

for which test data for a chemical substance or mixture are to be developed and any analysis that is to be performed on such data, and

(B) to the extent necessary to assure that data respecting such effects and characteristics are reliable and adequate—

(i) the manner in which such data are to be developed,

(ii) the specification of any test protocol or methodology to be employed in the development of such data, and

(iii) such other requirements as are necessary to provide such assurance.

(13) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(14) The term "United States", when used in the geographic sense, means all of the States.

SEC. 4. TESTING OF CHEMICAL SUBSTANCES AND MIXTURES.

(a) TESTING REQUIREMENTS.—If the Administrator 15 U.S.C. 2603 finds that—

(1) (A) (i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; and

(2) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture;

the Administrator shall by rule require that testing be conducted on such substance or mixture to develop data with respect to the health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

(b) (1) TESTING REQUIREMENT RULE.—A rule under subsection (a) shall include—

(A) identification of the chemical substance or mixture for which testing is required under the rule,

(B) standards for the development of test data for such substance or mixture, and

(C) with respect to chemical substances which are not new chemical substances and to mixtures, a specification of the period (which period may not be of unreasonable duration) within which the persons required to conduct the testing shall submit to the Administrator data developed in accordance with the standards referred to in subparagraph (B).

In determining the standards and period to be included, pursuant to subparagraphs (B) and (C), in a rule under subsection (a), the Administrator's considerations shall include the relative costs of the various test protocols and methodologies which may be required under the rule and the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule. Any such rule may require the submission to the Administrator of preliminary data during the period prescribed under subparagraph (C).

(2)(A) The health and environmental effects for which standards for the development of test data may be prescribed include carcinogenesis, mutagenesis, teratogenesis, behavioral disorders, cumulative or synergistic effects, and any other effect which may present an unreasonable risk of injury to health or the environment. The characteristics of chemical substances and mixtures for which such standards may be prescribed include persistence, acute toxicity, subacute toxicity, chronic toxicity, and any other characteristic which may present such a risk. The methodologies that may be prescribed in such standards include epidemiologic studies, serial or hierarchical tests, in vitro tests, and whole animal tests, except that before prescribing epidemiologic studies of employees, the Administrator shall consult with the Director of the National Institute for Occupational Safety and Health.

(B) From time to time, but not less than once each 12 months, the Administrator shall review the adequacy of the standards for development of data prescribed in rules under subsection (a) and shall, if necessary, institute proceedings to make appropriate revisions of such standards.

(3)(A) A rule under subsection (a) respecting a chemical substance or mixture shall require the persons described in subparagraph (B) to conduct tests and submit data to the Administrator on such substance or mixture, except that the Administrator may permit two or more of such persons to designate one such person or a qualified third party to conduct such tests and submit such data on behalf of the persons making the designation.

(B) The following persons shall be required to conduct tests and submit data on a chemical substance or mixture subject to a rule under subsection (a) :

(i) Each person who manufactures or intends to manufacture such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) with respect to the manufacture of such substance or mixture.

(ii) Each person who processes or intends to process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) with respect to the processing of such substance or mixture.

(iii) Each person who manufactures or processes or intends to manufacture or process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) with respect to the distribution in commerce, use, or disposal of such substance or mixture.

(4) Any rule under subsection (a) requiring the testing of and submission of data for a particular chemical substance or mixture shall expire at the end of the reimbursement period (as defined in subsection (c)(3)(B)) which is applicable to test data for such substance or mixture unless the Administrator repeals the rule before such date; and a rule under subsection (a) requiring the testing of and submission of data for a category of chemical substances or mixtures shall expire with respect to a chemical substance or mixture included in the category at the end of the reimbursement period (as so defined) which is applicable to test data for such substance or mixture unless the Administrator before such date repeals the application of the rule to such substance or mixture or repeals the rule.

(5) Rules issued under subsection (a) (and any substantive amendment thereto or repeal thereof) shall be promulgated pursuant to section 553 of title 5, United States Code, except that (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submission; (B) a transcript shall be made of any oral presentation; and (C) the Administrator shall make and publish with the rule the findings described in paragraph (1)(A) or (1)(B) of subsection (a) and, in the case of a rule respecting a mixture, the finding described in paragraph (2) of such subsection.

(c) EXEMPTION.—(1) Any person required by a rule under subsection (a) to conduct tests and submit data on a chemical substance or mixture may apply to the Administrator (in such form and manner as the Admin-

istrator shall prescribe) for an exemption from such requirement.

(2) If, upon receipt of an application under paragraph (1), the Administrator determines that—

(A) the chemical substance or mixture with respect to which such application was submitted is equivalent to a chemical substance or mixture for which data has been submitted to the Administrator in accordance with a rule under subsection (a) or for which data is being developed pursuant to such a rule, and

(B) submission of data by the applicant on such substance or mixture would be duplicative of data which has been submitted to the Administrator in accordance with such rule or which is being developed pursuant to such rule,

the Administrator shall exempt, in accordance with paragraph (3) or (4), the applicant from conducting tests and submitting data on such substance or mixture under the rule with respect to which such application was submitted.

(3)(A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the existence of previously submitted test data and if such exemption is granted during the reimbursement period for such test data (as prescribed by subparagraph (B)), then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted such test data, for a portion of the costs incurred by such person in complying with the requirement to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the person to be reimbursed and the share of the market for such substance or mixture of the person required to

provide reimbursement in relation to the share of such market of the persons to be reimbursed. An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) For purposes of subparagraph (A), the reimbursement period for any test data for a chemical substance or mixture is a period—

(i) beginning on the date such data is submitted in accordance with a rule promulgated under subsection (a), and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and which is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(4) (A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the fact that test data is being developed by one or more persons pursuant to a rule promulgated under subsection (a), then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to each such person who is developing such test data, for a portion of the costs incurred by each such person in complying with such rule, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to the costs of complying with such rule, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider the factors described in the second sentence of paragraph (3) (A). An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) If any exemption is granted under paragraph (2) on the basis of the fact that one or more persons are developing test data pursuant to a rule promulgated under subsection (a) and if after such exemption is granted the Administrator determines that no such person has

complied with such rule, the Administrator shall (i) after providing written notice to the person who holds such exemption and an opportunity for a hearing, by order terminate such exemption, and (ii) notify in writing such person of the requirements of the rule with respect to which such exemption was granted.

(d) NOTICE.—Upon the receipt of any test data pursuant to a rule under subsection (a), the Administrator shall publish a notice of the receipt of such data in the Federal Register within 15 days of its receipt. Subject to section 14, each such notice shall (1) identify the chemical substance or mixture for which data have been received; (2) list the uses or intended uses of such substance or mixture and the information required by the applicable standards for the development of test data; and (3) describe the nature of the test data developed. Except as otherwise provided in section 14, such data shall be made available by the Administrator for examination by any person.

(e) PRIORITY LIST.—(1) (A) There is established a committee to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule under subsection (a). In making such a recommendation with respect to any chemical substance or mixture, the committee shall consider all relevant factors, including—

(i) the quantities in which the substance or mixture is or will be manufactured,

(ii) the quantities in which the substance or mixture enters or will enter the environment,

(iii) the number of individuals who are or will be exposed to the substance or mixture in their places of employment and the duration of such exposure,

(iv) the extent to which human beings are or will be exposed to the substance or mixture,

(v) the extent to which the substance or mixture is closely related to a chemical substance or mixture which is known to present an unreasonable risk of injury to health or the environment,

(vi) the existence of data concerning the effects of the substance or mixture on health or the environment,

(vii) the extent to which testing of the substance or mixture may result in the development of data upon which the effects of the substance or mixture on health or the environment can reasonably be determined or predicted, and

(viii) the reasonably foreseeable availability of facilities and personnel for performing testing on the substance or mixture.

The recommendations of the committee shall be in the form of a list of chemical substances and mixtures which shall be set forth, either by individual substance or mixture or by groups of substances or mixtures, in the order in which the committee determines the Administrator should take action under subsection (a) with respect to the substances and mixtures. In establishing such list, the committee shall give priority attention to those chemical substances and mixtures which are known to cause or contribute to or which are suspected of causing or contributing to cancer, gene mutations, or birth defects. The committee shall designate chemical substances and mixtures on the list with respect to which the committee determines the Administrator should, within 12 months of the date on which such substances and mixtures are first designated, initiate a proceeding under subsection (a). The total number of chemical substances and mixtures on the list which are designated under the preceding sentence may not, at any time, exceed 50.

(B) As soon as practicable but not later than nine months after the effective date of this Act, the committee shall publish in the Federal Register and transmit to the Administrator the list and designations required by subparagraph (A) together with the reasons for the committee's inclusion of each chemical substance or mixture on the list. At least every six months after the date of the transmission to the Administrator of the list pursuant to the preceding sentence, the committee shall make such revisions in the list as it determines to be necessary and shall transmit them to the Administrator together with the committee's reasons for the revisions. Upon receipt of any such revision, the Administrator shall publish in the Federal Register the list with such revision, the reasons for such revision, and the designations made under subparagraph (A). The Administrator shall provide reasonable opportunity to any interested person to file with the Administrator written comments on the committee's list, any revision of such list by the committee, and designations made by the committee, and shall make such comments available to the public. Within the 12-month period beginning on the date of the first inclusion on the list of a chemical substance or mixture designated by the committee under subparagraph (A) the Administrator shall with respect to such chemical substance or mixture either initiate a rulemaking proceeding under subsection (a) or if such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not initiating such a proceeding.

(2) (A) The committee established by paragraph (1) (A) shall consist of eight members as follows:

(i) One member appointed by the Administrator from the Environmental Protection Agency.

(ii) One member appointed by the Secretary of Labor from officers or employees of the Department of Labor engaged in the Secretary's activities under the Occupational Safety and Health Act of 1970.

(iii) One member appointed by the Chairman of the Council on Environmental Quality from the Council or its officers or employees.

(iv) One member appointed by the Director of the National Institute for Occupational Safety and Health from officers or employees of the Institute.

(v) One member appointed by the Director of the National Institute of Environmental Health Sciences from officers or employees of the Institute.

(vi) One member appointed by the Director of the National Cancer Institute from officers or employees of the Institute.

(vii) One member appointed by the Director of the National Science Foundation from officers or employees of the Foundation.

(viii) One member appointed by the Secretary of Commerce from officers or employees of the Department of Commerce.

(B) (i) An appointed member may designate an individual to serve on the committee on the member's behalf. Such a designation may be made only with the approval of the applicable appointing authority and only if the individual is from the entity from which the member was appointed.

(ii) No individual may serve as a member of the committee for more than four years in the aggregate. If any member of the committee leaves the entity from which the member was appointed, such member may not continue as a member of the committee, and the member's position shall be considered to be vacant. A vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(iii) Initial appointments to the committee shall be made not later than the 60th day after the effective date of this Act. Not later than the 90th day after such date the members of the committee shall hold a meeting for the selection of a chairperson from among their number.

(C) (i) No member of the committee, or designee of such member, shall accept employment or compensation from any person subject to any requirement of this Act or of any rule promulgated or order issued thereunder, for a period of at least 12 months after termination of service on the committee.

(ii) No person, while serving as a member of the committee, or designee of such member, may own any stocks

or bonds, or have any pecuniary interest, of substantial value in any person engaged in the manufacture, processing, or distribution in commerce of any chemical substance or mixture subject to any requirement of this Act or of any rule promulgated or order issued thereunder.

(iii) The Administrator, acting through attorneys of the Environmental Protection Agency, or the Attorney General may bring an action in the appropriate district court of the United States to restrain any violation of this subparagraph.

(D) The Administrator shall provide the committee such administrative support services as may be necessary to enable the committee to carry out its function under this subsection.

(f) REQUIRED ACTIONS.—Upon the receipt of—

(1) any test data required to be submitted under this Act, or

(2) any other information available to the Administrator,

which indicates to the Administrator that there may be a reasonable basis to conclude that a chemical substance or mixture presents or will present a significant risk of serious or widespread harm to human beings from cancer, gene mutations, or birth defects, the Administrator shall, within the 180-day period beginning on the date of the receipt of such data or information, initiate appropriate action under section 5, 6, or 7 to prevent or reduce to a sufficient extent such risk or publish in the Federal Register a finding that such risk is not unreasonable. For good cause shown the Administrator may extend such period for an additional period of not more than 90 days. The Administrator shall publish in the Federal Register notice of any such extension and the reasons therefor. A finding by the Administrator that a risk is not unreasonable shall be considered agency action for purposes of judicial review under chapter 7 of title 5, United States Code. This subsection shall not take effect until two years after the effective date of this Act.

(g) PETITION FOR STANDARDS FOR THE DEVELOPMENT OF TEST DATA.—A person intending to manufacture or process a chemical substance for which notice is required under section 5(a) and who is not required under a rule under subsection (a) to conduct tests and submit data on such substance may petition the Administrator to prescribe standards for the development of test data for such substance. The Administrator shall by order either grant or deny any such petition within 60 days of its receipt. If the petition is granted, the Administrator shall prescribe such standards for such substance within 75 days of the date the petition is granted. If the petition is denied, the Administrator shall publish, subject to section 14, in the Federal Register the reasons for such denial.

SEC. 5. MANUFACTURING AND PROCESSING NOTICES.

15 U.S.C. 2604

(a) IN GENERAL.—(1) Except as provided in subsection (h), no person may—

(A) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 8(b), or

(B) manufacture or process any chemical substance for a use with the Administrator has determined, in accordance with paragraph (2), is a significant new use,

unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d), of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of subsection (b).

(2) A determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of a chemical substance,

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

(b) SUBMISSION OF TEST DATA.—(1) (A) If (i) a person is required by subsection (a) (1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and (ii) such person is required to submit test data for such substance pursuant to a rule promulgated under section 4 before the submission of such notice, such person shall submit to the Administrator such data in accordance with such rule at the time notice is submitted in accordance with subsection (a) (1).

(B) If—

(i) a person is required by subsection (a) (1) to submit a notice to the Administrator, and

(ii) such person has been granted an exemption under section 4(c) from the requirements of a rule promulgated under section 4 before the submission of such notice,

such person may not, before the expiration of the 90 day period which begins on the date of the submission in

accordance with such rule of the test data the submission or development of which was the basis for the exemption, manufacture such substance if such person is subject to subsection (a)(1)(A) or manufacture or process such substance for a significant new use if the person is subject to subsection (a)(1)(B).

(2)(A) If a person—

(i) is required by subsection (a)(1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance listed under paragraph (4), and

(ii) is not required by a rule promulgated under section 4 before the submission of such notice to submit test data for such substance,

such person shall submit to the Administrator data prescribed by subparagraph (B) at the time notice is submitted in accordance with subsection (a)(1).

(B) Data submitted pursuant to subparagraph (A) shall be data which the person submitting the data believes show that—

(i) in the case of a substance with respect to which notice is required under subsection (a)(1)(A), the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such activities will not present an unreasonable risk of injury to health or the environment, or

(ii) in the case of a chemical substance with respect to which notice is required under subsection (a)(1)(B), the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment.

(3) Data submitted under paragraph (1) or (2) shall be made available, subject to section 14, for examination by interested persons.

(4)(A)(i) The Administrator may, by rule, compile and keep current a list of chemical substances with respect to which the Administrator finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an unreasonable risk of injury to health or the environment.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such activities presents or may present an unreasonable risk of injury to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to such substance; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to such substance.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, by rule under subsection (a)(2), would constitute a significant new use of such substance.

(C) Any rule under subparagraph (A), and any substantive amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in section 553 of title 5, United States Code, except that (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions, (ii) a transcript shall be kept of any oral presentation, and (iii) the Administrator shall make and publish with the rule the finding described in subparagraph (A).

(c) EXTENSION OF NOTICE PERIOD.—The Administrator may for good cause extend for additional periods (not to exceed in the aggregate 90 days) the period, prescribed by subsection (a) or (b) before which the manufacturing or processing of a chemical substance subject to such subsection may begin. Subject to section 14, such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(d) CONTENT OF NOTICE; PUBLICATIONS IN THE FEDERAL REGISTER.—(1) The notice required by subsection (a) shall include—

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable, the information described in subparagraphs (A), (B), (C), (D), (F), and (G) of section 8(a)(2), and

(B) in such form and manner as the Administrator may prescribe, any test data in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such substance, or of any combination of such activities, on health or the environment, and

(C) a description of any other data concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

Such a notice shall be made available, subject to section 14, for examination by interested persons.

(2) Subject to section 14, not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a)

or of data under subsection (b), the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or data has been received;

(B) lists the uses or intended uses of such substance; and

(C) in the case of the receipt of data under subsection (b), describes the nature of the tests performed on such substance and any data which was developed pursuant to subsection (b) or a rule under section 4.

A notice under this paragraph respecting a chemical substance shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(3) At the beginning of each month the Administrator shall publish a list in the Federal Register of (A) each chemical substance for which notice has been received under subsection (a) and for which the notification period prescribed by subsection (a), (b), or (c) has not expired, and (B) each chemical substance for which such notification period has expired since the last publication in the Federal Register of such list.

(e) REGULATION PENDING DEVELOPMENT OF INFORMATION.—(1) (A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); and

(ii) (I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator may issue a proposed order, to take effect on the expiration of the notification period applicable to the manufacturing or processing of such substance under subsection (a), (b), or (c), to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities.

(B) A proposed order may not be issued under subparagraph (A) respecting a chemical substance (i) later

than 45 days before the expiration of the notification period applicable to the manufacture or processing of such substance under subsection (a), (b), or (c), and (ii) unless the Administrator has, on or before the issuance of the proposed order, notified, in writing, each manufacturer or processor, as the case may be, of such substance of the determination which underlies such order.

(C) If a manufacturer or processor of a chemical substance to be subject to a proposed order issued under subparagraph (A) files with the Administrator (within the 30-day period beginning on the date such manufacturer or processor received the notice required by subparagraph (B)(ii)) objections specifying with particularity the provisions of the order deemed objectionable and stating the grounds therefor, the proposed order shall not take effect.

(2)(A)(i) Except as provided in clause (ii), if with respect to a chemical substance with respect to which notice is required by subsection (a), the Administrator makes the determination described in paragraph (1)(A) and if—

(I) the Administrator does not issue a proposed order under paragraph (1) respecting such substance, or

(II) the Administrator issues such an order respecting such substance but such order does not take effect because objections were filed under paragraph (1)(C) with respect to it,

the Administrator, through attorneys of the Environmental Protection Agency, shall apply to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer or processor, as the case may be, of such substance is found, resides, or transacts business for an injunction to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance (or to prohibit or limit any combination of such activities).

(ii) If the Administrator issues a proposed order under paragraph (1)(A) respecting a chemical substance but such order does not take effect because objections have been filed under paragraph (1)(C) with respect to it, the Administrator is not required to apply for an injunction under clause (i) respecting such substance if the Administrator determines, on the basis of such objections, that the determinations under paragraph (1)(A) may not be made.

(B) A district court of the United States which receives an application under subparagraph (A)(i) for an injunction respecting a chemical substance shall issue such injunction if the court finds that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); and

(ii) (I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance.

(C) Pending the completion of a proceeding for the issuance of an injunction under subparagraph (B) respecting a chemical substance, the court may, upon application of the Administrator made through attorneys of the Environmental Protection Agency, issue a temporary restraining order or a preliminary injunction to prohibit the manufacture, processing, distribution in commerce, use, or disposal of such a substance (or any combination of such activities) if the court finds that the notification period applicable under subsection (a), (b), or (c) to the manufacturing or processing of such substance may expire before such proceeding can be completed.

(D) After the submission to the Administrator of test data sufficient to evaluate the health and environmental effects of a chemical substance subject to an injunction issued under subparagraph (B) and the evaluation of such data by the Administrator, the district court of the United States which issued such injunction shall, upon petition, dissolve the injunction unless the Administrator has initiated a proceeding for the issuance of a rule under section 6(a) respecting the substance. If such a proceeding has been initiated, such court shall continue the injunction in effect until the effective date of the rule promulgated in such proceeding or, if such proceeding is terminated without the promulgation of a rule, upon the termination of the proceeding, whichever occurs first.

(f) PROTECTION AGAINST UNREASONABLE RISKS.—(1) If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance with respect to which notice is required by subsection (a), or that any combination of such activities, presents or will present an unreasonable risk of injury to health

or environment before a rule promulgated under section 6 can protect against such risk, the Administrator shall, before the expiration of the notification period applicable under subsection (a), (b), or (c) to the manufacturing or processing of such substance, take the action authorized by paragraph (2) or (3) to the extent necessary to protect against such risk.

(2) The Administrator may issue a proposed rule under section 6(a) to apply to a chemical substance with respect to which a finding was made under paragraph (1)—

(A) a requirement limiting the amount of such substance which may be manufactured, processed, or distributed in commerce,

(B) a requirement described in paragraph (2), (3), (4), (5), (6), or (7) of section 6(a), or

(C) any combination of the requirements referred to in subparagraph (B).

Such a proposed rule shall be effective upon its publication in the Federal Register. Section 6(d)(2)(B) shall apply with respect to such rule.

(3)(A) The Administrator may—

(i) issue a proposed order to prohibit the manufacture, processing, or distribution in commerce of a substance with respect to which a finding was made under paragraph (1), or

(ii) apply, through attorneys of the Environmental Protection Agency, to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer, or processor, as the case may be, of such substance, is found, resides, or transacts business for an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance.

A proposed order issued under clause (i) respecting a chemical substance shall take effect on the expiration of the notification period applicable under subsection (a), (b), or (c) to the manufacture or processing of such substance.

(B) If the district court of the United States to which an application has been made under subparagraph (A) (ii) finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance with respect to which such application was made, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment before a rule promulgated under section 6 can protect against such risk, the court shall issue an injunction to prohibit the manufacture, processing or distribution in commerce of such substance or to prohibit any combination of such activities.

(C) The provisions of subparagraphs (B) and (C) of subsection (e)(1) shall apply with respect to an order issued under clause (i) of subparagraph (A); and the provisions of subparagraph (C) of subsection (e)(2) shall apply with respect to an injunction issued under subparagraph (B).

(D) If the Administrator issues an order pursuant to subparagraph (A)(i) respecting a chemical substance and objections are filed in accordance with subsection (e)(1)(C), the Administrator shall seek an injunction under subparagraph (A)(ii) respecting such substance unless the Administrator determines, on the basis of such objections, that such substance does not or will not present an unreasonable risk of injury to health or the environment.

(g) STATEMENT OF REASONS FOR NOT TAKING ACTION.—If the Administrator has not initiated any action under this section or section 6 or 7 to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, with respect to which notification or data is required by subsection (a)(1)(B) or (b), before the expiration of the notification period applicable to the manufacturing or processing of such substance, the Administrator shall publish a statement of the Administrator's reasons for not initiating such action. Such a statement shall be published in the Federal Register before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published.

(h) EXEMPTIONS.—(1) The Administrator may, upon application, exempt any person from any requirement of subsection (a) or (b) to permit such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance, and that any combination of such activities, for such purposes will not present any unreasonable risk of injury to health or the environment, and

(B) under such restrictions as the Administrator considers appropriate.

(2)(A) The Administrator may, upon application, exempt any person from the requirement of subsection (b)(2) to submit data for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance with respect to which such application was submitted is equivalent to a chemical substance for which data has been sub-

mitted to the Administrator as required by subsection (b) (2), and

(ii) submission of data by the applicant on such substance would be duplicative of data which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from the requirement to submit such data on such substance. No exemption which is granted under this subparagraph with respect to the submission of data for a chemical substance may take effect before the beginning of the reimbursement period applicable to such data.

(B) If the Administrator exempts any person, under subparagraph (A), from submitting data required under subsection (b) (2) for a chemical substance because of the existence of previously submitted data and if such exemption is granted during the reimbursement period for such data, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted the data on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (b) (2) to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. For purposes of judicial review, an order under this subparagraph shall be considered final agency action.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted data for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the

person who submitted such data to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such data, whichever is later.

(3) The requirements of subsections (a) and (b) do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) scientific experimentation or analysis, or

(B) chemical research on, or analysis of such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

(4) The Administrator may, upon application and by rule, exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or that any combination of such activities, will not present an unreasonable risk of injury to health or the environment. A rule promulgated under this paragraph (and any substantive amendment to, or repeal of, such a rule) shall be promulgated in accordance with paragraphs (2) and (3) of section 6(c).

(5) The Administrator may, upon application, make the requirements of subsections (a) and (b) inapplicable with respect to the manufacturing or processing of any chemical substance (A) which exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and (B) to which there is no, and will not be, human or environmental exposure.

(6) Immediately upon receipt of an application under paragraph (1) or (5) the Administrator shall publish in the Federal Register notice of the receipt of such application. The Administrator shall give interested persons an opportunity to comment upon any such application and shall, within 45 days of its receipt, either approve or deny the application. The Administrator

shall publish in the Federal Register notice of the approval or denial of such an application.

(i) **DEFINITION.**—For purposes of this section, the terms “manufacture” and “process” mean manufacturing or processing for commercial purposes.

SEC. 6. REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES.

15 U.S.C. 2605

(a) **SCOPE OF REGULATION.**—If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents, or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

(1) A requirement (A) prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture and monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6) (A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such unreasonable risk of injury to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such risk of injury, and (C) to replace or repurchase such substance or mixture as elected by the person to which the requirement is directed.

Any requirement (or combination of requirements) imposed under this subsection may be limited in application to specified geographic areas.

(b) **QUALITY CONTROL.**—If the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present or which will cause it to present an unreasonable risk of injury to health or the environment—

(1) the Administrator may by order require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance or mixture; and

(2) if the Administrator determines—

(A) that such quality control procedures are inadequate to prevent the chemical substance or mixture from presenting such risk of injury, the Administrator may order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy; or

(B) that the use of such quality control procedures has resulted in the distribution in commerce of chemical substances or mixtures which

present an unreasonable risk of injury to health or the environment, the Administrator may order the manufacturer or processor to (i) give notice of such risk to processors or distributors in commerce of any such substance or mixture, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to any such substance, (ii) to give public notice of such risk, and (iii) to provide such replacement or repurchase of any such substance or mixture as is necessary to adequately protect health or the environment.

A determination under subparagraph (A) or (B) of paragraph (2) shall be made on the record after opportunity for hearing in accordance with section 554 of title 5, United States Code. Any manufacturer or processor subject to a requirement to replace or repurchase a chemical substance or mixture may elect either to replace or repurchase the substance or mixture and shall take either such action in the manner prescribed by the Administrator.

(c) PROMULGATION OF SUBSECTION (a) RULES.—(1) In promulgating any rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement with respect to—

(A) the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture,

(B) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture,

(C) the benefits of such substance or mixture for various uses and the availability of substitutes for such uses, and

(D) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

If the Administrator determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law (or laws) administered in whole or in part by the Administrator, the Administrator may not promulgate a rule under subsection (a) to protect against such risk of injury unless the Administrator finds, in the Administrator's discretion, that it is in the public interest to protect against such risk under this Act. In making such a finding the Administrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions

taken under this Act and under such law (or laws), and (iii) the relative efficiency of actions under this Act and under such law (or laws) to protect against such risk of injury.

(2) When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with paragraph (3); (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in section 19(a)), and (E) make and publish with the rule the finding described in subsection (a).

(3) Informal hearings required by paragraph (2) (C) shall be conducted by the Administrator in accordance with the following requirements:

(A) Subject to subparagraph (B), an interested person is entitled—

(i) to present such person's position orally or by documentary submissions (or both), and

(ii) if the Administrator determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) (ii)) such cross-examination of persons as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to such issues.

(B) The Administrator may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include (i) the imposition of reasonable time limits on each interested person's oral presentations, and (ii) requirements that any cross-examination to which a person may be entitled under subparagraph (A) be conducted by the Administrator on behalf of that person in such manner as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to disputed issues of material fact.

(C) (i) Except as provided in clause (ii), if a group of persons each of whom under subparagraphs (A) and (B) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Administrator to have the same

or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Administrator may make rules and rulings (I) limiting the representation of such interest for such purposes, and (II) governing the manner in which such cross-examination shall be limited.

(ii) When any person who is a member of a group with respect to which the Administrator has made a determination under clause (i) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of clause (i) the opportunity to conduct (or have conducted) cross-examination as to issues affecting the person's particular interests if (I) the person satisfies the Administrator that the person has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (II) the Administrator determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(D) A verbatim transcript shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public.

(4)(A) The Administrator may, pursuant to rules prescribed by the Administrator, provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding for the promulgation of a rule under subsection (a) to any person—

(i) who represents an interest which would substantially contribute to a fair determination of the issues to be resolved in the proceeding, and

(ii) if—

(I) the economic interest of such person is small in comparison to the costs of effective participation in the proceeding by such person, or

(II) such person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources adequately to participate in the proceeding without compensation under this subparagraph.

In determining for purposes of clause (i) if an interest will substantially contribute to a fair determination of the issues to be resolved in a proceeding, the Administrator shall take into account the number and complexity of such issues and the extent to which representation of such interest will contribute to widespread public participation in the proceeding and representation of a fair balance of interests for the resolution of such issues.

(B) In determining whether compensation should be provided to a person under subparagraph (A) and the amount of such compensation, the Administrator shall take into account the financial burden which will be incurred by such person in participating in the rulemaking proceeding. The Administrator shall take such action as may be necessary to ensure that the aggregate amount of compensation paid under this paragraph in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either—

- (i) would be regulated by the proposed rule, or
- (ii) represent persons who would be so regulated,

may not exceed 25 per centum of the aggregate amount paid as compensation under this paragraph to all persons in such fiscal year.

(5) Paragraphs (1), (2), (3), and (4) of this subsection apply to the promulgation of a rule repealing, or making a substantive amendment to, a rule promulgated under subsection (a).

(d) EFFECTIVE DATE.—(1) The Administrator shall specify in any rule under subsection (a) the date on which it shall take effect, which date shall be as soon as feasible.

(2)(A) The Administrator may declare a proposed rule under subsection (a) to be effective upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if—

- (i) the Administrator determines that—

- (I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

- (II) making such proposed rule so effective is necessary to protect the public interest; and

- (ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an action under section 7 granted relief with respect to such risk associated with such substance or mixture.

Such a proposed rule which is made so effective shall not, for purposes of judicial review, be considered final agency action.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action, provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c), for a hearing on such rule,

and either promulgate such rule (as proposed or with modifications) or revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of the conclusion of the hearing, either promulgate such rule (as proposed or with modifications) or revoke it.

(e) POLYCHLORINATED BIPHENYLS.—(1) Within six months after the effective date of this Act the Administrator shall promulgate rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2) (A) Except as provided under subparagraph (B), effective one year after the effective date of this Act no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term “totally enclosed manner” means any manner which will ensure that any exposure of human beings or the environment by the polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3) (A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after the effective date of this Act, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph

(A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after the date of enactment of this Act.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraphs (2), (3), and (4) of subsection (c).

(5) This subsection does not limit the authority of the Administrator, under any other provision of this Act or any other Federal law, to take action respecting any polychlorinated biphenyl.

SEC. 7. IMMINENT HAZARDS.

(a) ACTIONS AUTHORIZED AND REQUIRED.—(1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b)) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminent hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a rule under section 4, 5, or 6 or an order under section 5, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this Act.

(2) If the Administrator has not made a rule under section 6(a) immediately effective (as authorized by subsection 6(d)(2)(A)(i)) with respect to an imminently hazardous chemical substance or mixture, the Administrator shall commence in a district court of the United States with respect to such substance or mixture or ar-

ticle containing such substance or mixture a civil action described in subparagraph (A), (B), or (C) of paragraph (1).

(b) **RELIEF AUTHORIZED.**—(1) The district court of the United States in which an action under subsection (a) is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance, mixture, or article involved in such action.

(2) In the case of an action under subsection (a) brought against a person who manufactures, processes, or distributes in commerce a chemical substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) **VENUE AND CONSOLIDATION.**—(1) (A) An action under subsection (a) against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection (a) against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(C) Subpoenas requiring attendance of witnesses in an action brought under subsection (a) may be served in any judicial district.

(2) Whenever proceedings under subsection (a) involving identical chemical substances, mixtures, or arti-

cles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) ACTION UNDER SECTION 6.—Were appropriate, concurrently with the filing of an action under subsection (a) or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 6(a).

(e) REPRESENTATION.—Notwithstanding any other provision of law, in any action under subsection (a), the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) DEFINITION.—For the purposes of subsection (a), the term “imminently hazardous chemical substance or mixture” means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 6 can protect against such risk.

SEC. 8. REPORTING AND RETENTION OF INFORMATION.

(a) REPORTS.—(1) The Administrator shall promulgate rules under which—

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(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require, and

(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process—

(i) a mixture, or

(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this Act.

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of such reports, or both, is necessary for the effective enforcement of this Act. For purposes of the compilation of the list of chemical substances required under subsection (b), the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after the effective date of this Act.

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing data concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative.

(3)(A)(i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b).

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture—

(I) subject to a rule proposed or promulgated under section 4, 5(b)(4), or 6, or an order in effect under section 5(e), or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 5 or 7,

to maintain such records on such substance or mixture, and to submit to the Administrator such reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(b) INVENTORY.—(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 5 or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1). In the case of a chemical substance for which a notice is submitted in accordance with section 5, such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufactured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after the effective date of this Act. The Administrator shall not include in such list any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this Act, the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(c) **RECORDS.**—Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) **HEALTH AND SAFETY STUDIES.**—The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator—

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person, or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this Act; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(e) **NOTICE TO ADMINISTRATOR OF SUBSTANTIAL RISKS.**—Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the

Administrator has been adequately informed of such information.

(f) **DEFINITIONS.**—For purposes of this section, the terms “manufacture” and “process” mean manufacture or process for commercial purposes.

SEC. 9. RELATIONSHIP TO OTHER FEDERAL LAWS.

(a) **LAWS NOT ADMINISTERED BY THE ADMINISTRATOR.**— 15 U.S.C. 2608

(1) If the Administrator has reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment and determines, in the Administrator's discretion, that such risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by the Administrator, the Administrator shall submit to the agency which administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

(A) (i) to determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and

(ii) if the agency determines that such risk may be so prevented or reduced, to issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and

(B) to respond to the Administrator with respect to the matters described in subparagraph (A).

Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register. The agency receiving a request under such a report shall make the requested determination, issue the requested order, and make the requested response within such time as the Administrator specifies in the request, but such time specified may not be less than 90 days from the date the request was made. The response of an agency shall be accompanied by a detailed statement of the findings and conclusions of the agency and shall be published in the Federal Register.

(2) If the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which such report was made either—

(A) issues an order declaring that the activity or combination of activities specified in the description of the risk described in the report does not present the risk described in the report, or

(B) initiates, within 90 days of the publication in the Federal Register of the response of the agency under paragraph (1), action under the law (or laws) administered by such agency to protect against such risk associated with such activity or combination of activities,

the Administrator may not take any action under section 6 or 7 with respect to such risk.

(3) If the Administrator has initiated action under section 6 or 7 with respect to a risk associated with a chemical substance or mixture which was the subject of a report made to an agency under paragraph (1), such agency shall before taking action under the law (or laws) administered by it to protect against such risk consult with the Administrator for the purpose of avoiding duplication of Federal action against such risk.

(b) LAWS ADMINISTERED BY THE ADMINISTRATOR.—The Administrator shall coordinate actions taken under this Act with actions taken under other Federal laws administered in whole or in part by the Administrator. If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this Act. This subsection shall not be construed to relieve the Administrator of any requirement imposed on the Administrator by such other Federal laws.

(c) OCCUPATIONAL SAFETY AND HEALTH.—In exercising any authority under this Act, the Administrator shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(d) COORDINATION.—In administering this Act, the Administrator shall consult and coordinate with the Secretary of Health, Education, and Welfare and the heads of any other appropriate Federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the Federal Government for the purpose of achieving the maximum enforcement of this Act while imposing the least burdens of duplicative requirements on those subject to the Act and for other purposes. The Administrator shall, in the report required by section 30, report annually to the Congress on actions taken to coordinate with such

other Federal departments, agencies, or instrumentalities, and on actions taken to coordinate the authority under this Act with the authority granted under other Acts referred to in subsection (b).

SEC. 10. RESEARCH, DEVELOPMENT, COLLECTION, DISSEMINATION AND UTILIZATION OF DATA.

(a) **AUTHORITY.**—The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this Act. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 14 U.S.C. 5).

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(b) **DATA SYSTEMS.**—(1) The Administrator shall establish, administer, and be responsible for the continuing activities of an interagency committee which shall design, establish, and coordinate an efficient and effective system, within the Environmental Protection Agency, for the collection, dissemination to other Federal departments and agencies, and use of data submitted to the Administrator under this Act.

(2) (A) The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare and other heads of appropriate departments and agencies design, establish, and coordinate an efficient and effective system for the retrieval of toxicological and other scientific data which could be useful to the Administrator in carrying out the purposes of this Act. Systematized retrieval shall be developed for use by all Federal and other departments and agencies with responsibilities in the area of regulation or study of chemical substances and mixtures and their effect on health or the environment.

(B) The Administrator, in consultation and cooperation with the Secretary of Health, Education, and Welfare, may make grants and enter into contracts for the development of a data retrieval system described in subparagraph (A). Contracts may be entered into under this subparagraph without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5).

(c) **SCREENING TECHNIQUES.**—The Administrator shall coordinate, with the Assistant Secretary for Health of the Department of Health, Education, and Welfare, research undertaken by the Administrator and directed toward the development of rapid, reliable, and economical screening techniques for carcinogenic, mutagenic,

teratogenic, and ecological effects of chemical substances and mixtures.

(d) **MONITORING.**—The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare, establish and be responsible for research aimed at the development, in cooperation with local, State, and Federal agencies, of monitoring techniques and instruments which may be used in the detection of toxic chemical substances and mixtures and which are reliable, economical, and capable of being implemented under a wide variety of conditions.

(e) **BASIC RESEARCH.**—The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare, establish research programs to develop the fundamental scientific basis of the screening and monitoring techniques described in subsections (c) and (d), the bounds of the reliability of such techniques, and the opportunities for their improvement.

(f) **TRAINING.**—The Administrator shall establish and promote programs and workshops to train or facilitate the training of Federal laboratory and technical personnel in existing or newly developed screening and monitoring techniques.

(g) **EXCHANGE OF RESEARCH AND DEVELOPMENT RESULTS.**—The Administrator shall, in consultation with the Secretary of Health, Education, and Welfare and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures.

SEC. 11. INSPECTIONS AND SUBPOENAS.

15 U.S.C. 2610

(a) **IN GENERAL.**—For purposes of administering this Act, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at

reasonable times, within reasonable limits, and in a reasonable manner.

(b) **SCOPE.**—(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this Act applicable to the chemical substances or mixtures within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) shall extend to—

- (A) financial data,
- (B) sales data (other than shipment data),
- (C) pricing data,
- (D) personnel data, or
- (E) research data (other than data required by

this Act or under a rule promulgated thereunder). Unless, the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (a) for such inspection.

(c) **SUBPOENAS.**—In carrying out this Act, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

SEC. 12. EXPORTS.

(a) **IN GENERAL.**—(1) Except as provided in paragraph (2) and subsection (b), this Act (other than section 8) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

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(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United States, and

(B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.

(2) Paragraph (1) shall not apply to any chemical substance, mixture, or article if the Administrator finds that the substance, mixture, or article will present an unreasonable risk of injury to health within the United States or to the environment of the United States. The Administrator may require, under section 4, testing of any chemical substance or mixture exempted from this Act by paragraph (1) for the purpose of determining whether or not such substance or mixture presents an unreasonable risk of injury to health within the United States or to the environment of the United States.

(b) NOTICE.—(1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 4 or 5(b), such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the data submitted to the Administrator under such section for such substance or mixture.

(2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 5 or a rule has been proposed or promulgated under section 5 or 6, or with respect to which an action is pending, or relief has been granted under section 5 or 7, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

SEC. 13. ENTRY INTO CUSTOMS TERRITORY OF THE UNITED STATES.

15 U.S.C. 2612

(a) IN GENERAL.—(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this Act, or

(B) it is offered for entry in violation of section 5 or 6, a rule or order under section 5 or 6, or an order issued in a civil action brought under section 5 or 7.

(2) If a chemical substance, mixture, or article is refused entry under paragraph (1), the Secretary of the Treasury shall notify the consignee of such entry refusal, shall not release it to the consignee, and shall cause its disposal or storage (under such rules as the Secretary of the Treasury may prescribe) if it has not been exported by the consignee within 90 days from the date of receipt of notice of such refusal, except that the Secretary of

the Treasury may, pending a review by the Administrator of the entry refusal, release to the consignee such substance, mixture, or article on execution of bond for the amount of the full invoice of such substance, mixture, or article (as such value is set forth in the customs entry), together with the duty thereon. On failure to return such substance, mixture, or article for any cause to the custody of the Secretary of the Treasury when demanded, such consignee shall be liable to the United States for liquidated damages equal to the full amount of such bond. All charges for storage, cartage, and labor on and for disposal of substances, mixtures, or articles which are refused entry or released under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future entry made by such owner or consignee.

(b) **RULES.**—The Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of subsection (a) of this section.

SEC. 14. DISCLOSURE OF DATA.

(a) **IN GENERAL.**—Except as provided by subsection (b), any information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this Act, which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, by reason of subsection (b) (4) of such section, shall, notwithstanding the provisions of any other section of this Act, not be disclosed by the Administrator or by any officer or employee of the United States, except that such information—

15 U.S.C. 2613

(1) shall be disclosed to any officer or employee of the United States—

(A) in connection with the official duties of such officer or employee under any law for the protection of health or the environment, or

(B) for specific law enforcement purposes;

(2) shall be disclosed to contractors with the United States and employees of such contractors if in the opinion of the Administrator such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States entered into on or after the date of enactment of this Act for the performance of work in connection with this Act and under such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment; or

(4) may be disclosed when relevant in any proceeding under this Act, except that disclosure in

such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

In any proceeding under section 552(a) of title 5, United States Code, to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(b) DATA FROM HEALTH AND SAFETY STUDIES.—(1) Subsection (a) does not prohibit the disclosure of—

(A) any health and safety study which is submitted under this Act with respect to—

(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution, or

(ii) any chemical substance or mixture for which testing is required under section 4 or for which notification is required under section 5, and

(B) any data reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).

This paragraph does not authorize the release of any data which discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.

(2) If a request is made to the Administrator under subsection (a) of section 552 of title 5, United States Code, for information which is described in the first sentence of paragraph (1) and which is not information described in the second sentence of such paragraph, the Administrator may not deny such request on the basis of subsection (b)(4) of such section.

(c) DESIGNATION AND RELEASE OF CONFIDENTIAL DATA.—(1) In submitting data under this Act, a manufacturer, processor, or distributor in commerce may (A) designate the data which such person believes is entitled to confidential treatment under subsection (a), and (B) submit such designated data separately from other data submitted under this Act. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(2) (A) Except as provided by subparagraph (B), if the Administrator proposes to release for inspection data which has been designated under paragraph (1)(A), the

Administrator shall notify, in writing and by certified mail, the manufacturer, processor, or distributor in commerce who submitted such data of the intent to release such data. If the release of such data is to be made pursuant to a request made under section 552(a) of title 5, United States Code, such notice shall be given immediately upon approval of such request by the Administrator. The Administrator may not release such data until the expiration of 30 days after the manufacturer, processor, or distributor in commerce submitting such data has received the notice required by this subparagraph.

(B) (i) Subparagraph (A) shall not apply to the release of information under paragraph (1), (2), (3), or (4) of subsection (a), except that the Administrator may not release data under paragraph (3) of subsection (a) unless the Administrator has notified each manufacturer, processor, and distributor in commerce who submitted such data of such release. Such notice shall be made in writing by certified mail at least 15 days before the release of such data, except that if the Administrator determines that the release of such data is necessary to protect against an imminent, unreasonable risk of injury to health or the environment, such notice may be made by such means as the Administrator determines will provide notice at least 24 hours before such release is made.

(ii) Subparagraph (A) shall not apply to the release of information described in subsection (b) (1) other than information described in the second sentence of such subsection.

(d) **CRIMINAL PENALTY FOR WRONGFUL DISCLOSURE.**—

(1) Any officer or employee of the United States or former officer or employee of the United States, who by virtue of such employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a), and who knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000 or imprisoned for not more than one year, or both. Section 1905 of title 18, United States Code, does not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this Act.

(2) For the purposes of paragraph (1), any contractor with the United States who is furnished information as authorized by subsection (a) (2), and any employee of any such contractor, shall be considered to be an employee of the United States.

(e) **ACCESS BY CONGRESS.**—Notwithstanding any limitation contained in this section or any other provision of

law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

SEC. 15. PROHIBITED ACTS.

15 U.S.C. 2614

It shall be unlawful for any person to—

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 4, (B) any requirement prescribed by section 5 or 6, or (C) any rule promulgated or order issued under section 5 or 6;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 or 6, a rule or order under section 5 or 6, or an order issued in action brought under section 5 or 7;

(3) fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this Act or a rule thereunder; or

(4) fail or refuse to permit entry or inspection as required by section 11.

SEC. 16. PENALTIES.

15 U.S.C. 2615

(a) CIVIL.—(1) Any person who violates a provision of section 15 shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 15.

(2) (A) A civil penalty for a violation of section 15 shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) CRIMINAL.—Any person who knowingly or willfully violates any provision of section 15 shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than one year, or both.

SEC. 17. SPECIFIC ENFORCEMENT AND SEIZURE.

(a) SPECIFIC ENFORCEMENT.—(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of section 15,

(B) restrain any person from taking any action prohibited by section 5 or 6 or by a rule or order under section 5 or 6,

(C) compel the taking of any action required by or under this Act, or

(D) direct any manufacturer or processor of a chemical substance or mixture manufactured or processed in violation of section 5 or 6 or a rule or order under section 5 or 6 and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—

(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 15 occurred or wherein the defendant is found or transacts business, or

(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) SEIZURE.—Any chemical substance or mixture which was manufactured, processed, or distributed in commerce in violation of this Act or any rule promulgated or order issued under this Act or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such substance, mixture, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, or article is found. Such proceeding shall conform as nearly as possible to proceedings in rem in admiralty.

SEC. 18. PREEMPTION.

15 U.S.C. 2617

(a) EFFECT ON STATE LAW.—(1) Except as provided in paragraph (2), nothing in this Act shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.

(2) Except as provided in subsection (b)—

(A) if the Administrator requires by a rule promulgated under section 4 the testing of a chemical

substance or mixture, no State or political subdivision may, after the effective date of such rule, establish or continue in effect a requirement for the testing of such substance or mixture for purposes similar to those for which testing is required under such rule; and

(B) if the Administrator prescribes a rule or order under section 5 or 6 (other than a rule imposing a requirement described in subsection (a)(6) of section 6) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).

(b) EXEMPTION.—Upon application of a State or political subdivision of a State the Administrator may by rule exempt from subsection (a)(2), under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—

(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this Act described in subsection (a)(2), and

(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this Act described in subsection (a)(2) and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce.

SEC. 19. JUDICIAL REVIEW.

(a) IN GENERAL.—(1)(A) Not later than 60 days after the date of the promulgation of a rule under section 4(a), 5(a)(2), 5(b)(4), 6(a), 6(e), or 8, any person may

file a petition for judicial review of such rule with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(B) Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of an order issued under subparagraph (A) or (B) of section 6(b)(1) if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(2) Copies of any petition filed under paragraph (1)(A) shall be transmitted forthwith to the Administrator and to the Attorney General by the clerk of the court with which such petition was filed. The provisions of section 2112 of title 28, United States Code, shall apply to the filing of the rulemaking record of proceedings on which the Administrator based the rule being reviewed under this section and to the transfer of proceedings between United States courts of appeals.

(3) For purposes of this section, the term "rulemaking record" means—

(A) the rule being reviewed under this section;

(B) in the case of a rule under section 4(a), the finding required by such section, in the case of a rule under section 5(b)(4), the finding required by such section, in the case of a rule under section 6(a) the finding required by section 5(f) or 6(a), as the case may be, in the case of a rule under section 6(a), the statement required by section 6(c)(1), and in the case of a rule under section 6(e), the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be;

(C) any transcript required to be made of oral presentations made in proceedings for the promulgation of such rule;

(D) any written submission of interested parties respecting the promulgation of such rule; and

(E) any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the Federal Register.

(b) **ADDITIONAL SUBMISSIONS AND PRESENTATIONS; MODIFICATIONS.**—If in an action under this section to review a rule the petitioner or the Administrator applies to

the court for leave to make additional oral submissions or written presentations respecting such rule and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify or set aside the rule being reviewed or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(c) STANDARD OF REVIEW.—(1)(A) Upon the filing of a petition under subsection (a)(1) for judicial review of a rule, the court shall have jurisdiction (i) to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5, United States Code, and (ii) except as otherwise provided in subparagraph (B), to review such rule in accordance with chapter 7 of title 5, United States Code.

(B) Section 706 of title 5, United States Code, shall apply to review of a rule under this section, except that—

(i) in the case of review of a rule under section 4(a), 5(b)(4), 6(a), or 6(e), the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3)) taken as a whole;

(ii) in the case of review of a rule under section 6(a), the court shall hold unlawful and set aside such rule if it finds that—

(I) a determination by the Administrator under section 6(c)(3) that the petitioner seeking review of such rule is not entitled to conduct (or have conducted) cross-examination or to present rebuttal submissions, or

(II) a rule of, or ruling by, the Administrator under section 6(c)(3) limiting such petitioner's cross-examination or oral presentations. has precluded disclosure of disputed material facts which was necessary to a fair determination by the Administrator of the rulemaking proceeding taken as a whole; and section 706(2)(D) shall not apply with respect to a determination, rule, or ruling referred to in subclause (I) or (II); and

(iii) the court may not review the contents and adequacy of—

(I) any statement required to be made pursuant to section 6(c)(1), or

(II) any statement of basis and purpose required by section 553(c) of title 5, United States Code, to be incorporated in the rule except as part of a review of the rulemaking record taken as a whole.

The term "evidence" as used in clause (i) means any matter in the rulemaking record.

(C) A determination, rule, or ruling of the Administrator described in subparagraph (B)(ii) may be reviewed only in an action under this section and only in accordance with such subparagraph.

(2) The judgment of the court affirming or setting aside, in whole or in part, any rule reviewed in accordance with this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d) FEES AND COSTS.—The decision of the court in an action commenced under subsection (a), or of the Supreme Court of the United States on review of such a decision, may include an award of costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

(e) OTHER REMEDIES.—The remedies as provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

SEC. 20. CITIZENS' CIVIL ACTIONS.

(a) IN GENERAL.—Except as provided in subsection (b), any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this Act or any rule promulgated under section 4, 5, or 6 or order issued under section 5 to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this Act which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of

the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

(b) LIMITATION.—No civil action may be commenced—

(1) under subsection (a)(1) to restrain a violation of this Act or rule or order under this Act—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 16(a)(2) to require compliance with this Act or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this Act or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

(2) under subsection (a)(2) before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 7, before the expiration of ten days after such notification.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(c) GENERAL.—(1) In any action under this section, the Administrator, if not a party, may intervene as a matter of right.

(2) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(3) Nothing in this section shall restrict any right which any person (or class of persons) may have under

any statute or common law to seek enforcement of this Act or any rule or order under this Act or to seek any other relief.

(d) CONSOLIDATION.—When two or more civil actions brought under subsection (a) involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions which is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

(1) any district which is selected by such defendant and in which one of such actions is pending,

(2) a district which is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending, or

(3) a district which is selected by the court and in which one of such actions is pending.

The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending.

SEC. 21. CITIZENS' PETITIONS.

15 U.S.C. 2620

(a) IN GENERAL.—Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 4, 6, or 8 or an order under section 5(e) or (6)(b)(2).

(b) PROCEDURES.—(1) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under section 4, 6, or 8 or an order under section 5(e), 6(b)(1)(A), or 6(b)(1)(B).

(2) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(3) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with section 4, 5, 6, or 8. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial.

(4)(A) If the Administrator denies a petition filed under this section (or if the Administrator fails to grant or deny such petition within the 90-day period) the petitioner may commence a civil action in a district court of the United States to compel the Administrator to

initiate a rulemaking proceeding as requested in the petition. Any such action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after filing the petition, within 60 days after the expiration of the 90-day period.

(B) In an action under subparagraph (A) respecting a petition to initiate a proceeding to issue a rule under section 4, 6, or 8 or an order under section 5(e) or 6(b)(2), the petitioner shall be provided an opportunity to have such petition considered by the court in a de novo proceeding. If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

(i) in the case of a petition to initiate a proceeding for the issuance of a rule under section 4 or an order under section 5(e)—

(I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance to be subject to such rule or order; and

(II) in the absence of such information, the substance may present an unreasonable risk to health or the environment, or the substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to it; or

(ii) in the case of a petition to initiate a proceeding for the issuance of a rule under section 6 or 8 or an order under section 6(b)(2), there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment,

the court shall order the Administrator to initiate the action requested by the petitioner. If the court finds that the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this Act and there are insufficient resources available to the Administrator to take the action requested by the petitioner, the court may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes.

(C) The court in issuing any final order in any action brought pursuant to subparagraph (A) may award costs of suit and reasonable fees for attorneys and expert wit-

nesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(5) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

SEC. 22. NATIONAL DEFENSE WAIVER.

15 U.S.C. 2621

The Administrator shall waive compliance with any provision of this Act upon a request and determination by the President that the requested waiver is necessary in the interest of national defense. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this Act. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national defense purposes, unless, upon the request of the President, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national defense, in which event the Administrator shall submit notice thereof to the Armed Services Committees of the Senate and the House of Representatives.

SEC. 23. EMPLOYEE PROTECTION.

15 U.S.C. 2622

(a) IN GENERAL.—No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

(b) REMEDY.—(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt

of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2) (A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If in response to a complaint filed under paragraph (1) the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) REVIEW.—(1) Any employee or employer adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code.

(2) An order of the Secretary, with respect to which review could have been obtained under paragraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) **ENFORCEMENT.**—Whenever a person has failed to comply with an order issued under subsection (b) (2), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages. Civil actions brought under this subsection shall be heard and decided expeditiously.

(e) **EXCLUSION.**—Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the employee's employer (or any agent of the employer), deliberately causes a violation of any requirement of this Act.

SEC. 24. EMPLOYMENT EFFECTS.

15 U.S.C. 2623

(a) **IN GENERAL.**—The Administrator shall evaluate on a continuing basis the potential effects on employment (including reductions in employment or loss of employment from threatened plant closures) of—

(1) the issuance of a rule or order under section 4, 5, or 6, or

(2) a requirement of section 5 or 6.

(b) (1) **INVESTIGATIONS.**—Any employee (or any representative of an employee) may request the Administrator to make an investigation of—

(A) a discharge or layoff or threatened discharge or layoff of the employee, or

(B) adverse or threatened adverse effects on the employee's employment,

allegedly resulting from a rule or order under section 4, 5, or 6 or a requirement of section 5 or 6. Any such request shall be made in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

(2) (A) Upon receipt of a request made in accordance with paragraph (1) the Administrator shall (i) conduct the investigation requested, and (ii) if requested by any interested person, hold public hearings on any matter involved in the investigation unless the Administrator, by order issued within 45 days of the date such hearings are requested, denies the request for the hearings because the Administrator determines there are no reasonable grounds for holding such hearings. If the Administrator makes such a determination, the Administrator shall notify in writing the person requesting the hearing of the determination and the reasons therefor and shall publish the determination and the reasons therefor in the Federal Register.

(B) If public hearings are to be held on any matter involved in an investigation conducted under this subsection—

(i) at least five days' notice shall be provided the person making the request for the investigation and any person identified in such request,

(ii) such hearings shall be held in accordance with section 6(c)(3), and

(iii) each employee who made or for whom was made a request for such hearings and the employer of such employee shall be required to present information respecting the applicable matter referred to in paragraph (1)(A) or (1)(B) together with the basis for such information.

(3) Upon completion of an investigation under paragraph (2), the Administrator shall make findings of fact, shall make such recommendations as the Administrator deems appropriate, and shall make available to the public such findings and recommendations.

(4) This section shall not be construed to require the Administrator to amend or repeal any rule or order in effect under this Act.

SEC. 25. STUDIES.

(a) INDEMNIFICATION STUDY.—The Administrator shall conduct a study of all Federal laws administered by the Administrator for the purpose of determining whether and under what conditions, if any, indemnification should be accorded any person as a result of any action taken by the Administrator under any such law. The study shall—

(1) include an estimate of the probable cost of any indemnification programs which may be recommended;

(2) include an examination of all viable means of financing the cost of any recommended indemnification; and

(3) be completed and submitted to Congress within two years from the effective date of enactment of this Act.

The General Accounting Office shall review the adequacy of the study submitted to Congress pursuant to paragraph (3) and shall report the results of its review to the Congress within six months of the date such study is submitted to Congress.

(b) CLASSIFICATION, STORAGE, AND RETRIEVAL STUDY.—The Council on Environmental Quality, in consultation with the Administrator, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the heads of other appropriate Federal departments or agencies, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical

substances and related substances, and (2) a standard means for storing and for obtaining rapid access to information respecting such substances. A report on such study shall be completed and submitted to Congress not later than 18 months after the effective date of enactment of this Act.

SEC. 26. ADMINISTRATION OF THE ACT.

15 U.S.C. 2625

(a) COOPERATION OF FEDERAL AGENCIES.—Upon request by the Administrator, each Federal department and agency is authorized—

(1) to make its services, personnel, and facilities available (with or without reimbursement) to the Administrator to assist the Administrator in the administration of this Act; and

(2) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession as the Administrator may reasonably determine to be necessary for the administration of this Act.

(b) FEES.—(1) The Administrator may, by rule, require the payment of a reasonable fee from any person required to submit data under section 4 or 5 to defray the cost of administering this Act. Such rules shall not provide for any fee in excess of \$2,500 or, in the case of a small business concern, any fee in excess of \$100. In setting a fee under this paragraph, the Administrator shall take into account the ability to pay of the person required to submit the data and the cost to the Administrator of reviewing such data. Such rules may provide for sharing such a fee in any case in which the expenses of testing are shared under section 4 or 5.

(2) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the persons which qualify as small business concerns for purposes of paragraph (1).

(c) ACTION WITH RESPECT TO CATEGORIES.—(1) Any action authorized or required to be taken by the Administrator under any provision of this Act with respect to a chemical substance or mixture may be taken by the Administrator in accordance with that provision with respect to a category of chemical substances or mixtures. Whenever the Administrator takes action under a provision of this Act with respect to a category of chemical substances or mixtures, any reference in this Act to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category.

(2) For purposes of paragraph (1):

(A) The term “category of chemical substances” means a group of chemical substances the members

of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this Act, except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances.

(B) The term "category of mixtures" means a group of mixtures the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in the mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this Act.

(d) ASSISTANCE OFFICE.—The Administrator shall establish in the Environmental Protection Agency an identifiable office to provide technical and other nonfinancial assistance to manufacturers and processors of chemical substances and mixtures respecting the requirements of this Act applicable to such manufacturers and processors, the policy of the Agency respecting the application of such requirements to such manufacturers and processors, and the means and methods by which such manufacturers and processors may comply with such requirements.

(e) FINANCIAL DISCLOSURES.—(1) Except as provided under paragraph (3), each officer or employee of the Environmental Protection Agency and the Department of Health, Education, and Welfare who—

(A) performs any function or duty under this Act, and

(B) has any known financial interest (i) in any person subject to this Act or any rule or order in effect under this Act, or (ii) in any person who applies for or receives any grant or contract under this Act,

shall, on February 1, 1978, and on February 1 of each year thereafter, file with the Administrator or the Secretary of Health, Education, and Welfare (hereinafter in this subsection referred to as the "Secretary"), as appropriate, a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be made available to the public.

(2) The Administrator and the Secretary shall—

(A) act within 90 days of the effective date of this Act—

(i) to define the term "known financial interests" for purposes of paragraph (1), and

(ii) to establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for review by the Administrator and the Secretary of such statements; and

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

(3) The Administrator may by rule identify specific positions with the Environmental Protection Agency, and the Secretary may by rule identify specific positions with the Department of Health, Education, and Welfare, which are of a nonregulatory or nonpolicymaking nature, and the Administrator and the Secretary may by rule provide that officers or employees occupying such positions shall be exempt from the requirements of paragraph (1).

(4) This subsection does not supersede any requirement of chapter 11 of title 18, United States Code.

(5) Any officer or employee who is subject to, and knowingly violates, this subsection or any rule issued thereunder, shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

(f) **STATEMENT OF BASIS AND PURPOSE.**—Any final order issued under this Act shall be accompanied by a statement of its basis and purpose. The contents and adequacy of any such statement shall not be subject to judicial review in any respect.

(g) **ASSISTANT ADMINISTRATOR.**—(1) The President, by and with the advice and consent of the Senate, shall appoint an Assistant Administrator for Toxic Substances of the Environmental Protection Agency. Such Assistant Administrator shall be a qualified individual who is, by reason of background and experience, especially qualified to direct a program concerning the effects of chemicals on human health and the environment. Such Assistant Administrator shall be responsible for (A) the collection of data, (B) the preparation of studies, (C) the making of recommendations to the Administrator for regulatory and other actions to carry out the purposes and to facilitate the administration of this Act, and (D) such other functions as the Administrator may assign or delegate.

(2) The Assistant Administrator to be appointed under paragraph (1) shall (A) be in addition to the Assistant Administrators of the Environmental Protection Agency authorized by section 1(d) of Reorganization Plan No. 3 of 1970, and (B) be compensated at the rate of pay authorized for such Assistant Administrators.

SEC. 27. DEVELOPMENT AND EVALUATION OF TEST METHODS.

15 U.S.C. 2626

(a) **IN GENERAL.**—The Secretary of Health, Education, and Welfare in consultation with the Administrator and acting through the Assistant Secretary for Health, may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities for, projects for the development and evaluation of inexpensive and efficient methods (1) for determining and evaluating the health and environmental effects of chemical substances and mixtures, and their toxicity, persistence, and other characteristics which affect health and the environment, and (2) which may be used for the development of test data to meet the requirements of rules promulgated under section 4. The Administrator shall consider such methods in prescribing under section 4 standards for the development of test data.

(b) **APPROVAL BY SECRETARY.**—No grant may be made or contract entered into under subsection (a) unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require. The Secretary may apply such conditions to grants and contracts under subsection (a) as the Secretary determines are necessary to carry out the purposes of such subsection. Contracts may be entered into under such subsection without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

(c) **ANNUAL REPORTS.**—(1) The Secretary shall prepare and submit to the President and the Congress on or before January 1 of each year a report of the number of grants made and contracts entered into under this section and the results of such grants and contracts.

(2) The Secretary shall periodically publish in the Federal Register reports describing the progress and results of any contract entered into or grant made under this section.

SEC. 28. STATE PROGRAMS.

(a) **IN GENERAL.**—For the purpose of complementing (but not reducing) the authority of, or actions taken by, the Administrator under this Act, the Administrator may make grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under this Act for their prevention or elimination. The amount of a grant under this subsection shall be determined by the Administrator, except that no grant for any State program may

15 U.S.C. 2627

exceed 75 per centum of the establishment and operation costs (as determined by the Administrator) of such program during the period for which the grant is made.

(b) APPROVAL BY ADMINISTRATOR.—(1) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Administrator. Such an application shall be submitted in such form and manner as the Administrator may require and shall—

(A) set forth the need of the applicant for a grant under subsection (a),

(B) identify the agency or agencies of the State which shall establish or operate, or both, the program for which the application is submitted,

(C) describe the actions proposed to be taken under such program,

(D) contain or be supported by assurances satisfactory to the Administrator that such program shall, to the extent feasible, be integrated with other programs of the applicant for environmental and public health protection,

(E) provide for the making of such reports and evaluations as the Administrator may require, and

(F) contain such other information as the Administrator may prescribe.

(2) The Administrator may approve an application submitted in accordance with paragraph (1) only if the applicant has established to the satisfaction of the Administrator a priority need, as determined under rules of the Administrator, for the grant for which the application has been submitted. Such rules shall take into consideration the seriousness of the health effects in a State which are associated with chemical substances or mixtures, including cancer, birth defects, and gene mutations, the extent of the exposure in a State of human beings and the environment to chemical substances and mixtures, and the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State.

(c) ANNUAL REPORTS.—Not later than six months after the end of each of the fiscal years 1979, 1980, and 1981, the Administrator shall submit to the Congress a report respecting the programs assisted by grants under subsection (a) in the preceding fiscal year and the extent to which the Administrator has disseminated information respecting such programs.

(d) AUTHORIZATION.—For the purpose of making grants under subsection (a) there are authorized to be appropriated \$1,500,000 for the fiscal year ending September 30, 1977, \$1,500,000 for the fiscal year ending September 30, 1978, and \$1,500,000 for the fiscal year ending September 30, 1979. Sums appropriated under this subsection shall remain available until expended.

SEC. 29. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated to the Administrator for purposes of carrying out this Act (other than sections 27 and 28 and subsections (a) and (c) through (g) of section 10 thereof) \$10,100,000 for the fiscal year ending September 30, 1977, \$12,625,000 for the fiscal year ending September 30, 1978, \$16,200,000 for the fiscal year ending September 30 1979. No part of the funds appropriated under this section may be used to construct any research laboratories. 15 U.S.C. 2628

SEC. 30. ANNUAL REPORT.

The Administrator shall prepare and submit to the President and the Congress on or before January 1, 1978, and on or before January 1 of each succeeding year a comprehensive report on the administration of this Act during the preceding fiscal year. Such report shall include— 15 U.S.C. 2629

(1) a list of the testing required under section 4 during the year for which the report is made and an estimate of the costs incurred during such year by the persons required to perform such tests;

(2) the number of notices received during such year under section 5, the number of such notices received during such year under such section for chemical substances subject to a section 4 rule, and a summary of any action taken during such year under section 5(g);

(3) a list of rules issued during such year under section 6;

(4) a list, with a brief statement of the issues, of completed or pending judicial actions under this Act and administrative actions under section 16 during such year;

(5) a summary of major problems encountered in the administration of this Act; and

(6) such recommendations for additional legislation as the Administrator deems necessary to carry out the purposes of this Act.

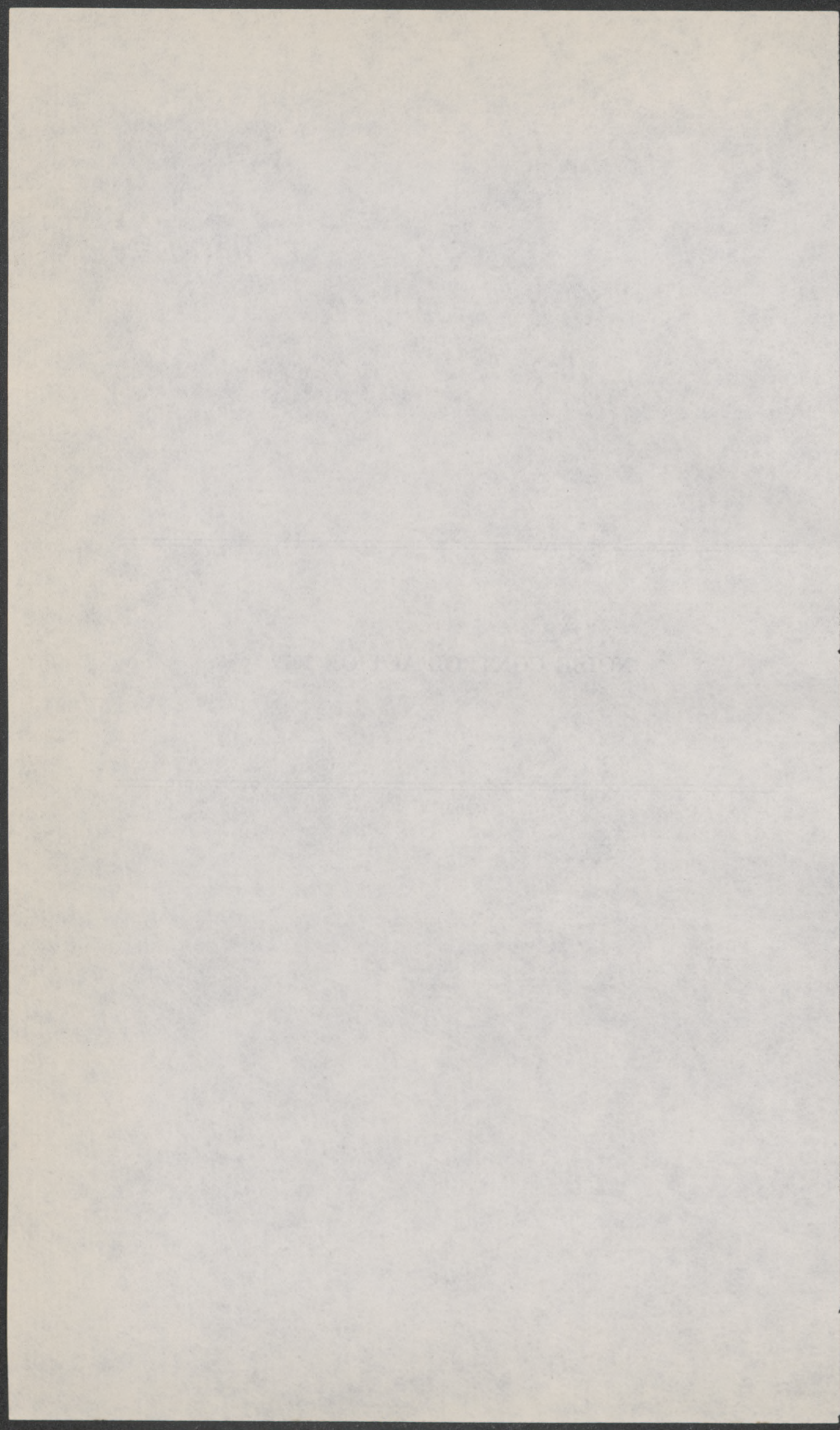
SEC. 31. EFFECTIVE DATE.

Except as provided in section 4(f), this Act shall take effect on January 1, 1977. 15 U.S.C. 2601

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THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOHN HUTCHINGS
OF THE BOSTON BAR
IN TWO VOLUMES
VOL. II
BOSTON
PUBLISHED BY
JOHN HUTCHINGS
AT THE BOSTON BAR
1796

NOISE CONTROL ACT OF 1972



NOISE CONTROL ACT OF 1972

(PUBLIC LAW 92-574; OCT. 27, 1972)

SHORT TITLE

SECTION 1. This Act may be cited as the "Noise Control Act of 1972". 42 U.S.C. 4901
Note

FINDINGS AND POLICY

SEC. 2(a) The Congress finds— 42 U.S.C. 4901

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this Act to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.

DEFINITIONS

SEC. 3. For purposes of this Act: 42 U.S.C. 4902

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

(2) The term "person" means an individual, corporation, partnership, or association, and (except as provided in sections 11(e) and 12(a)) includes any officer, employee, department, agency, or instrumentality of the United States, a State, or any political subdivision of a State.

(3) The term "product" means any manufactured article or goods or component thereof; except that such term does not include—

(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 101 of the Federal Aviation Act of 1958; or

(B) (i) any military weapons or equipment which are designed for combat use; (ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or (iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

(4) The term "ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.

(5) The term "new product" means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 6 or section 8 which would have been applicable to such product had it been manufactured in the United States.

(6) The term "manufacturer" means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

(7) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(8) The term "distribute in commerce" means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

(9) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term "Federal agency" means an executive agency (as defined in section 105 of title 5, United States Code) and includes the United States Postal Service.

(11) The term "environmental noise" means the intensity, duration, and the character of sounds from all sources.

FEDERAL PROGRAMS

SEC. 4. (a) The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 2(b). 42 U.S.C. 4903

(b) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the emission of noise, shall comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption, other than for those products referred to in section 3(3)(B) of this Act, may be granted from the requirements of sections 6, 17, and 18 of this Act. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c) (1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has

reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 611 of the Federal Aviation Act of 1958 (as amended by section 7 of this Act) shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise research and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control noise.

IDENTIFICATION OF MAJOR NOISE SOURCES; NOISE CRITERIA AND CONTROL TECHNOLOGY

42 U.S.C. 4904

SEC. 5. (a) (1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of the date of the enactment of this Act, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of the date of the enactment of this Act, publish information on the levels of environmental noise the attainment and maintenance of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) The Administrator shall, after consultation with appropriate Federal agencies, compile and publish a report or series of reports (1) identifying products (or

classes of products) which in his judgment are major sources of noise, and (2) giving information on techniques for control of noise from such products, including available data on the technology, costs, and alternative methods of noise control. The first such report shall be published not later than eighteen months after the date of enactment of this Act.

(c) The Administrator shall from time to time review and, as appropriate, revise or supplement any criteria or reports published under this section.

(d) Any report (or revision thereof) under subsection (b)(1) identifying major noise sources shall be published in the Federal Register. The publication or revision under this section of any criteria or information on control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

NOISE EMISSION STANDARDS FOR PRODUCTS DISTRIBUTED IN COMMERCE

42 U.S.C. 4905

SEC. 6. (a)(1) The Administrator shall publish proposed regulations, meeting the requirements of subsection (c), for each product—

(A) which is identified (or is part of a class identified) in any report published under section 5(b)(1) as a major source of noise,

(B) for which, in his judgment, noise emission standards are feasible, and

(C) which falls in one of the following categories:

(i) Construction equipment.

(ii) Transportation equipment (including recreational vehicles and related equipment).

(iii) Any motor or engine (including any equipment of which an engine or motor is an integral part).

(iv) Electrical or electronic equipment.

(2) (A) Initial proposed regulations under paragraph (1) shall be published not later than eighteen months after the date of enactment of this Act, and shall apply to any product described in paragraph (1) which is identified (or is a part of a class identified) as a major source of noise in any report published under section 5(b)(1) on or before the date of publication of such initial proposed regulations.

(B) In the case of any product described in paragraph (1) which is identified (or is part of a class identified) as a major source of noise in a report published under section 5(b)(1) after publication of the initial proposed regulations under subparagraph (A) of this paragraph, regulations under paragraph (1) for such product shall

be proposed and published by the Administrator not later than eighteen months after such report is published.

(3) After proposed regulations respecting a product have been published under paragraph (2), the Administrator shall, unless in his judgment noise emission standards are not feasible for such product, prescribe regulations, meeting the requirements of subsection (c), for such product—

(A) not earlier than six months after publication of such proposed regulations, and

(B) not later than—

(i) twenty-four months after the date of enactment of this Act, in the case of a product subject to proposed regulations published under paragraph (2) (A), or

(ii) in the case of any other product, twenty-four months after the publication of the report under section 5(b)(1) identifying it (or a class of products of which it is a part) as a major source of noise.

(b) The Administrator may publish proposed regulations, meeting the requirements of subsection (c), for any product for which he is not required by subsection (a) to prescribe regulations but for which, in his judgment, noise emission standards are feasible and are requisite to protect the public health and welfare. Not earlier than six months after the date of publication of such proposed regulations respecting such product, he may prescribe regulations, meeting the requirements of subsection (c), for such product.

(c) (1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 5, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of the best available technology and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including any standards under the National Traffic and Motor Vehicle Safety Act of 1966, the Clean Air Act, and the Federal Water Pollution Control Act. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) (and any revision thereof) may contain testing procedures

necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

(2) After publication of any proposed regulations under this section, the Administrator shall allow interested persons an opportunity to participate in rulemaking in accordance with the first sentence of section 553(c) of title 5, United States Code.

(3) The Administrator may revise any regulation prescribed by him under this section by (A) publication of proposed revised regulations, and (B) the promulgation, not earlier than six months after the date of such publication, of regulations making the revision; except that a revision which makes only technical or clerical corrections in a regulation under this section may be promulgated earlier than six months after such date if the Administrator finds that such earlier promulgation is in the public interest.

(d)(1) On and after the effective date of any regulation prescribed under subsection (a) or (b) of this section, the manufacturer of each new product to which such regulation applies shall warrant to the ultimate purchaser and each subsequent purchaser that such product is designed, built, and equipped so as to conform at the time of sale with such regulation.

(2) Any cost obligation of any dealer incurred as a result of any requirement imposed by paragraph (1) of this subsection shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act.

(e)(1) No State or political subdivision thereof may adopt or enforce—

(A) with respect to any new product for which a regulation has been prescribed by the Administrator under this section, any law or regulation which sets a limit on noise emissions from such new product and which is not identical to such regulation of the Administrator; or

(B) with respect to any component incorporated into such new product by the manufacturer of such product, any law or regulation setting a limit on noise emissions from such component when so incorporated.

(2) Subject to sections 17 and 18, nothing in this section precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation, or restriction of the use, operation, or movement of any product or combination of products.

AIRCRAFT NOISE STANDARDS

42 U.S.C. 4906

SEC. 7. (a) The Administrator, after consultation with appropriate Federal, State, and local agencies and interested persons, shall conduct a study of the (1) adequacy of Federal Aviation Administration flight and operational noise controls; (2) adequacy of noise emission standards on new and existing aircraft, together with recommendations on the retrofitting and phaseout of existing aircraft; (3) implications of identifying and achieving levels of cumulative noise exposure around airports; and (4) additional measures available to airport operators and local governments to control aircraft noise. He shall report on such study to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committees on Commerce and Public Works of the Senate within nine months after the date of the enactment of this Act.

(b) Section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431) is amended to read as follows:

“CONTROL AND ABATEMENT OF AIRCRAFT NOISE AND SONIC BOOM

“SEC. 611. (a) For purposes of this section:

“(1) The term ‘FAA’ means Administrator of the Federal Aviation Administration.

“(2) The term ‘EPA’ means the Administrator of the Environmental Protection Agency.

“(b) (1) In order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom, the FAA, after consultation with the Secretary of Transportation and with EPA, shall prescribe and amend standards for the measurement of aircraft noise and sonic boom and shall prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom, including the application

of such standards and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title. No exemption with respect to any standard or regulation under this section may be granted under any provision of this Act unless the FAA shall have consulted with EPA before such exemption is granted, except that if the FAA determines that safety in air commerce or air transportation requires that such an exemption be granted before EPA can be consulted, the FAA shall consult with EPA as soon as practicable after the exemption is granted.

“(2) The FAA shall not issue an original type certificate under section 603(a) of this Act for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom, consistent with the considerations listed in subsection (d).

“(c)(1) Not earlier than the date of submission of the report required by section 7(a) of the Noise Control Act of 1972, EPA shall submit to the FAA proposed regulations to provide such control and abatement of aircraft noise and sonic boom (including control and abatement through the exercise of any of the FAA’s regulatory authority over air commerce or transportation or over aircraft or airport operations) as EPA determines is necessary to protect the public health and welfare. The FAA shall consider such proposed regulations submitted by EPA under this paragraph and shall, within thirty days of the date of its submission to the FAA, publish the proposed regulations in a notice of proposed rulemaking. Within sixty days after such publication, the FAA shall commence a hearing at which interested persons shall be afforded an opportunity for oral (as well as written) presentations of data, views, and arguments. Within a reasonable time after the conclusion of such hearing and after consultation with EPA, the FAA shall—

“(A) in accordance with subsection (b), prescribe regulations (i) substantially as they were submitted by EPA, or (ii) which are a modification of the proposed regulations submitted by EPA, or

“(B) publish in the Federal Register a notice that it is not prescribing any regulation in response to EPA’s submission of proposed regulations, together with a detailed explanation providing reasons for the decision not to prescribe such regulations.

“(2) If EPA has reason to believe that the FAA’s action with respect to a regulation proposed by EPA under

paragraph (1)(A)(ii) or (1)(B) of this subsection does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations listed in subsection (d) of this section, EPA shall consult with the FAA and may request the FAA to review, and report to EPA on, the advisability of prescribing the regulation originally proposed by EPA. Any such request shall be published in the Federal Register and shall include a detailed statement of the information on which it is based. The FAA shall complete the review requested and shall report to EPA within such time as EPA specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The FAA's report shall be accompanied by a detailed statement of the FAA's findings and the reasons for the FAA's conclusions; shall identify any statement filed pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 with respect to such action of the FAA under paragraph (1) of this subsection; and shall specify whether (and where) such statements are available for public inspection. The FAA's report shall be published in the Federal Register, except in a case in which EPA's request proposed specific action to be taken by the FAA, and FAA's report indicates such action will be taken.

"(3) If, in the case of a matter described in paragraph (2) of this subsection with respect to which no statement is required to be filed under such section 102(2)(C), the report of the FAA indicates that the proposed regulation originally submitted by EPA should not be made, then EPA may request the FAA to file a supplemental report, which shall be published in the Federal Register within such a period as EPA may specify (but such time specified shall not be less than ninety days from the date the request was made), and which shall contain a comparison of (A) the environmental effects (including those which cannot be avoided) of the action actually taken by the FAA in response to EPA's proposed regulations, and (B) EPA's proposed regulations.

"(d) In prescribing and amending standards and regulations under this section, the FAA shall—

"(1) consider relevant available data relating to aircraft noise and sonic boom, including the results of research, development, testing, and evaluation activities conducted pursuant to this Act and the Department of Transportation Act;

"(2) consult with such Federal, State, and interstate agencies as he deems appropriate;

"(3) consider whether any proposed standard or regulation is consistent with the highest degree of safety in air commerce or air transportation in the public interest;

“(4) consider whether any proposed standard or regulation is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply; and

“(5) consider the extent to which such standard or regulation will contribute to carrying out the purposes of this section.

“(e) In any action to amend, modify, suspend, or revoke a certificate in which violation of aircraft noise or sonic boom standards or regulations is at issue, the certificate holder shall have the same notice and appeal rights as are contained in section 609, and in any appeal to the National Transportation Safety Board, the Board may amend, modify, or reverse the order of the FAA if it finds that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require the affirmation of such order, or that such order is not consistent with safety in air commerce or air transportation.”

(c) All—

(1) standards, rules, and regulations prescribed under section 611 of the Federal Aviation Act of 1958, and

(2) exemptions, granted under any provision of the Federal Aviation Act of 1958, with respect to such standards, rules, and regulations,

which are in effect on the date of the enactment of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator of the Federal Aviation Administration in the exercise of any authority vested in him, by a court of competent jurisdiction, or by operation of law.

LABELING

SEC. 8. (a) The Administrator shall by regulation designate any product (or class thereof)—

(1) which emits noise capable of adversely affecting the public health or welfare; or

(2) which is sold wholly or in part on the basis of its effectiveness in reducing noise.

(b) For each product (or class thereof) designated under subsection (a) the Administrator shall by regulation require that notice be given to the prospective user of the level of the noise the product emits, or of its effectiveness in reducing noise, as the case may be. Such regulations shall specify (1) whether such notice shall be affixed to the product or to the outside of its container, or to both, at the time of its sale to the ultimate purchaser or whether such notice shall be given to the prospective

user in some other manner, (2) the form of the notice, and (3) the methods and units of measurement to be used. Sections 6(c) (2) shall apply to the prescribing of any regulation under this section.

(c) This section does not prevent any State or political subdivision thereof from regulating product labeling or information respecting products in any way not in conflict with regulations prescribed by the Administrator under this section.

IMPORTS

42 U.S.C. 4908

SEC. 9. The Secretary of the Treasury shall, in consultation with the Administrator, issue regulations to carry out the provisions of this Act with respect to new products imported or offered for importation.

PROHIBITED ACTS

42 U.S.C. 4909

SEC. 10. (a) Except as otherwise provided in subsection (b), the following acts or the causing thereof are prohibited:

(1) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 6 which is applicable to such product, except in conformity with such regulation.

(2) (A) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under section 6, prior to its sale or delivery to the ultimate purchaser or while it is in use, or (B) the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(3) In the case of a manufacturer, to distribute in commerce any new product manufactured after the effective date of a regulation prescribed under section 8(b) (requiring information respecting noise) which is applicable to such product, except in conformity with such regulation.

(4) The removal by any person of any notice affixed to a product or container pursuant to regulations prescribed under section 8(b), prior to sale of the product to the ultimate purchaser.

(5) The importation into the United States by any person of any new product in violation of a regulation prescribed under section 9 which is applicable to such product.

(6) The failure or refusal by any person to comply with any requirement of section 11(d) or 13(a) or regulations prescribed under section 13(a), 17, or 18.

(b) (1) For the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security, the Administrator may exempt for a specified period of time any product, or class thereof, from paragraphs (1), (2), (3), and (5) of subsection (a), upon such terms and conditions as he may find necessary to protect the public health or welfare.

(2) Paragraphs (1), (2), (3), and (4) of subsection (a) shall not apply with respect to any product which is manufactured solely for use outside any State and which (and the container of which) is labeled or otherwise marked to show that it is manufactured solely for use outside any State; except that such paragraphs shall apply to such product if it is in fact distributed in commerce for use in any State.

ENFORCEMENT

SEC. 11. (a) Any person who willfully or knowingly violates paragraph (1), (3), (5), or (6) of subsection (a) of section 10 of this Act shall be punished by a fine of not more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both. 42 U.S.C. 4910

(b) For the purpose of this section, each day of violation of any paragraph of section 10(a) shall constitute a separate violation of that section.

(c) The district courts of the United States shall have jurisdiction of actions brought by and in the name of the United States to restrain any violations of section 10(a) of this Act.

(d) (1) Whenever any person is in violation of section 10(a) of this Act, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5 of the United States Code.

(e) The term "person," as used in this section, does not include a department, agency, or instrumentality of the United States.

CITIZEN SUITS

SEC. 12. (a) Except as provided in subsection (b), any person (other than the United States) may commence a civil action on his own behalf— 42 U.S.C. 4911

(1) against any person (including (A) the United States, and (B) any other governmental instrumen-

tality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any noise control requirement (as defined in subsection (e)), or

(2) against—

(A) the Administrator of the Environmental Protection Agency where there is alleged a failure of such Administrator to perform any act or duty under this Act which is not discretionary with such Administrator, or

(B) the Administrator of the Federal Aviation Administration where there is alleged a failure of such Administrator to perform any act or duty under section 611 of the Federal Aviation Act of 1958 which is not discretionary with such Administrator.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order such Administrator to perform such act or duty, as the case may be.

(b) No action may be commenced—

(1) under subsection (a) (1)—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation Administrator in the case of a violation of a noise control requirement under such section 611) and (ii) to any alleged violator of such requirement, or

(B) if an Administrator has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(2) under subsection (a) (2) prior to sixty days after the plaintiff has given notice to the defendant that he will commence such action.

Notice under this subsection shall be given in such manner as the Administrator of the Environmental Protection Agency shall prescribe by regulation.

(c) In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may intervene as a matter of right. In an action under this section respecting a noise control requirement under section 611 of the Federal Aviation Act of 1958, the Administrator of the Federal Aviation Administration, if not a party, may also intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney

and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an Administrator).

(f) For purposes of this section, the term "noise control requirement" means paragraph (1), (2), (3), (4), or (5) of section 10(a), or a standard, rule, or regulation issued under section 17 or 18 of this Act or under section 611 of the Federal Aviation Act of 1958.

RECORDS, REPORTS, AND INFORMATION

SEC. 13. (a) Each manufacturer of a product to which regulations under section 6 or section 8 apply shall—

42 U.S.C. 4912

(1) establish and maintain such records, make such reports, provide such information, and make such tests, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this Act.

(2) upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to such information and the results of such tests and to copy such records, and

(3) to the extent required by regulations of the Administrator, make products coming off the assembly line or otherwise in the hands of the manufacturer available for testing by the Administrator.

(b) (1) All information obtained by the Administrator or his representatives pursuant to subsection (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other Federal officers or employees, in whose possession it shall remain confidential, or when relevant to the matter in controversy in any proceeding under this Act.

(2) Nothing in this subsection shall authorize the withholding of information by the Administrator, or by any officers or employees under his control, from the duly authorized committees of the Congress.

(c) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under

this Act, shall upon conviction be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

RESEARCH, TECHNICAL ASSISTANCE, AND PUBLIC INFORMATION

42 U.S.C. 4913

SEC. 14. In furtherance of his responsibilities under this Act and to complement, as necessary, the noise-research programs of other Federal agencies, the Administrator is authorized to:

(1) Conduct research, and finance research by contract with any person, on the effects, measurement, and control of noise, including but not limited to—

(A) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and determination of acceptable levels of noise on the basis of such effects;

(B) development of improved methods and standards for measurement and monitoring of noise, in cooperation with the National Bureau of Standards, Department of Commerce; and

(C) determination of the most effective and practicable means of controlling noise emission.

(2) Provide technical assistance to State and local governments to facilitate their development and enforcement of ambient noise standards, including but not limited to—

(A) advice on training of noise-control personnel and on selection and operation of noise-abatement equipment; and

(B) preparation of model State or local legislation for noise control.

(3) Disseminate to the public information on the effects of noise, acceptable noise levels, and techniques for noise measurement and control.

DEVELOPMENT OF LOW-NOISE-EMISSION PRODUCTS

42 U.S.C. 4914

SEC. 15. (a) For the purpose of this section:

(1) The term "Committee" means the Low-Noise-Emission Product Advisory Committee.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "low-noise-emission product" means any product which emits noise in amounts significantly below the levels specified in noise emission standards under regulations applicable under sec-

tion 6 at the time of procurement to that type of product.

(4) The term "retail price" means (A) the maximum statutory price applicable to any type of product; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any type of product.

(b)(1) The Administrator shall determine which products qualify as low-noise-emission products in accordance with the provisions of this section.

(2) The Administrator shall certify any product—

(A) for which a certification application has been filed in accordance with paragraph (5)(A) of this subsection;

(B) which is a low-noise-emission product as determined by the Administrator; and

(C) which he determines is suitable for use as a substitute for a type of product at that time in use by agencies of the Federal Government.

(3) The Administrator may establish a Low-Noise-Emission Product Advisory Committee to assist him in determining which products qualify as low-noise-emission products for purposes of this section. The Committee shall include the Administrator or his designee, a representative of the National Bureau of Standards, and representatives of such other Federal agencies and private individuals as the Administrator may deem necessary from time to time. Any member of the Committee not employed on a full-time basis by the United States may receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day such member is engaged upon work of the Committee. Each member of the Committee shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(4) Certification under this section shall be effective for a period of one year from the date of issuance.

(5)(A) Any person seeking to have a class or model of product certified under this section shall file a certification application in accordance with regulations prescribed by the Administrator.

(B) The Administrator shall publish in the Federal Register a notice of each application received.

(C) The Administrator shall make determinations for the purpose of this section in accordance with procedures prescribed by him by regulation.

(D) The Administrator shall conduct whatever investigation is necessary, including actual inspection of the

product at a place designated in regulations prescribed under subparagraph (A).

(E) The Administrator shall receive and evaluate written comments and documents from interested persons in support of, or in opposition to, certification of the class or model of product under consideration.

(F) Within ninety days after the receipt of a properly filed certification application the Administrator shall determine whether such product is a low-noise-emission product for purposes of this section. If the Administrator determines that such product is a low-noise-emission product, then within one hundred and eighty days of such determination the Administrator shall reach a decision as to whether such product is a suitable substitute for any class or classes of products presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator shall publish in the Federal Register notice of such determination or decision, including reasons therefor.

(c) (1) Certified low-noise-emission products shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other products if the Administrator of General Services determines that such certified products have procurement costs which are no more than 125 per centum of the retail price of the least expensive type of product for which they are certified substitutes.

(2) Data relied upon by the Administrator in determining that a product is a certified low-noise-emission product shall be incorporated in any contract for the procurement of such product.

(d) The procuring agency shall be required to purchase available certified low-noise-emission products which are eligible for purchase to the extent they are available before purchasing any other products for which any low-noise-emission product is a certified substitute. In making purchasing selections between competing eligible certified low-noise-emission products, the procuring agency shall give priority to any class or model which does not require extensive periodic maintenance to retain its low-noise emission qualities or which does not involve operating costs significantly in excess of those products for which it is a certified substitute.

(e) For the purpose of procuring certified low-noise-emission products any statutory price limitations shall be waived.

(f) The Administrator shall, from time to time as he deems appropriate, test the emissions of noise from certified low-noise-emission products purchased by the Federal Government. If at any time he finds that the noise-

emission levels exceed the levels on which certification under this section was based, the Administrator shall give the supplier of such product written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Administrator, he may order the supplier to show cause why the product involved should be eligible for recertification.

(g) There are authorized to be appropriated for paying additional amounts for products pursuant to, and for carrying out the provisions of, this section, \$1,000,000 for the fiscal year ending June 30, 1973, and \$2,000,000 for each of the two succeeding fiscal years, \$2,200,000 for the fiscal year ending June 30, 1976, \$550,000 for the transition period of July 1, 1976, through September 30, 1976, and \$2,420,000 for the fiscal year ending September 30, 1977.

(h) The Administrator shall promulgate the procedures required to implement this section within one hundred and eighty days after the date of enactment of this Act.

JUDICIAL REVIEW; WITNESSES

Sec. 16. (a) A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under section 6, 17, or 18 of this Act or any labeling regulation under section 8 of this Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the Administrator of the Federal Aviation Administration in promulgating any standard or regulation under section 611 of the Federal Aviation Act of 1958 may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of either Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

42 U.S.C. 4915

(b) If a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or Administration (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such

modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) With respect to relief pending review of an action by either Administrator, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

(d) For the purpose of obtaining information to carry out this Act, the Administrator of the Environmental Protection Agency may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

RAILROAD NOISE EMISSION STANDARDS

42 U.S.C. 4916

SEC. 17. (a) (1) Within nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for surface carriers engaged in interstate commerce by railroad. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of the equipment and facilities of surface carriers engaged in interstate commerce by railroad which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised, from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) The Secretary of Transportation, after consultation with the Administrator, shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Safety Appliance Acts, the Interstate Commerce Act, and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

(c) (1) Subject to paragraph (2) but notwithstanding any other provision of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any equipment or facility of a surface carrier engaged in interstate commerce by railroad, no State or political subdivision thereof may adopt or enforce any standard applicable to noise emissions resulting from the operation of the same equipment or facility of such carrier unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) The terms "carrier" and "railroad" as used in this section shall have the same meaning and such terms have under the first section of the Act of February 17, 1911 (45 U.S.C. 22).

MOTOR CARRIER NOISE EMISSION STANDARDS

42 U.S.C. 4917

SEC. 18. (a) (1) Within nine months after the date of enactment of this Act, the Administrator shall publish proposed noise emission regulations for motor carriers engaged in interstate commerce. Such proposed regulations shall include noise emission standards setting such limits on noise emissions resulting from operation of motor carriers engaged in interstate commerce which reflect the degree of noise reduction achievable through the application of the best available technology, taking into account the cost of compliance. These regulations shall be in addition to any regulations that may be proposed under section 6 of this Act.

(2) Within ninety days after the publication of such regulations as may be proposed under paragraph (1) of this subsection, and subject to the provisions of section 16 of this Act, the Administrator shall promulgate final regulations. Such regulations may be revised from time to time, in accordance with this subsection.

(3) Any standard or regulation, or revision thereof, proposed under this subsection shall be promulgated only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety and technological availability.

(4) Any regulation or revision thereof promulgated under this subsection shall take effect after such period as the Administrator finds necessary, after consultation with the Secretary of Transportation, to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(b) The Secretary of Transportation, after consultation with the Administrator shall promulgate regulations to insure compliance with all standards promulgated by the Administrator under this section. The Secretary of Transportation shall carry out such regulations through the use of his powers and duties of enforcement and inspection authorized by the Interstate Commerce Act and the Department of Transportation Act. Regulations promulgated under this section shall be subject to the provisions of sections 10, 11, 12, and 16 of this Act.

(c) (1) Subject to paragraph (2) of this subsection but notwithstanding any other provision of this Act, after the effective date of a regulation under this section applicable to noise emissions resulting from the operation of any motor carrier engaged in interstate commerce, no State or political subdivision thereof may adopt or enforce any standard applicable to the same operation of such motor carrier, unless such standard is identical to a standard applicable to noise emissions resulting from such operation prescribed by any regulation under this section.

(2) Nothing in this section shall diminish or enhance the rights of any State or political subdivision thereof to establish and enforce standards or controls on levels of environmental noise, or to control, license, regulate, or restrict the use, operation, or movement of any product if the Administrator, after consultation with the Secretary of Transportation, determines that such standard, control, license, regulation, or restriction is necessitated by special local conditions and is not in conflict with regulations promulgated under this section.

(d) For purposes of this section, the term "motor carrier" includes a common carrier by motor vehicle, a contract carrier by motor vehicle, and a private carrier of property by motor vehicle as those terms are defined by paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a)).

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There is authorized to be appropriated to carry out this Act (other than section 15) \$3,000,000 for the fiscal year ending June 30, 1973; \$6,000,000 for the fiscal year ending June 30, 1974; \$12,000,000 for the fiscal year ending June 30, 1975; \$11,090,000 for the fiscal year ending June 30, 1976; \$2,772,500 for the transition period of July 1, 1976, through September 30, 1976; and \$12,199,000 for the fiscal year ending September 30, 1977; except that no part of any amount appropriated pursuant to this section or section 15 for any period after the fiscal year ending June 30, 1975, shall be available for research or development. 42 U.S.C. 4918

The first part of the paper is devoted to a discussion of the general principles of the theory of the structure of the atom. It is shown that the structure of the atom is determined by the laws of quantum mechanics, and that the laws of quantum mechanics are based on the principle of the conservation of energy. The second part of the paper is devoted to a discussion of the experimental results of the study of the structure of the atom. It is shown that the experimental results are in good agreement with the theoretical predictions of the theory of the structure of the atom.

The third part of the paper is devoted to a discussion of the application of the theory of the structure of the atom to the study of the properties of matter. It is shown that the theory of the structure of the atom can be used to calculate the properties of matter, and that the calculated properties are in good agreement with the experimental results. The fourth part of the paper is devoted to a discussion of the application of the theory of the structure of the atom to the study of the properties of the nucleus. It is shown that the theory of the structure of the atom can be used to calculate the properties of the nucleus, and that the calculated properties are in good agreement with the experimental results.

NATIONAL MATERIALS POLICY ACT
OF 1970

(235)

THE UNIVERSITY OF CHICAGO
LIBRARY

NATIONAL MATERIALS POLICY ACT OF 1970

[TITLE II OF PUBLIC LAW 91-512, OCTOBER 26, 1970]

TITLE II—NATIONAL MATERIALS POLICY

SEC. 201. This title may be cited as the "National Materials Policy Act of 1970".

SEC. 202. It is the purpose of this title to enhance environmental quality and conserve materials by developing a national materials policy to utilize present resources and technology more efficiently, to anticipate the future materials requirements of the Nation and the world, and to make recommendations on the supply, use, recovery, and disposal of materials.

SEC. 203. (a) There is hereby created the National Commission on Materials Policy (hereafter referred to as the "Commission") which shall be composed of seven members chosen from Government service and the private sector for their outstanding qualifications and demonstrated competence with regard to matters related to materials policy, to be appointed by the President with the advice and consent of the Senate, one of whom he shall designate as Chairman.

(b) The members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Commission.

SEC. 204. The Commission shall make a full and complete investigation and study for the purpose of developing a national materials policy which shall include, without being limited to, a determination of—

(1) national and international materials requirements, priorities, and objectives, both current and future, including economic projections;

(2) the relationship of materials policy to (A) national and international population size and (B) the enhancement of environmental quality;

(3) recommended means for the extraction, development, and use of materials which are susceptible to recycling, reuse, or self-destruction, in order to enhance environmental quality and conserve materials;

(4) means of exploiting existing scientific knowledge in the supply, use, recovery, and disposal of materials and encouraging further research and education in this field;

(5) means to enhance coordination and cooperation among Federal departments and agencies in materials usage so that such usage might best serve the national materials policy;

(6) the feasibility and desirability of establishing computer inventories of national and international materials requirements, supplies, and alternatives; and

(7) which Federal agency or agencies shall be assigned continuing responsibility for the implementation of the national materials policy.

(b) In order to carry out the purposes of this title, the Commission is authorized—

(1) to request the cooperation and assistance of such other Federal departments and agencies as may be appropriate;

(2) to appoint and fix the compensation of such staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of such title relating to classification and General Schedule pay rates; and

(3) to obtain the services of experts and consultants, in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed \$100 per diem.

(c) The Commission shall submit to the President and to the Congress a report with respect to its findings and recommendations no later than June 30, 1973, and shall terminate not later than ninety days after submission of such report.

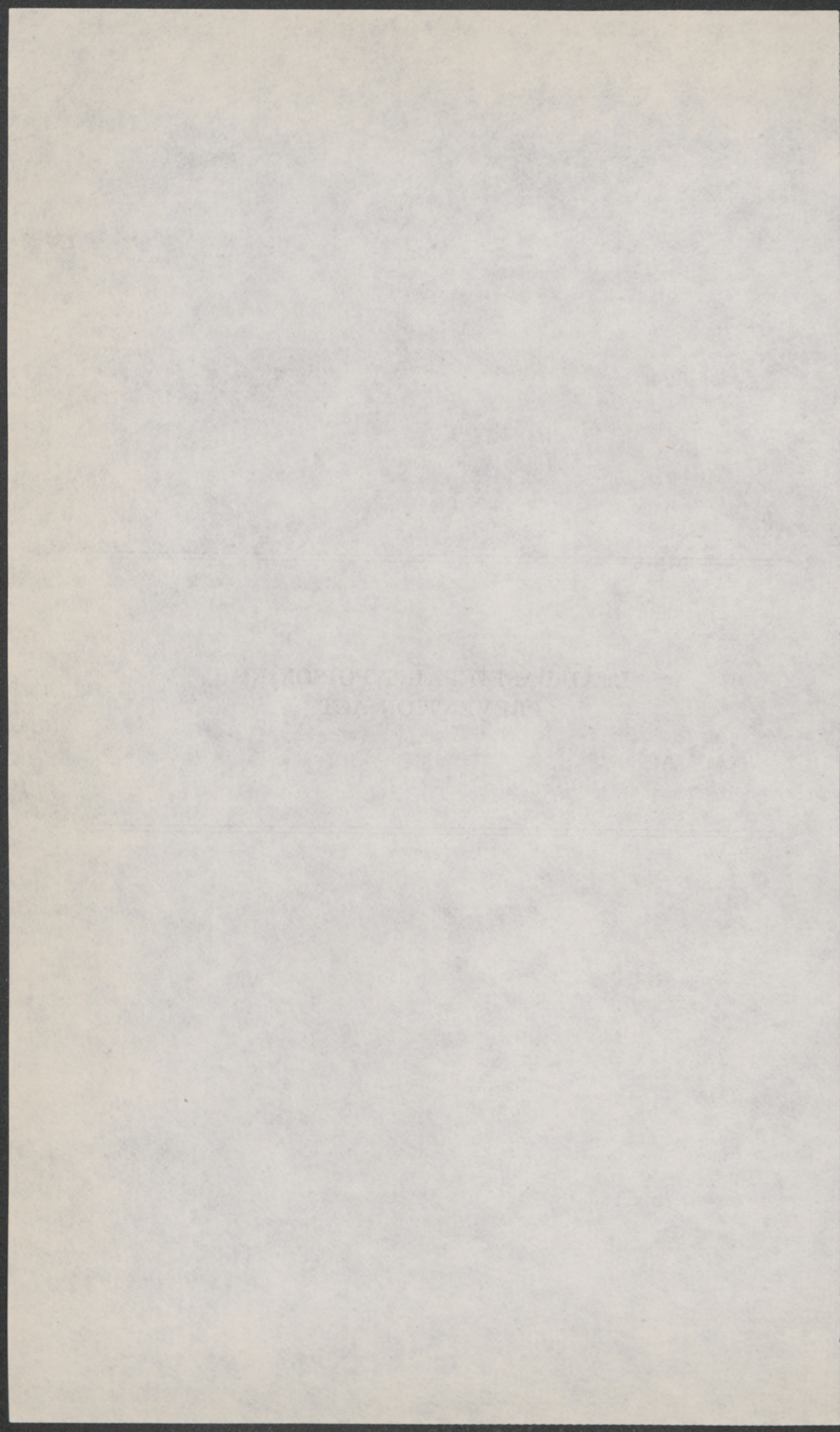
(d) Upon request by the Commission, each Federal department and agency is authorized and directed to furnish, to the greatest extent practicable, such information and assistance as the Commission may request.

SEC. 205. When used in this title, the term “materials” means natural resources intended to be utilized by industry for the production of goods, with the exclusion of food.

SEC. 206. There is hereby authorized to be appropriated the sum of \$2,000,000 to carry out the provisions of this title.

LEAD-BASED PAINT POISONING
PREVENTION ACT

(239)



LEAD-BASED PAINT POISONING PREVENTION ACT

[PUBLIC LAW 91-695, JANUARY 13, 1971]

AN ACT To provide Federal financial assistance to help cities and communities to develop and carry out intensive local programs to eliminate the causes of lead-based paint poisoning and local programs to detect and treat incidents of such poisoning, to establish a Federal demonstration and research program to study the extent of the lead-based paint poisoning problem and the methods available for lead-based paint removal, and to prohibit future use of lead-based paint in Federal or federally assisted construction or rehabilitation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Lead-Based Paint Poisoning Prevention Act".

42 U.S.C. 4801
Note

TITLE I—GRANTS FOR THE DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

GRANTS FOR LOCAL DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

42 U.S.C. 4801

SEC. 101. (a) The Secretary of Health, Education, and Welfare (hereafter referred to in this title as the "Secretary") is authorized to make grants to public agencies of units of general local government in any State and to private nonprofit organizations in any State for the purpose of assisting such units in developing and carrying out local programs to detect and treat incidents of lead-based paint poisoning.

(b) The amount of any such grant shall not exceed 90 per centum of the cost of developing and carrying out a local program, as approved by the Secretary, during a period of three years.

(c) A local program shall include—

(1) educational programs intended to communicate the health danger and prevalence of lead-based paint poisoning among children of inner city areas, to parents, educators, and local health officials;

(2) development and carrying out of intensive community testing programs designed to detect incidents of lead-based paint poisoning among community residents, and to insure prompt medical treatment for such afflicted individuals;

(3) development and carrying out of intensive followup programs to insure that identified cases of lead-based paint poisoning are protected against further exposure to lead-based paints in their living environment; and

(4) any other actions which will reduce or eliminate lead-based paint poisoning.

Follow-up programs described in paragraph (3) shall include programs to eliminate lead-based paint hazards from surfaces in and around residential dwelling units or houses, including programs to provide for such purpose financial assistance to the owners of such units or houses who are financially unable to eliminate such hazards from their units or houses. In administering programs for the elimination of such hazards, priority shall be given to the elimination of such hazards in residential dwelling units or houses in which reside children with diagnosed lead-based paint poisoning.

(d) Each local program shall afford opportunities for employing the residents of communities or neighborhoods affected by lead-based paint poisoning, and for providing appropriate training, education, and any information which may be necessary to inform such residents of opportunities for employment in lead-based paint poisoning elimination programs.

(e) The Secretary is also authorized to make grants to State agencies for the purpose of establishing centralized laboratory facilities for analyzing biological and environmental lead specimens obtained from local lead-based paint poisoning detection programs.

(f) No grant may be made under this section unless the Secretary determines that there is satisfactory assurance that (A) the services to be provided will constitute an addition to, or a significant improvement in quality (as determined in accordance with criteria of the Secretary) in, services that would otherwise be provided, and (B) Federal funds made available under this section for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program described in this section, and will in no event supplant such State, local, and other non-Federal funds, and (C) the services to be provided will be provided under local programs which meet the requirements of subsections (c) and (d) of this section.

TITLE II—GRANTS FOR THE ELIMINATION OF LEAD-BASED PAINT POISONING

42 U.S.C. 4811

SEC. 201. The Secretary of Health, Education, and Welfare is authorized to make grants to public agencies of units of general local government in any State and to private nonprofit organizations in any State for the purpose of assisting such units in developing and carrying out programs that identify those areas that present a high risk to the health of residents because of the presence of lead-based paints on interior surfaces, and then to develop and carry out programs to eliminate the hazards of lead-based paint poisoning.

(a) A local program should include:

(1) development and carrying out of comprehensive testing programs to detect the presence of lead-based paints on surfaces of residential housing;

(2) the development and carrying out of procedures to remove from exposure to young children all interior surfaces of residential housing, porches, and exterior surfaces of such housing to which children may be commonly exposed, in those areas that present a high risk for the health of residents because of the presence of lead-based paints. Such programs should include those surfaces on which non-lead-based paints have been used to cover surfaces to which lead-based paints were previously applied; and

(3) any other actions which will reduce or eliminate lead-based paint poisoning.

(b) Each such program shall—

(1) be consistent with the appropriate local program assisted under section 101, and

(2) afford, to the maximum extent feasible, opportunities for employing the residents of communities or neighborhoods affected by lead-based paint poisoning, and for providing appropriate training, education, and any information which may be necessary to inform such residents of opportunities for employment in lead-based paint elimination programs.

(c) Any public agency, of a unit of local government or private nonprofit organization which receives assistance under this Act shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for purposes of audit and examination, any books, documents, papers, and records that are pertinent to the assistance received by such public agency of a unit of local government or private nonprofit organization under this Act.

TITLE III—FEDERAL DEMONSTRATION AND RESEARCH PROGRAM; FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

FEDERAL DEMONSTRATION AND RESEARCH PROGRAM

SEC. 301. (a) The Secretary of Housing and Urban Development, in consultation with the Secretary of Health, Education, and Welfare, shall develop and carry out a demonstration and research program to determine the nature and extent of the problem of lead based paint poisoning in the United States, particularly in urban areas, including the methods by which the lead based paint hazard can most effectively be removed from interior surfaces, porches, and exterior surfaces of residential housing to which children may be exposed. 42 U.S.C. 4821

(b) The Chairman of the Consumer Product Safety Commission shall conduct appropriate research on multiple layers of dried paint film, containing the various lead compounds commonly used, in order to ascertain the safe level of lead in residential paint products. No later than December 31, 1974, the Chairman shall submit to Congress a full and complete report of his findings and recommendations as developed pursuant to such programs, together with a statement of any legislation which should be enacted or any changes in existing law which should be made in order to carry out such recommendations.

FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

SEC. 302. The Secretary of Housing and Urban Development (hereafter in this section referred to as the "Secretary") shall establish procedures to eliminate as far as practicable the hazards of lead based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary. Such procedures shall apply to all such housing constructed prior to 1950 and shall as a minimum provide for (1) appropriate measures to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed, and (2) assured notification to purchasers and tenants of such housing of the hazards of lead based paint, of the symptoms and treatment of lead based paint poisoning, and of the importance and availability of maintenance. 42 U.S.C. 4822

nance and removal techniques for eliminating such hazards. Such procedures may apply to housing constructed during or after 1950 if the Secretary determines in his discretion, that such housing presents hazards of lead based paint. The Secretary may establish such other procedures as may be appropriate to carry out the purposes of this section. Further, the Secretary shall establish and implement procedures to eliminate the hazards of lead based paint poisoning in all federally owned properties prior to the sale of such properties when their use is intended for residential habitation.

TITLE IV—PROHIBITION AGAINST FUTURE USE OF LEAD-BASED PAINT

PROHIBITION AGAINST USE OF LEAD-BASED PAINT IN CON- STRUCTION OF FACILITIES AND THE MANUFACTURE OF CER- TAIN TOYS AND UTENSILS

SEC. 401. (a) The Secretary of Health, Education, and Welfare shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any cooking utensil, drinking utensil, or eating utensil manufactured and distributed after the date of enactment of this Act. 42 U.S.C. 4831

(b) The Secretary of Housing and Urban Development shall take steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government, or with Federal assistance in any form after the date of enactment of this Act.

(c) The Consumer Product Safety Commission shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any toy or furniture article.

TITLE V—GENERAL

DEFINITIONS

42 U.S.C. 4841

SEC. 501. As used in this Act—

(1) The term “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(2) The term “units of general local government” means (A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, (B) any combination of units of general local government in one or more States, (C) an Indian tribe, or (D) with respect to lead-based paint poisoning elimination activities in their urban areas, the territories and possessions of the United States.

(3)(A) Except as provided in subparagraph (B), the term “lead-based paint” means any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(B)(i) The Consumer Product Safety Commission shall, during the six-month period beginning on the date of the enactment of the National Health Promotion and Disease Prevention Act of 1976, determine, on the basis of available data and information and after providing opportunity for an oral hearing and considering recommendations of the Secretary of Health, Education, and Welfare (including those of the Center for Disease Control) and of the National Academy of Sciences, whether or not a level of lead in paint which is greater than six one-hundredths of 1 per centum but not in excess of five-tenths of 1 per centum is safe. If the Commission determines, in accordance with the preceding sentence, that another level of lead is safe, the term “lead-based paint” means, with respect to paint which is manufactured after the expiration of the six-month period beginning on the date of the Commission’s determination, paint containing by weight (calculated as lead metal) in the total nonvolatile content of the paint more than the level of lead determined by the Commission to be safe or the equiv-

alent measure of lead in the dried film of paint already applied, or both.

(ii) Unless the definition of the term "lead-based paint" has been established by a determination of the Consumer Product Safety Commission pursuant to clause (i) of this subparagraph, the term "lead-based paint" means, with respect to paint which is manufactured after the expiration of the twelve-month period beginning on such date of enactment, paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

CONSULTATION WITH OTHER DEPARTMENTS AND AGENCIES

SEC. 502. In carrying out their respective authorities under this Act, the Secretary of Housing and Urban Development and the Secretary of Health, Education, and Welfare shall each cooperate with and seek the advice of the heads of any other departments or agencies regarding any programs under their respective responsibilities which are related to, or would be affected by, such authority.

42 U.S.C. 4842

APPROPRIATIONS

SEC. 503. (a) There are authorized to be appropriated to carry out this Act \$10,000,000 for the fiscal year 1976, \$12,000,000 for the fiscal year 1977, and \$14,000,000 for the fiscal year 1978.

42 U.S.C. 4843

(b) Any amounts appropriated under this section shall remain available until expended when so provided in appropriation Acts; and any amounts authorized for one fiscal year but not appropriated may be appropriated for the succeeding fiscal year.

ELIGIBILITY OF CERTAIN STATE AGENCIES

SEC. 504. Notwithstanding any other provision of this Act, grants authorized under sections 101 and 201 of this Act may be made to an agency of State government in any case where State government provides direct services to citizens in local communities or where units of general local government within the State are prevented by State law from implementing or receiving such grants or from expending such grants in accordance with their intended purpose.

42 U.S.C. 4844

ADVISORY BOARDS

SEC. 505. (a) The Secretary of Health, Education, and Welfare, in consultation with the Secretary of Housing and Urban Development, is authorized to establish a

42 U.S.C. 4845

National Childhood Lead Based Paint Poisoning Advisory Board to advise the Secretary on policy relating to the administration of this Act. Members of the Board shall include residents of communities and neighborhoods affected by lead based paint poisoning. Each member of the National Advisory Board who is not an officer of the Federal Government is authorized to receive an amount equal to the minimum daily rate prescribed for GS-18, under section 5332 of title 5, United States Code, for each day he is engaged in the actual performance of his duties (including traveltime) as a member of the Board. All members shall be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties.

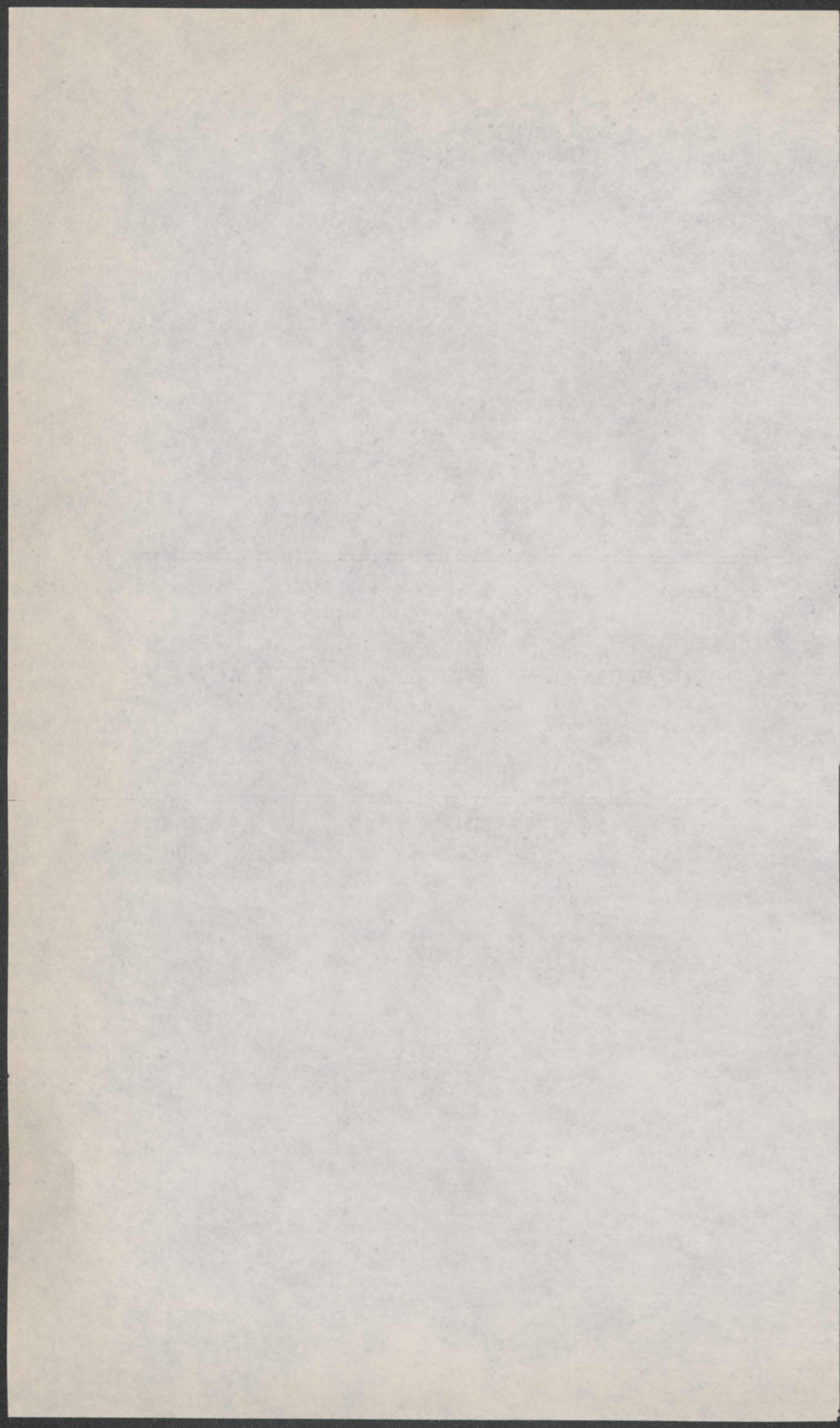
(b) The Secretary of Health, Education, and Welfare, in consultation with the Secretary of Housing and Urban Development, shall promulgate regulations for establishment of an advisory board for each local program assisted under this Act to assist in carrying out this program. Two-thirds of the members of the board shall be residents of communities and neighborhoods affected by lead based paint poisoning. A majority of the board shall be appointed from among parents, who, when appointed, have at least one child under six years of age. Each member of a local advisory board shall only be reimbursed for necessary expenses incurred in the actual performance of his duties as a member of the board.

EFFECT UPON STATE LAW

42 U.S.C. 4846

SEC. 506. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and units of local government insofar as they may now or hereafter provide for a requirement, prohibition, or standard relating to the lead content in paints or other similar surface-coating materials which differs from the provisions of this Act or regulations issued pursuant to this Act. Any law, regulation, or ordinance purporting to establish such different requirement, prohibition, or standard shall be null and void.

OCCUPATIONAL SAFETY AND HEALTH ACT



OCCUPATIONAL SAFETY AND HEALTH ACT

[PUBLIC LAW 91-596, DECEMBER 29, 1970]

AN ACT To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970".

29 U.S.C. 651
Note

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. (2) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

29 U.S.C. 651

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources—

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) by providing for the development and promulgation of occupational safety and health standards;

(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;

(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;

(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;

(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Labor.

(2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.

(3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.

(4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.

(6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.

(7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.

(10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.

(11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

APPLICABILITY OF THIS ACT

29 U.S.C. 653

SEC. 4. (a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no United States district courts having jurisdiction.

(b) (1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.

(3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.

(4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

DUTIES

SEC. 5. (a) Each employer—

29 U.S.C. 654

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

SEC. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

29 U.S.C. 655

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be

promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6) (A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made

available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c) (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such

rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards.

ADVISORY COMMITTEES; ADMINISTRATION

29 U.S.C. 656

SEC. 7 (a) (1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary,

four of whom are to be designated by the Secretary of Health, Education, and Welfare, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health, Education, and Welfare, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards-producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code.

The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to—

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including traveltime, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING

29 U.S.C. 657

SEC. 8. (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) (1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will

indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f) (1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any repre-

sentative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

(g) (1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.

CITATIONS

SEC. 9. (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

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(b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.

(c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

PROCEDURE FOR ENFORCEMENT

SEC. 10. (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer

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by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.

(c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements

of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

JUDICIAL REVIEW

SEC. 11. (a) Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify

29 U.S.C. 660

its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.

(c) (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon

such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

THE OCCUPATIONAL SAFETY AND HEALTH REVIEW
COMMISSION

SEC. 12. (a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman. 29 U.S.C. 661

(b) The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the President at the time of appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) (1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(57) Chairman, Occupational Safety and Health Review Commission.”

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

“(94) Members, Occupational Safety and Health Review Commission.”

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized,

it may hold hearings or conduct other proceedings at any other place.

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(g) Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

(j) A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the hearing examiner shall become the final order of the Commission within thirty days after such report by the hearing examiner, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Except as otherwise provided in this Act, the hearing examiners shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each hearing examiner shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

PROCEDURES TO COUNTERACT IMMINENT DANGERS

SEC. 13. (a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. 29 U.S.C. 662

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

REPRESENTATION IN CIVIL LITIGATION

29 U.S.C. 663

SEC. 14. Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

CONFIDENTIALITY OF TRADE SECRETS

29 U.S.C. 664

SEC. 15. All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

VARIATIONS, TOLERANCES, AND EXEMPTIONS

29 U.S.C. 665

SEC. 16. The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

PENALTIES

29 U.S.C. 666

SEC. 17. (a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty or not more than \$10,000 for each violation.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to \$1,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$1,000 for each such violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(h) (1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health, Education, and Welfare to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement

functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to \$1,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

STATE JURISDICTION AND STATE PLANS

29 U.S.C. 667

SEC. 18. (a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement

of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence,

the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

FEDERAL AGENCY SAFETY PROGRAMS AND RESPONSIBILITIES

SEC. 19. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof)— 29 U.S.C. 668

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a) (3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902 (e) (2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a) (5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of the activities of Federal agencies under this section.

(c) Section 7902(c) (1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a) (3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

RESEARCH AND RELATED ACTIVITIES

SEC. 20. (a) (1) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) re- 29 U.S.C. 669

search, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.

(2) The Secretary of Health, Education, and Welfare shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.

(3) The Secretary of Health, Education, and Welfare, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.

(4) The Secretary of Health, Education, and Welfare shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act. The Secretary of Health, Education, and Welfare shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.

(5) The Secretary of Health, Education, and Welfare, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health, Education, and Welfare reasonably believes may endanger the health or safety of employees. The Secretary of Health, Education, and Welfare also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the suscep-

tibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health, Education, and Welfare shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expense incurred by him in carrying out the measuring and recording as provided in this subsection.

(6) The Secretary of Health, Education, and Welfare shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health, Education, and Welfare determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health, Education, and Welfare shall immediately submit such determination to the Secretary, together with all pertinent criteria.

(7) Within two years of enactment of this Act, and annually thereafter the Secretary of Health, Education, and Welfare shall conduct and publish industrywide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults.

(b) The Secretary of Health, Education, and Welfare is authorized to make inspections and question employers and employees as provided in section 8 of this Act in order to carry out his functions and responsibilities under this section.

(c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose

of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this subsection, the Secretary shall cooperate with the Secretary of Health, Education, and Welfare in order to avoid any duplication of efforts under this section.

(d) Information obtained by the Secretary and the Secretary of Health, Education, and Welfare under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.

(e) The functions of the Secretary of Health, Education, and Welfare under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act.

TRAINING AND EMPLOYEE EDUCATION

29 U.S.C. 670

SEC. 21. (a) The Secretary of Health, Education, and Welfare, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts (1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and (2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

29 U.S.C. 671

SEC. 22. (a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health, Education, and Welfare in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(b) There is hereby established in the Department of Health, Education, and Welfare a National Institute for

Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health, Education, and Welfare, and who shall serve for a term of six years unless previously removed by the Secretary of Health, Education, and Welfare.

(c) The Institute is authorized to—

(1) develop and establish recommended occupational safety and health standards; and

(2) perform all functions of the Secretary of Health, Education, and Welfare under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary or the Secretary of Health, Education, and Welfare, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health, Education, and Welfare.

(e) In addition to any authority vested in the Institute by the other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to—

(1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;

(2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;

(4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for

travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance of other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;

(8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(9) make other necessary expenditures.

(f) The Director shall submit to the Secretary of Health, Education, and Welfare, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.

GRANTS TO THE STATES

29 U.S.C. 672

SEC. 23. (a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them—

- (1) in identifying their needs and responsibilities in the area of occupational safety and health,
- (2) in developing State plans under section 18, or
- (3) in developing plans for—

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health, Education, and Welfare, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health, Education, and Welfare, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

STATISTICS

SEC. 24. (a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

29 U.S.C. 673

(b) To carry out his duties under subsection (a) of this section, the Secretary may—

(1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;

(2) make grants to States or political subdivisions

thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and

(3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(e) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

AUDITS

29 U.S.C. 674

SEC. 25. (a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health, Education, and Welfare shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary or the Secretary of Health, Education, and Welfare, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

ANNUAL REPORT

29 U.S.C. 675

SEC. 26. Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health, Education, and Welfare shall each prepare and submit to the

President for transmittal to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

SEC. 27. (a) (1) The Congress hereby finds and declares that— 29 U.S.C. 676

(A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(B) in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the

labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(2) The purpose of this section is to authorize an effective study and objective evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment.

(b) There is hereby established a National Commission on State Workmen's Compensation Laws.

(c) (1) The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission:

(2) Any vacancy in the Workmen's Compensation Commission shall not affect its powers.

(3) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.

(4) Eight members of the Workmen's Compensation Commission shall constitute a quorum.

(d) (1) The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabilitation, (F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability

of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.

(2) The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

(e) (1) The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.

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

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(j) On the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

ECONOMIC ASSISTANCE TO SMALL BUSINESSES

SEC. 28. (a) Section 7(b) of the Small Business Act, as amended, is amended—

(1) by striking out the period at the end of "paragraph (5)" and inserting in lieu thereof "; and"; and

(2) by adding after paragraph (5) a new paragraph as follows:

"(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in the equipment, facilities, or methods of operation of such business in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act of 1970, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph."

(b) The third sentence of section 7(b) of the Small Business Act, as amended, is amended by striking out "or (5)" after "paragraph (3)" and inserting a comma followed by "(5) or (6)".

(c) Section 4(c)(1) of the Small Business Act, as amended, is amended by inserting "7(b)(6)," after "7(b)(5),".

(d) Loans may also be made or guaranteed for the purposes set forth in section 7(b)(6) of the Small Business Act, as amended, pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended.

ADDITIONAL ASSISTANT SECRETARY OF LABOR

SEC. 29. (a) Section 2 of the Act of April 17, 1946 (60 Stat. 91) as amended (29 U.S.C. 553) is amended by—

(1) striking out "four" in the first sentence of such section and inserting in lieu thereof "five"; and

(2) adding at the end thereof the following new sentence, "One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health."

(b) Paragraph (20) of section 5315 of title 5, United States Code, is amended by striking out "(4)" and inserting in lieu thereof "(5)".

ADDITIONAL POSITIONS

SEC. 30. Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (8);

(2) striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately after paragraph (9) the following new paragraph:

"(10) (A) the Secretary of Labor, subject to the standards and procedures prescribed by this chapter, may place an additional twenty-five positions in the Department of Labor in GS-16, 17, and 18 for the purposes of carrying out his responsibilities under the Occupational Safety and Health Act of 1970;

"(B) the Occupational Safety and Health Review Commission, subject to the standards and procedures prescribed by this chapter, may place ten positions in GS-16, 17, and 18 in carrying out its functions under the Occupational Safety and Health Act of 1970."

EMERGENCY LOCATOR BEACONS

SEC. 31. Section 601 of the Federal Aviation Act of 1958 is amended by inserting at the end thereof a new subsection as follows:

“EMERGENCY LOCATOR BEACONS

“(d) (1) Except with respect to aircraft described in paragraph (2) of this subsection, minimum standards pursuant to this section shall include a requirement that emergency locator beacons shall be installed—

“(A) on any fixed-wing, powered aircraft for use in air commerce the manufacture of which is completed, or which is imported into the United States, after one year following the date of enactment of this subsection; and

“(B) on any fixed-wing, powered aircraft used in air commerce after three years following such date.

“(2) The provisions of this subsection shall not apply to jet-powered aircraft; aircraft used in air transportation (other than air taxis and charter aircraft); military aircraft; aircraft used solely for training purposes not involving flights more than twenty miles from its base; and aircraft used for the aerial application of chemicals.”

SEPARABILITY

29 U.S.C. 677

SEC. 32. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

APPROPRIATIONS

29 U.S.C. 678

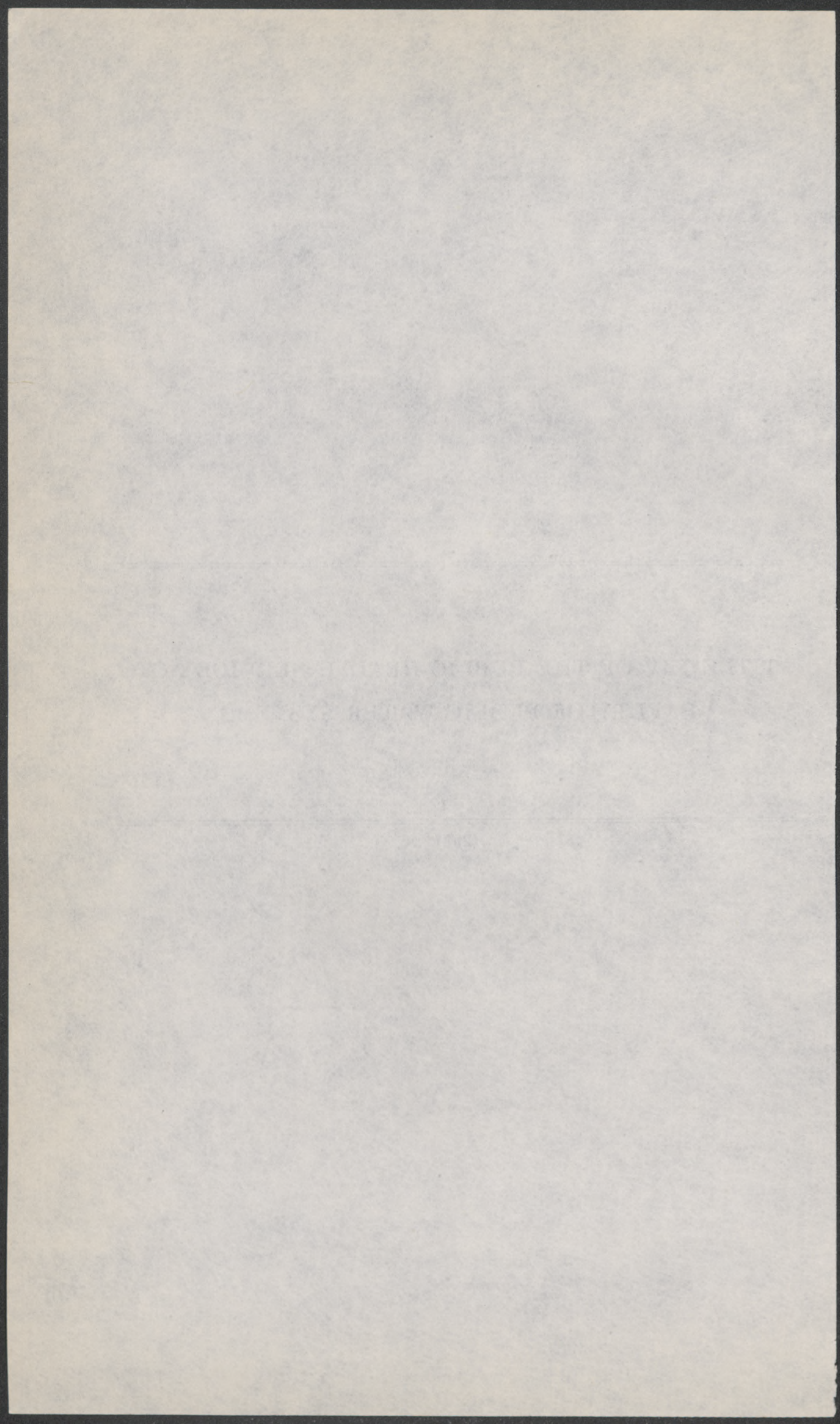
SEC. 33. There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

EFFECTIVE DATE

29 U.S.C. 651
Note

SEC. 34. This Act shall take effect one hundred and twenty days after the date of its enactment.

TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT
SAFETY OF PUBLIC WATER SYSTEMS



**TITLE XIV OF THE PUBLIC HEALTH
SERVICE ACT**
SAFETY OF PUBLIC WATER SYSTEMS

PART A—DEFINITIONS

DEFINITIONS

SEC. 1401. For purposes of this title :

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(1) The term "primary drinking water regulation" means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

(2) The term "secondary drinking water regulation" means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing

such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

(3) The term "maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) The term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(5) The term "supplier of water" means any person who owns or operates a public water system.

(6) The term "contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

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

(8) The term "Agency" means the Environmental Protection Agency.

(9) The term "Council" means the National Drinking Water Advisory Council established under section 1446.

(10) The term "municipality" means a city, town, or other public body created by or pursuant to State law, or an Indian tribal organization authorized by law.

(11) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(12) The term "person" means an individual, corporation, company, association, partnership, State, or municipality.

(13) The term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

PART B—PUBLIC WATER SYSTEMS

COVERAGE

42 U.S.C. 300g

SEC. 1411. Subject to sections 1415 and 1416, national primary drinking water regulations under this part shall

apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

NATIONAL DRINKING WATER REGULATIONS

SEC. 1412. (a) (1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after the date of enactment of this title. Within 180 days after such date of enactment, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

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(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on the date of enactment of this title.

(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.

(b) (1) (A) Within 10 days of the date of the report on the study conducted pursuant to subsection (e) is submitted to Congress, the Administrator shall publish in the Federal Register, and provide opportunity for comment on, the—

(i) proposals in the report for recommended maximum contaminant levels for national primary drinking water regulations, and

(ii) list in the report of contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(B) Within 90 days after the date the Administrator makes the publication required by subparagraph (A), he shall by rule establish recommended maximum contaminant levels for each contaminant which, in his judgment based on the report on the study conducted pursuant to subsection (e), may have any adverse effect on the health of persons. Each such recommended maximum contaminant level shall be set at a level at which, in the Administrator's judgment based on such report, no known or anticipated adverse effects on the health of persons occur

and which allows an adequate margin of safety. In addition, he shall, on the basis of the report on the study conducted pursuant to subsection (e), list in the rules under this subparagraph any contaminant the level of which cannot be accurately enough measured in drinking water to establish a recommended maximum contaminant level and which may have any adverse effect on the health of persons. Based on information available to him, the Administrator may by rule change recommended levels established under this subparagraph or change such list.

(2) On the date the Administrator establishes pursuant to paragraph (1)(B) recommended maximum contaminant levels he shall publish in the Federal Register proposed revised national primary drinking water regulations (meeting the requirements of paragraph (3)). Within 180 days after the date of such proposed regulations, he shall promulgate such revised drinking water regulations with such modifications as he deems appropriate.

(3) Revised national primary drinking water regulations promulgated under paragraph (2) of this subsection shall be primary drinking water regulations which specify a maximum contaminant level or require the use of treatment techniques for each contaminant for which a recommended maximum contaminant level is established or which is listed in a rule under paragraph (1)(B). The maximum contaminant level specified in a revised national primary drinking water regulation for a contaminant shall be as close to the recommended maximum contaminant level established under paragraph (1)(B) for such contaminant as is feasible. A required treatment technique for a contaminant for which a recommended maximum contaminant level has been established under paragraph (1)(B) shall reduce such contaminant to a level which is as close to the recommended maximum contaminant level for such contaminant as is feasible. A required treatment technique for a contaminant which is listed under paragraph (1)(B) shall require treatment necessary in the Administrator's judgment to prevent known or anticipated adverse effects on the health of persons to the extent feasible. For purposes of this paragraph, the term "feasible" means feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds are generally available (taking cost into consideration).

(4) Revised national primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years.

(5) Revised national primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after

the date of their promulgation. Regulations under subsection (a) shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.

(6) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(c) The Administrator shall publish proposed national secondary drinking water regulations within 270 days after the date of enactment of this title. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations under this section shall be prescribed in accordance with section 553 of title 5, United States Code (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) (1) The Administrator shall enter into appropriate arrangements with the National Academy of Sciences (or with another independent scientific organization if appropriate arrangements cannot be made with such Academy) to conduct a study to determine (A) the maximum contaminant levels which should be recommended under subsection (b) (2) in order to protect the health of persons from any known or anticipated adverse effects, and (B) the existence of any contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(2) The result of the study shall be reported to Congress no later than 2 years after the date of enactment of this title. The report shall contain (A) a summary and evaluation of relevant publications and unpublished studies; (B) a statement of methodologies and assumptions for estimating the levels at which adverse health effects may occur; (C) a statement of methodologies and assumptions for estimating the margin of safety which should be incorporated in the national primary drinking water regulations; (D) proposals for recommended maximum contaminant levels for national primary drinking water regulations, based on the methodologies, assumptions, and studies referred to in clauses (A), (B), and (C) and in paragraph (4); (E) a list of contaminants the level of which in drinking water cannot be determined but which may have an adverse effect on the health of persons; and (F) recommended studies and test protocols for future research on the health effects of drinking water contaminants, including a list of the

major research priorities and estimated costs necessary to conduct such priority research.

(3) In developing its proposals for recommended maximum contaminant levels under paragraph (2) (D) the National Academy of Sciences (or other organization preparing the report) shall evaluate and explain (separately and in composite) the impact of the following considerations:

(A) The existence of groups or individuals in the population which are more susceptible to adverse effects than the normal healthy adult.

(B) The exposure to contaminants in other media than drinking water (including exposures in food, in the ambient air, and in occupational settings) and the resulting body burden of contaminants.

(C) Synergistic effects resulting from exposure to or interaction by two or more contaminants.

(D) The contaminant exposure and body burden levels which alter physiological function or structure in a manner reasonably suspected of increasing the risk of illness.

(4) In making the study under this subsection, the National Academy of Sciences (or other organization) shall collect and correlate (A) morbidity and mortality data and (B) monitored data on the quality of drinking water. Any conclusions based on such correlation shall be included in the report of the study.

(5) Neither the report of the study under this subsection nor any draft of such report shall be submitted to the Office of Management and Budget or to any other Federal agency (other than the Environmental Protection Agency prior to its submission to Congress.

(6) Of the funds authorized to be appropriated to the Administrator by this title, such amounts as may be required shall be available to carry out the study and to make the report directed by paragraph (2) of this subsection.

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STATE PRIMARY ENFORCEMENT RESPONSIBILITY

SEC. 1413. (a) For purposes of this title, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b)) that such State—

(1) has adopted drinking water regulations which (A) in the case of the period beginning on the date the national interim primary drinking water regulations are promulgated under section 1412 and ending on the date such regulations take effect are no less stringent than such regulations, and (B) in the case of the period after such effective date are no less stringent than the interim and revised national

primary drinking water regulations in effect under such section;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416; and

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

(b)(1) The Administrator shall, by regulation (proposed within 180 days of the date of the enactment of this title), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this title when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application

and notify the applicant in writing of the reasons for his denial.

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FAILURE BY STATE TO ASSURE ENFORCEMENT OF DRINKING
WATER REGULATIONS

SEC. 1414. (a) (1) (A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 1413(a)) that any public water system—

(i) for which a variance under section 1415 or an exemption under section 1416 is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(ii) for which a variance under section 1415 or an exemption under section 1416 is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with such regulation or requirement by the earliest feasible time.

(B) If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of the notice given pursuant to subparagraph (A), he shall give public notice of such finding and request the State to report within fifteen days from the date of such public notice as to the steps being taken to bring the system into compliance (including reasons for anticipated steps to be taken to bring the system into compliance and for any failure to take steps to bring the system into compliance). If—

(i) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to subparagraph (A); and

(ii) (α) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence; or

(β) the State submits such report within such period but the Administrator, after considering the report, determines that the State abused its discretion in carrying out primary enforcement responsibility for public water systems by both—

(I) failing to implement by such sixtieth day adequate procedures to bring the system into compliance by the earliest feasible time, and

(II) failing to assure by such day the provision through alternative means of safe drinking water by the earliest feasible time;

the Administrator may commence a civil action under subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

(A) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(B) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he may commence a civil action under subsection (b).

(b) The Administrator may bring a civil action in the appropriate United States district court to require compliance with a national primary drinking water regulation or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 1415 or 1416 if—

(1) authorized under paragraph (1) or (2) of subsection (a), or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgment as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a willful violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed \$5,000 for each day in which such violation occurs.

(c) Each owner or operator of a public water system shall give notice to the persons served by it—

(1) of any failure on the part of the public water system to—

(A) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation, or

(B) perform monitoring required by section 1445(a), and

(2) if the public water system is subject to a variance granted under section 1415(a)(1)(A) or 1415

(a) (2) for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 1416, of—

(A) the existence of such variance or exemption, and

(B) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

The Administrator shall by regulation prescribe the form and manner for giving such notice. Such notice shall be given not less than once every 3 months, shall be given by publication in a newspaper of general circulation serving the area served by each such water system (as determined by the Administrator), shall be furnished to the other communications media serving such area, and shall be furnished to the communications media as soon as practicable after the discovery of the violation with respect to which the notice is required. If the water bills of a public water system are issued more often than once every 3 months such notice shall be included in at least one water bill of the system every 3 months, and if a public water system issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system. Any person who willfully violates this subsection or regulations thereunder shall be fined not more than \$5,000.

(d) Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

(f) If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a) (1)) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or other public officials, representatives of such public water

system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

SEC. 1415. (a) Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

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(1) (A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation despite application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration.) Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe within one year of the date the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more

than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of a national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 1414 as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by

the Administrator unless the variance for which it was prescribed is revoked by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this title, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G) (i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subpara-

graph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance or schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Any schedule or other requirement on which a variance granted under paragraph (1) (B) or (2) of subsection (a) is conditioned may be enforced under section 1414 as if such schedule or other requirement was part of a national primary drinking water regulation.

(c) If an application for a variance under subsection (a) is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 1401(1)(C)(ii)) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412(b)(3).

EXEMPTIONS

SEC. 1416. (a) A State which has primary enforcement responsibility may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

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(1) due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement,

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, and

(3) the granting of the exemption will not result in an unreasonable risk to health.

(b)(1) If a State grants a public water system an exemption under subsection (a), the State shall prescribe, within one year of the date the exemption is granted, a schedule for—

(A) compliance (including increments of progress) by the public water system with each containment level requirement and treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each containment, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and

a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2) (A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but (except as provided in subparagraph (B))—

(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the interim national primary drinking water regulations promulgated under section 1412(a), not later than January 1, 1981; and

(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, not later than seven years after the date such requirement takes effect.

(B) Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1983; and

(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.

(3) Each public water system's exemption granted by a State under subsection (a) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 1414 as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to

this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d) (2) or the schedule is revised by the Administrator under such subsection.

(c) Each State which grants an exemption under subsection (a) shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a) (3) before the exemption may be granted) and document the need for the exemption.

(d) (1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this title, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(2) (A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) or failed to prescribe schedules in accordance with subsection (b), the Administrator shall notify the State of his finding. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

- (i) identify each exempt public water system with respect to which the finding was made,
- (ii) specify the reasons for the finding, and
- (iii) as appropriate, propose revocations of spe-

cific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on a notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 1401(1)(C)(ii)) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412(b)(3).

(f) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

PART C—PROTECTION OF UNDERGROUND SOURCES OF
DRINKING WATER

REGULATIONS FOR STATE PROGRAMS

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SEC. 1421. (a) (1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after the date of enactment of this title. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5, United States Code (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) (1) Regulations under subsection (a) for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d) (2). Such regulations shall require that a State program, in order to be approved under section 1422—

(A) shall prohibit, effective three years after the date of the enactment of this title, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, record-keeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 1447 (b), to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this sec-

tion for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(c)(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)) temporary permits for underground injection which may be effective until the expiration of four years after the date of enactment of this title, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after the date of enactment of this title, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) For purposes of this part:

(1) The term "underground injection" means the subsurface emplacement of fluids by well injection.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

STATE PRIMARY ENFORCEMENT RESPONSIBILITY

SEC. 1422. (a) Within 180 days after the date of enactment of this title, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

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(b) (1) (A) Each State listed under subsection (a) shall within 270 days after the date of promulgation of any regulation under section 1421 (or, if later, within 270 days after such State is first listed under subsection (a)) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 1421; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

(B) Within 270 days of any amendment of a regulation under section 1421 revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application

under paragraph (1) (A) or notice under paragraph (1) (B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1) (A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) If the Administrator disapproves a State's program (or part thereof) under subsection (b) (2), if the Administrator determines under subsection (b) (3) that a State no longer meets the requirements of clause (i) or (ii) of subsection (b) (1) (A), or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b) (1), the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 1421 (b). Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) For purposes of this title, the term "applicable underground injection control program" with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b), or (2) which has been prescribed by the Administrator under subsection (c).

FAILURE OF STATE TO ASSURE ENFORCEMENT OF PROGRAM

SEC. 1423. (a) (1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 1422(b) (3)) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of such notice, he shall give public notice of such finding and request the State to report within 15 days after the date of such public notice as to the steps being taken to bring such person into compliance with such requirement (including reasons for anticipated steps to be taken to bring such person into compliance with such requirement and for any failure to take steps to bring such person into compliance with such requirement). If—

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(A) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to the first sentence of this paragraph, and

(B) (i) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence, or

(ii) the State submits such report within such period but the Administrator, after considering the report, determines that by failing to take necessary steps to bring such person into compliance by such sixtieth day the State abused its discretion in carrying out primary enforcement responsibility for underground water sources,

the Administrator may commence a civil action under subsection (b) (1).

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, he may commence a civil action under subsection (b) (1).

(b) (1) When authorized by subsection (a), the Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any requirement of an applicable underground injection control program. The court may enter such judgment as protection of public health may require, including, in the case of an action brought against a person who violates an applicable requirement of an underground injection control program and who is located in a State which has primary enforcement

responsibility for underground water sources, the imposition of a civil penalty of not to exceed \$5,000 for each day such person violates such requirement after the expiration of 60 days after receiving notice under subsection (a) (1).

(2) Any person who violates any requirement of an applicable underground injection control program to which he is subject during any period for which the State does not have primary enforcement responsibility for underground water sources (A) shall be subject to a civil penalty of not more than \$5,000 for each day of such violation, or (B) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (B), be fined not more than \$10,000 for each day of such violation.

(c) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

INTERIM REGULATION OF UNDERGROUND INJECTIONS

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SEC. 1424. (a) (1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b). The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) (1) During the period beginning on the date an area is designated under subsection (a) and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in

such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) only if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Any person who operates a new underground injection well in violation of subsection (b), (1) shall be subject to a civil penalty of not more than \$5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than \$10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b), he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) For purposes of this section, the term "new underground injection well" means an underground injection well whose operation was not approved by appropriate State and Federal agencies before the date of the enactment of this title.

(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee,

or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

PART D—EMERGENCY POWERS

EMERGENCY POWERS

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SEC. 1431. (a) Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Any person who willfully violates or fails or refuses to comply with any order issued by the Administrator under subsection (a) (1) may, in an action brought in the appropriate United States district court to enforce such order, be fined no more than \$5,000 for each day in which such violation occurs or failure to comply continues.

PART E—GENERAL PROVISIONS

ASSURANCE OF AVAILABILITY OF ADEQUATE SUPPLIES OF CHEMICALS NECESSARY FOR TREATMENT OF WATER

42 U.S.C. 300j

SEC. 1441. (a) If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to

effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a "certification of need") that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b)(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c)(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven

days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f), any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) There shall be available as a defense to any action

brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c) (1), that such delay or failure was caused solely by compliance with such order.

(e) (1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c) (1) shall be fined not more than \$5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c) (1) shall be subject to a civil penalty of not more than \$2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c) (1), he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provisions of such order.

(f) No certification of need or order issued under this section may remain in effect—

(1) for more than one year, or

(2) after June 30, 1977,

whichever occurs first.

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

SEC. 1442. (a) (1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including—

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(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 1443(c)(1)).

(3) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 1412.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after the date of enactment of this title, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after the date of enactment of this title, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(b) In carrying out this title, the Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this title;

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or a part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this title (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 1443(d))).

(c) There are authorized to be appropriated to carry out the provisions of this section \$15,000,000 for the fiscal year ending June 30, 1975; \$25,000,000 for the fiscal year ending June 30, 1976; and \$35,000,000 for the fiscal year ending June 30, 1977.

GRANTS FOR STATE PROGRAMS

SEC. 1443. (a) (1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

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(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary

enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): *Provided*, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: *And provided further*, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) For the purposes of making grants under paragraph (1) there are authorized to be appropriated \$15,000,000 for the fiscal year ending June 30, 1976, and \$25,000,000 for the fiscal year ending June 30, 1977.

(b)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within two years from the date of such grant an underground water source protection, and

(B) will, within such two years, assume primary enforcement responsibility for underground water sources within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period

beginning on the date the grant is made, an underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1976, and \$7,500,000 for the fiscal year ending June 30, 1977.

(c) For purposes of this section:

(1) The term "public water system supervision program" means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416) which are no less stringent than the national primary drinking water regulations under section 1412, and for keeping records and making reports required by section 1413(a)(3).

(2) The term "underground water source protection program" means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 1421 and for keeping records and making reports required by section 1422(b)(1)(A)(ii).

SPECIAL STUDY AND DEMONSTRATION PROJECT GRANTS;
GUARANTEED LOANS

SEC. 1444. (a) The Administrator may make grants to any person for the purposes of— 42 U.S.C.
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(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66 $\frac{2}{3}$ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated \$7,500,000 for the fiscal year ending June 30, 1975; and \$7,500,000 for the fiscal year ending June 30, 1976; and \$10,000,000 for the fiscal year ending June 30, 1977.

(d) The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations (including interim regulations) prescribed under section 1412. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed \$50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed \$50,000,000. The Administrator shall prescribe regulations to carry out this subsection.

RECORDS AND INSPECTIONS

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SEC. 1445. (a) Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 1412 or to an applicable underground injection control program (as defined in section 1422(c)), who is or may be subject to

the permit requirement of section 1424 or to an order issued under section 1441, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, in determining whether such person has acted or is acting in compliance with this title, or in administering any program of financial assistance under this title.

(b) (1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to a national primary drinking water regulation prescribed under section 1412 or applicable underground injection control program (or person in charge of any of the property of such supplier or other person), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this title, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) or which are pertinent to any financial assistance under this title.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the

agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Whoever fails or refuses to comply with any requirement of subsection (a) or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) may be fined not more than \$5,000.

(d) (1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title or to committees of the Congress, or when relevant in any proceeding under this title, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term "information required under this section" means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) For purposes of this section, (1) the term "grantee" means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this title, and (2) the term "person" includes a Federal agency.

NATIONAL DRINKING WATER ADVISORY COUNCIL

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SEC. 1446. (a) There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after the date of enactment of this title, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this title.

(c) Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(d) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

FEDERAL AGENCIES

SEC. 1447. (a) Each Federal agency having jurisdiction over any federally owned or maintained public water system shall comply with all national primary drinking water regulations in effect under section 1412, and each Federal agency shall comply with any applicable underground injection control program, and shall keep such records and submit such reports as may be required under such program.

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(b) The Administrator shall waive compliance with subsection (a) upon request of the Secretary of Defense and upon a determination by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this title.

Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the request of the Secretary of Defense, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the Armed Services Committee of the Senate and House of Representatives.

JUDICIAL REVIEW

42 U.S.C.
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SEC. 1448. (a) A petition for review of—

(1) action of the Administrator in promulgating any national primary drinking water regulation under section 1412, any regulation under section 1413(b)(1), any regulation under section 1414(c), any regulation for State underground injection control programs under section 1421, or any general regulation for the administration of this title may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and

(2) action of the Administrator in promulgating any other regulation under this title, issuing any order under this title, or making any determination under this title may be filed only in the United States court of appeals for the appropriate circuit.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(b) The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 1415 or 1416 or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review

may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this title required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

CITIZEN'S CIVIL ACTION

SEC. 1449. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

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(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this title, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this title which is not discretionary with the Administrator.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this title which occurred within the 27-month period beginning on the first day of the month in which this title is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this title or to order the Administrator to perform an act, or duty described in paragraph (2), as the case may be.

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this title—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) to require a State to prescribe a schedule under section 1415 or 1416 for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this title or to seek any other relief.

GENERAL PROVISIONS

SEC. 1450. (a)(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.

(2) The Administrator may delegate any of his functions under this title (other than prescribing regulations) to any officer or employee of the Agency.

(b) The Administrator, with the consent of the head of any other agency of the United States, may utilize

such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this title.

(c) Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this title.

(d) (1) The Administrator may make payments of grants under this title (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term "nonprofit agency or institution" means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a-276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(f) The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this title to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) The provisions of this title shall not be construed as affecting any authority of the Administrator under part G of title III of this Act.

(h) Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a report respecting the activities of the Agency under this title and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this title. The Office of Management and Budget may review any report required by this subsection before its submis-

sion to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i)(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this title.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

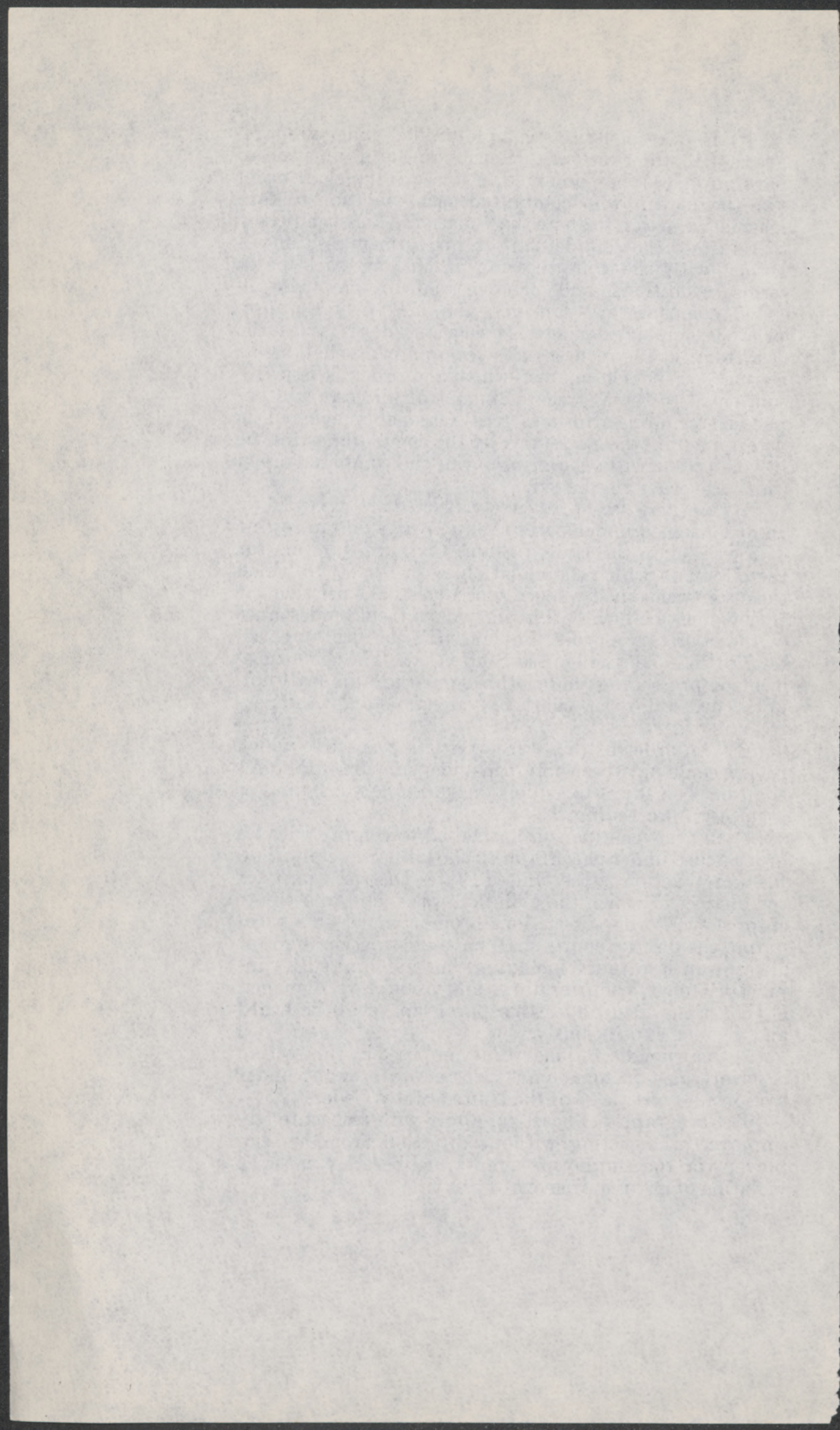
(3) (A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

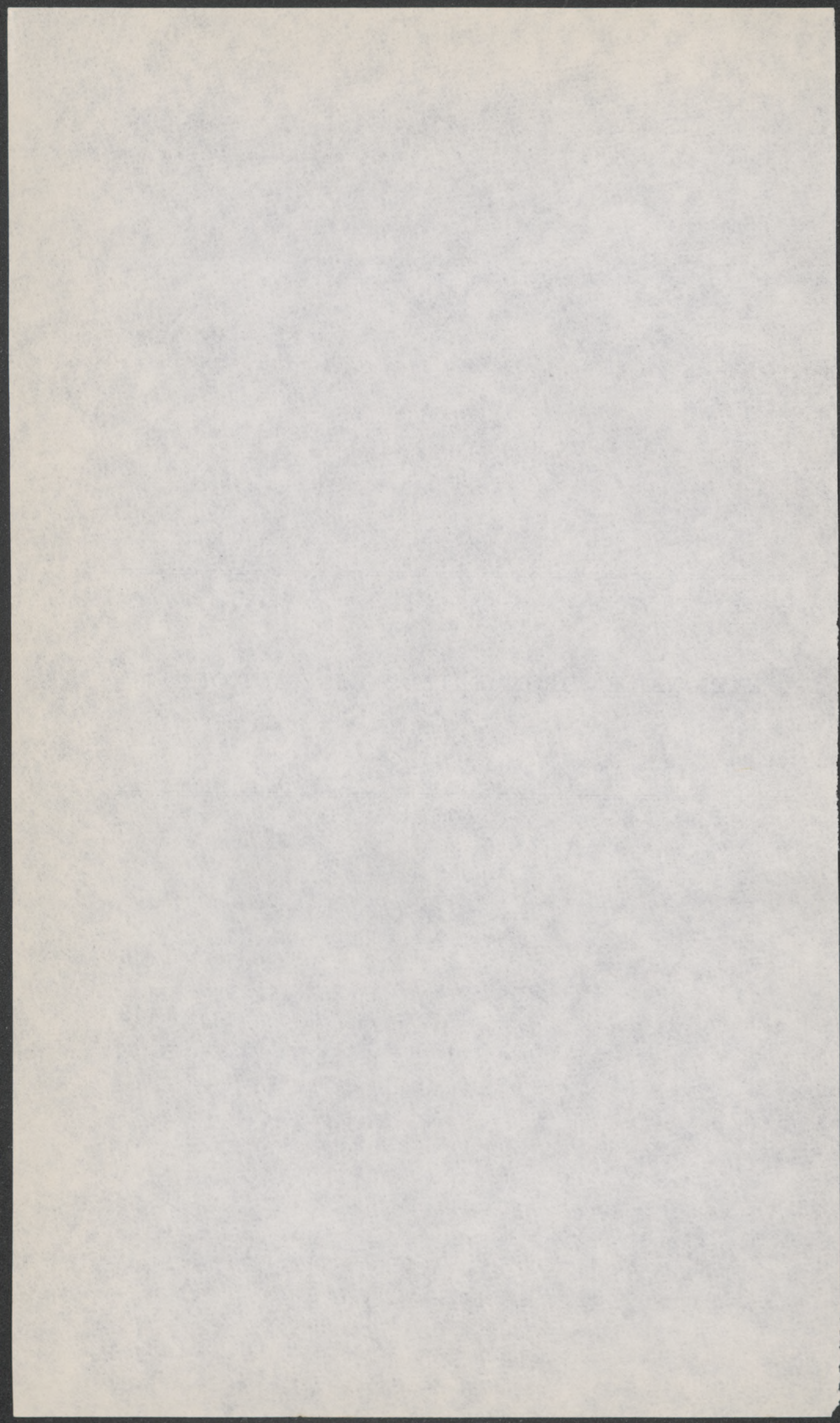
(4) Whenever a person has failed to comply with an order issued under paragraph (2) (B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this paragraph shall be heard and decided expeditiously.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28 of the United States Code.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this title.



NATIONAL ENVIRONMENTAL POLICY ACT OF 1969



NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969".

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

42 U.S.C. 4321

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

42 U.S.C. 4331

SEC. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

42 U.S.C. 4332

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as pro-

vided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality established by title II of this Act.

42 U.S.C. 4333

SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

42 U.S.C. 4334

SEC. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

42 U.S.C. 4335

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

42 U.S.C. 4341

SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

42 U.S.C. 4342

SEC. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

42 U.S.C. 4343

SEC. 204. It shall be the duty and function of the Council—

42 U.S.C. 4344

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

42 U.S.C. 4345

SEC. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation, organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

42 U.S.C. 4346

SEC. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 U.S.C. 5315).

42 U.S.C. 4347

SEC. 207. There are authorized to be appropriated to carry out the provisions of this Act not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

LEGISLATIVE HISTORY

HOUSE REPORTS: No. 91-378, pt. 2, accompanying H.R. 12549 (Committee on Merchant Marine and Fisheries) and 91-765 (Committee of Conference).

SENATE REPORT No. 91-296 (Committee on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 115 (1969):

July 10: Considered and passed Senate.

Sept. 23: Considered and passed House, amended, in lieu of H.R. 12549.

Oct. 8: Senate disagreed to House amendments; agreed to conference.

Dec. 20: Senate agreed to conference report.

Dec. 22: House agreed to conference report.

APPENDIX

Administrative procedures and public information requirements
prescribed by chapters 5 and 7 of title 5, United States Code.

THE INDEX

THE INDEX is a list of the names of the persons who have been
mentioned in the text of the book, and is intended to be used
as a guide to the reader.

(1897)

ADMINISTRATIVE PROCEDURES AND PUBLIC INFORMATION REQUIREMENTS PRESCRIBED BY CHAPTERS 5 AND 7 OF TITLE 5, UNITED STATES CODE

CHAPTER 5—ADMINISTRATIVE PROCEDURE

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SUBCHAPTER I—GENERAL PROVISIONS

§ 500. Administrative practice; general provisions

(a) For the purpose of this section—

(1) “agency” has the meaning given it by section 551 of this title; and

(2) “State” means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(d) This section does not—

(1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;

(2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;

(3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or

(4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.

(e) Subsections (b)–(d) of this section do not apply to practice before the Patent Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.

(f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representa-

tive in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient. (Added Pub. L. 90-83, § 1(1)(A), Sept. 11, 1967, 81 Stat. 195.)

§ 501. Advertising practice; restrictions

An individual, firm, or corporation practicing before an agency of the United States may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the business. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

§ 502. Administrative practice; Reserves and National Guardsmen

Membership in a reserve component of the armed forces or in the National Guard does not prevent an individual from practicing his civilian profession or occupation before, or in connection with, an agency of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

§ 503. Witness fees and allowances

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

(b) A witness is entitled to the fees and allowances allowed by statute for witnesses in the courts of the United States when—

(1) he is subpoenaed under section 304(a) of this title; or

(2) he is subpoenaed to and appears at a hearing before an agency authorized by law to hold hearings and subpoena witnesses to attend the hearings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

§ 551. Definitions

For the purpose of this subchapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix;

(2) “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) “rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valua-

tions, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceedings" means an agency process as defined by paragraphs (5), (7), and (9) of this section; and

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public; unless the materials are promptly published and

copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available, to any person.

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take procedure on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acting arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a) (6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a) (4) (F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost,

fees, and penalties assessed under subsections (a) (4) (E), (F) and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383, amended Pub. L. 90-23, § 1, June 5, 1967, 81 Stat. 54; Pub. L. 93-502 §§ 1-3, Nov. 21, 1974, 88 Stat. 1561-1564.)

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or

with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) pursuant to the order of a court of competent jurisdiction.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections

(b) (1) or (b) (2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his requests, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request

a review of such refusals, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and, if after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENT.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4) (D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal

process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

(g) (1) CIVIL REMEDIES.—Whenever any agency—

(A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d) (1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual;

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recover receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i) (1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the

notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b) (1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the

scope of subsection (j) (2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1) (1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for

storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an eval-

uation of the probable or potential effect of such proposal on the privacy and other personnel or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) **ANNUAL REPORT.**—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

(q) **EFFECT OF OTHER LAWS.**—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section. (Pub. L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897.)

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy;

or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a hearing examiner appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had

for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 384.)

§ 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency

proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceedings. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 385.)

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

- (1) the agency;
- (2) one or more members of the body which comprises the agency; or
- (3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or be-

fore boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

- (1) administer oaths and affirmations;
- (2) issue subpoenas authorized by law;
- (3) rule on offers of proof and receive relevant evidence;
- (4) take depositions or have depositions taken when the ends of justice would be served;
- (5) regulate the course of the hearing;
- (6) hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) dispose of procedural requests or similar matters;
- (8) make or recommend decisions in accordance with section 557 of this title; and
- (9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to

show the contrary. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 386.)

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 387.)

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

§ 559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2) (E), 5362, and 7521 of this title, and the provisions of section 5335(a) (B) of this title that relate to hearing examiners, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2) (E), 5362, or 7521 of this title, or the provisions of section 5335(a) (B) of this title that relate to hearing examiners, except to the extent that it does so expressly. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388, amended Pub. L. 90-623, § 1(1), Oct. 22, 1968, 82 Stat. 1312.)

SUBCHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

§ 571. Purpose

It is the purpose of this subchapter to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

§ 572. Definitions

For the purpose of this subchapter—

(1) “administrative program” includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter, except that it does not include a military or foreign affairs function of the United States;

(2) “administrative agency” means an authority as defined by section 551(1) of this title; and

(3) “administrative procedure” means procedure used in carrying out an administrative program and is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

§ 573. Administrative Conference of the United States

(a) The Administrative Conference of the United States consists of not more than 91 nor less than 75 members appointed as set forth in subsection (b) of this section.

(b) The Conference is composed of—

(1) a full-time Chairman appointed for a 5-year term by the President, by and with the advice and consent of the Senate. The Chairman is entitled to pay at the highest rate established by statute for the chairman of an independent regulatory board or commission, and may continue to serve until his successor is appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or an individual designated by the board or commission;

(3) the head of each Executive department or other administrative agency which is designated by the President, or an individual designated by the head of the department or agency;

(4) when authorized by the Council referred to in section 575(b) of this title, one or more appointees from a board, commission, department, or agency referred to in this subsection, designated by the head thereof with, in the case of a board or commission, the approval of the board or commission;

(5) individuals appointed by the President to membership on the Council who are not otherwise members of the Conference; and

(6) not more than 36 other members appointed by the Chairman, with the approval of the Council, for terms of 2 years, except that the number of members appointed by the Chairman may at no time be less than one-third nor more than two-fifths of the total number of members. The Chairman shall select the members in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference, except the Chairman, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of this title for individuals serving without pay. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 389.)

§ 574. Powers and duties of the Conference

To carry out the purpose of this subchapter, the Administrative Conference of the United States may—

(1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the

United States, in connection therewith, as it considers appropriate;

(2) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(3) collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 390.)

§ 575. Organization of the Conference

(a) The membership of the Administrative Conference of the United States meeting in plenary session constitutes the Assembly of the Conference. The assembly has ultimate authority over all activities of the Conference. Specifically, it has the power to—

(1) adopt such recommendations as it considers appropriate for improving administrative procedure. A member who disagrees with a recommendation adopted by the Assembly is entitled to enter a dissenting opinion and an alternate proposal in the record of the Conference proceedings, and the opinion and proposal so entered shall accompany the Conference recommendation in a publication or distribution thereof; and

(2) adopt bylaws and regulations not inconsistent with this subchapter for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference includes a Council composed of the Chairman of the Conference, who is Chairman of the Council, and 10 other members appointed by the President, of whom not more than one-half shall be employees of Federal regulatory agencies or Executive departments. The President may designate a member of the Council as Vice Chairman. During the absence or incapacity of the Chairman or when that office is vacant, the Vice Chairman shall serve as Chairman. The term of each member, except the Chairman, is 3 years. When the term of a member ends, he may continue to serve until a successor is appointed. However, the service of any member ends when a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment. The Council has the power to—

(1) determine the time and place of plenary sessions of the Conference and the agenda for the sessions. The Council shall call at least one plenary session each year;

(2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(3) make recommendations to the Conference or its committees on a subject germane to the purpose of the Conference;

(4) receive and consider reports and recommendations of committees of the Conference and send them to members of the Conference with the views and recommendations of the Council;

(5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman;

(6) designate such additional officers of the Conference as it considers desirable;

(7) approve or revise the budgetary proposals of the Chairman; and

(8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman is the chief executive of the Conference. In that capacity he has the power to—

(1) make inquiries into matters he considers important for Conference consideration, including matters proposed by individuals inside or outside the Federal Government;

(2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to carry out the recommendations of the Conference;

(3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law;

(4) recommend to the Council appropriate subjects for action by the Conference;

(5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference;

(6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference;

(7) appoint and fix the pay of employees, define their duties and responsibilities, and direct and supervise their activities;

(8) rent office space in the District of Columbia;

(9) provide necessary services for the Assembly, the Council, and the committees of the Conference;

(10) organize and direct studies ordered by the Assembly or the Council, to contract for the performance of such studies with any public or private persons, firm, association, corporation, or institution un-

der title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251-260), and to use from time to time, as appropriate, experts and consultants who may be employed in accordance with section 3109 of this title at rates not in excess of the maximum rate of pay for grade GS-15 as provided in section 5332 of this title;

(11) utilize, with their consent, the services and facilities of Federal agencies and of State and private agencies and instrumentalities with or without reimbursement;

(12) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the work of the Conference. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairman. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States;

(13) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(14) on request of the head of an agency, furnish assistance and advice on matters of administrative procedure; and

(15) exercise such additional authority as the Council or Assembly delegates to him.

The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman, on behalf of the Conference, shall transmit to the President and Congress an annual report and such interim reports as he considers desirable. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 390, amended Pub. L. 92-526, § 1, Oct. 21, 1972, 86 Stat. 1048.)

§ 576. Appropriations

There are authorized to be appropriated sums necessary not in excess of \$760,000 for the fiscal year ending June 30, 1974, \$805,000 for the fiscal year ending June 30, 1975, \$850,000 for the fiscal year ending June 30, 1976, \$900,000 for the fiscal year ending June 30, 1977, and \$950,000 for the fiscal year ending June 30, 1978, and for each fiscal year thereafter, to carry out the purposes of this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 391, amended Pub. L. 91-164, Dec. 24, 1969, 83 Stat. 446; Pub. L. 92-526, § 2, Oct. 21, 1972, 86 Stat. 1048.)

CHAPTER 7—JUDICIAL REVIEW

SEC.

701. Application ; definitions.

702. Right of review.

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704. Actions reviewable.

705. Relief pending review.

706. Scope of review.

§ 701. Application ; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

- (1) statutes preclude judicial review ; or
- (2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress ;
- (B) the courts of the United States ;
- (C) the governments of the territories or possessions of the United States ;
- (D) the government of the District of Columbia ;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them ;

(F) courts martial and military commissions ;

(G) military authority exercised in the field in time of war or in occupied territory ; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12 ; chapter 2 of title 41 ; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix ; and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by section 551 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

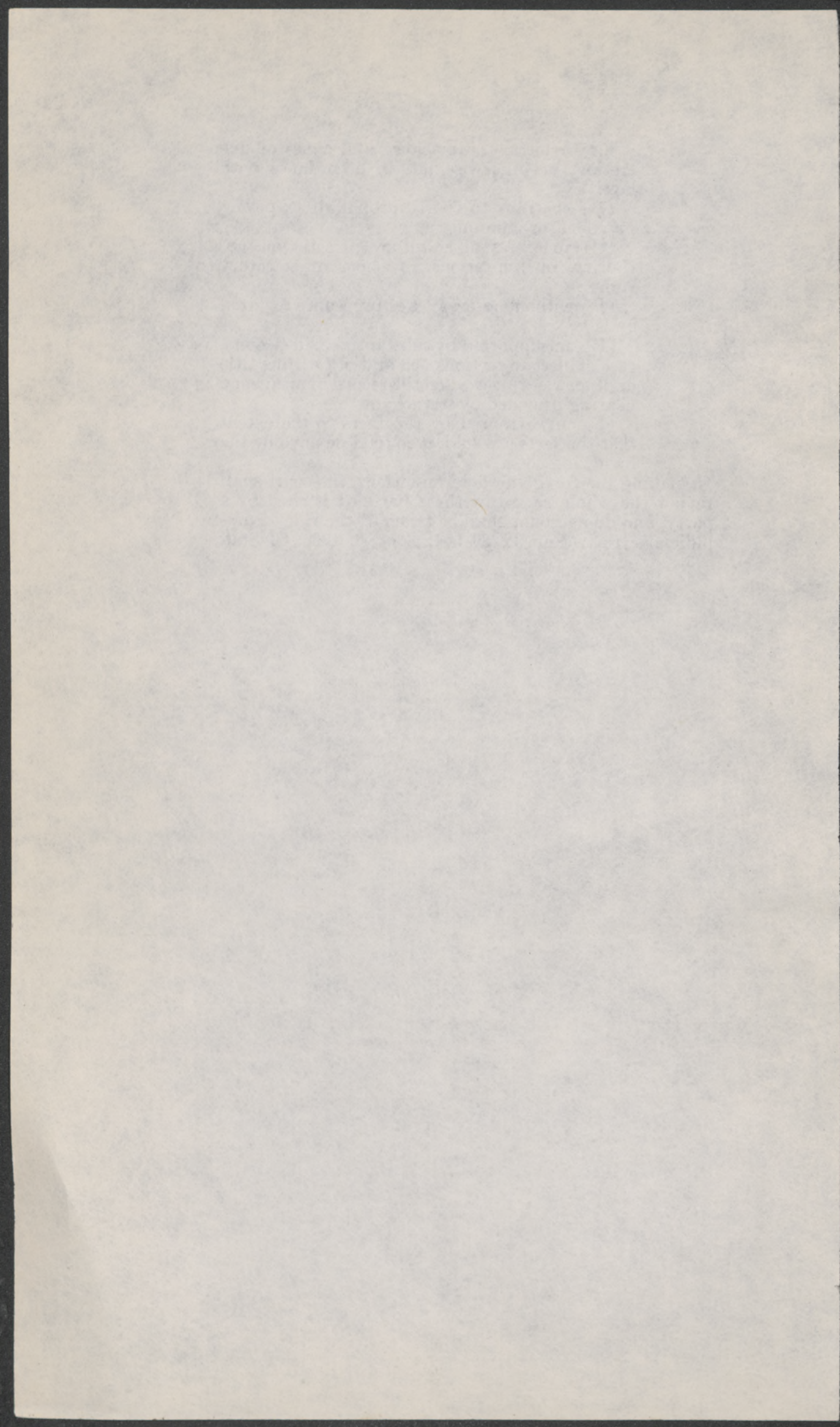
(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

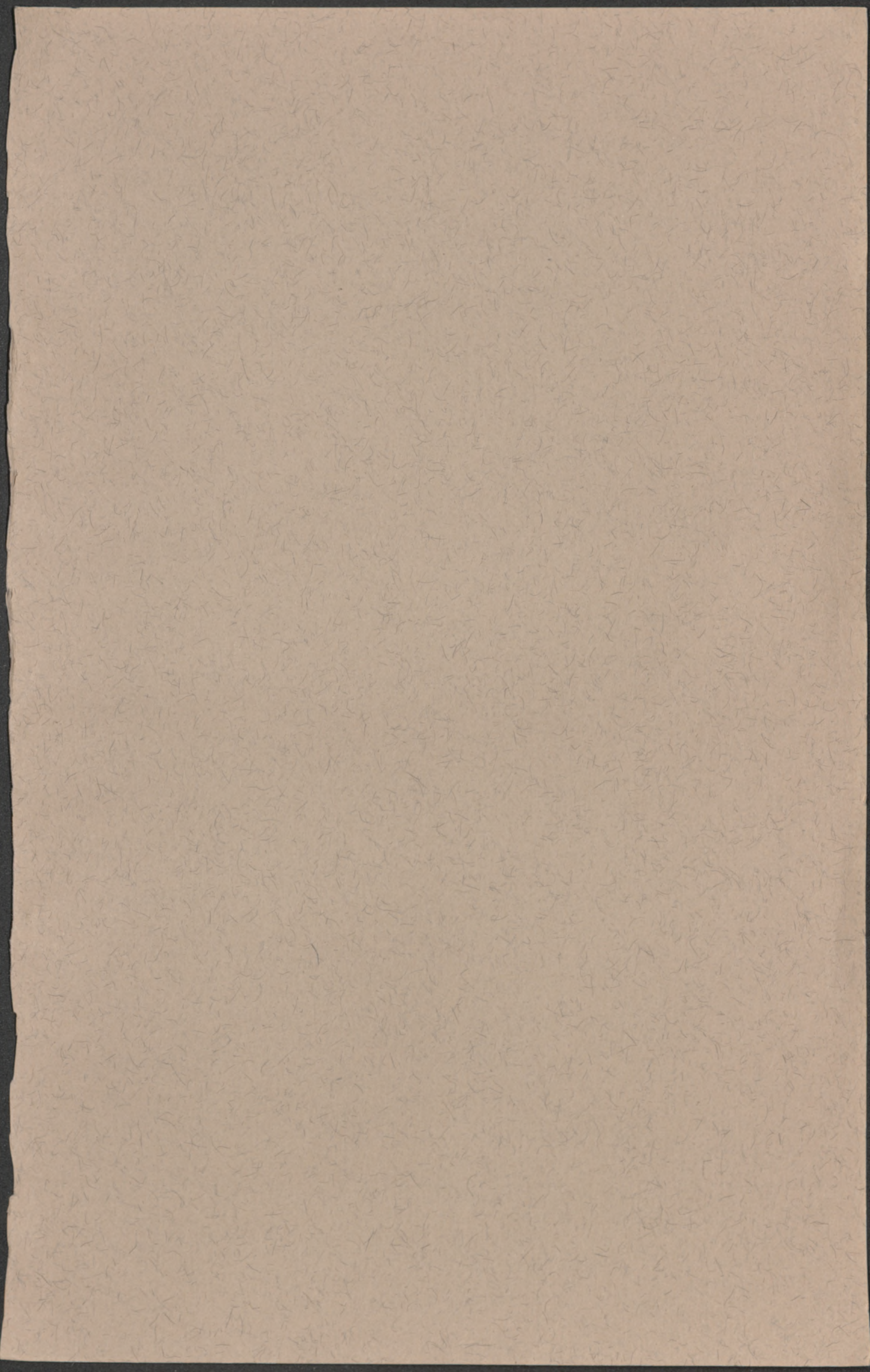
(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. (Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 393.)





Clean Air

Solid Waste Disposal

Toxic Substances Control Act

Noise Control

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**Lead-Based Paint Poisoning
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Occupational Safety and Health

APPENDIX

To use this index, bend the publication over and locate the desired section by following the black markers.