

amended Pub. L. 93-243, § 2, Jan. 2, 1974, 87 Stat. 1069; Pub. L. 95-217, §§ 18, 19, Dec. 27, 1977, 91 Stat. 1571, 1572; Pub. L. 96-483, § 6, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 97-117, § 9, Dec. 29, 1981, 95 Stat. 1626; Pub. L. 100-4, title II, §§ 203, 204, Feb. 4, 1987, 101 Stat. 16, 17.)

### Editorial Notes

#### AMENDMENTS

1987—Subsec. (a). Pub. L. 100-4, § 203, designated provision relating to submission of plans, specifications, and estimates, and provision relating to contractual nature of approval by Administrator as par. (1), designated provision relating to requirements for awarding single grant for combined Federal share of cost of preparing plans and specifications, and building and erection of treatment works as par. (3), and added par. (2).

Subsec. (f). Pub. L. 100-4, § 204, added subsec. (f).

1981—Subsec. (a). Pub. L. 97-117 substituted “\$8,000,000” for “\$4,000,000” and struck out provision that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed \$5,000,000.

1980—Subsec. (a). Pub. L. 96-483 substituted “\$4,000,000” and “\$5,000,000” for “\$2,000,000” and “\$3,000,000”, respectively.

1977—Subsec. (a). Pub. L. 95-217, § 18, provided that, in the case of a treatment works that has an estimated total cost of \$2,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works, and that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed \$3,000,000.

Subsec. (e). Pub. L. 95-217, § 19, added subsec. (e).

1974—Subsec. (d). Pub. L. 93-243 added subsec. (d).

### § 1284. Limitations and conditions

#### (a) Determinations by Administrator

Before approving grants for any project for any treatment works under section 1281(g)(1) of this title the Administrator shall determine—

(1) that any required areawide waste treatment management plan under section 1288 of this title (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;

(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 1313(e) of this title and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 1315(b) of this title;

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other

works in the State in accordance with any applicable State plan under section 1313(e) of this title, except that any priority list developed pursuant to section 1313(e)(3)(H) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title and for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 1283(a) of this title which utilizes processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title.<sup>1</sup>

(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capacity will be required, after taking into account, in accordance with regulations promulgated by the Administrator, efforts to reduce total flow of sewage and unnecessary water consumption. The amount of reserve capacity eligible for a grant under this subchapter shall be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under section 1288 of this title, or an applicable municipal master plan of development. For the purpose of this paragraph, section 1288 of this title, and any such plan, projected population shall be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate. Beginning October 1, 1984, no grant shall be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs (including existing needs of residential, commercial, industrial, and other users) on the date of

<sup>1</sup> So in original. The period probably should be a semicolon.

approval of a grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on October 1, 1990. In any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal financial assistance under this subchapter, the incremental costs of the additional reserve capacity shall be paid by the applicant;

(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment. When in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

**(b) Additional determinations; issuance of guidelines; approval by Administrator; system of charges**

(1) Notwithstanding any other provision of this subchapter, the Administrator shall not approve any grant for any treatment works under section 1281(g)(1) of this title after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; and (B) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator. In any case where an applicant which, as of December 27, 1977, uses a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the wastes, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, then such dedicated ad valorem tax system shall be deemed to be the user charge system

meeting the requirements of clause (A) of this paragraph for the residential user class and such small non-residential user classes as defined by the Administrator. In defining small non-residential users, the Administrator shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he deems appropriate. A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.

(2) The Administrator shall, within one hundred and eighty days after October 18, 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

(3) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress.

(4) A system of charges which meets the requirement of clause (A) of paragraph (1) of this subsection may be based on something other than metering the sewage or water supply flow of residential recipients of waste treatment services, including ad valorem taxes. If the system of charges is based on something other than metering the Administrator shall require (A) the applicant to establish a system by which the necessary funds will be available for the proper operation and maintenance of the treatment works; and (B) the applicant to establish a procedure under which the residential user will be notified as to that portion of his total payment which will be allocated to the cost of the waste treatment services.

**(c) Applicability of reserve capacity restrictions to primary, secondary, or advanced waste treatment facilities or related interceptors**

The next to the last sentence of paragraph (5) of subsection (a) of this section shall not apply in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors has received a grant for erection, building, acquisition, alteration, remodeling, improvement, or extension before October 1, 1984, and all segments and phases of such facility and interceptors shall be funded based on a 20-year reserve capacity in the case of such facility and a 20-year reserve capacity in the case of such interceptors, except that, if a grant for

such interceptors has been approved prior to December 29, 1981, such interceptors shall be funded based on the approved reserve capacity not to exceed 40 years.

**(d) Engineering requirements; certification by owner and operator; contractual assurances, etc.**

(1) A grant for the construction of treatment works under this subchapter shall provide that the engineer or engineering firm supervising construction or providing architect engineering services during construction shall continue its relationship to the grant applicant for a period of one year after the completion of construction and initial operation of such treatment works. During such period such engineer or engineering firm shall supervise operation of the treatment works, train operating personnel, and prepare curricula and training material for operating personnel. Costs associated with the implementation of this paragraph shall be eligible for Federal assistance in accordance with this subchapter.

(2) On the date one year after the completion of construction and initial operation of such treatment works, the owner and operator of such treatment works shall certify to the Administrator whether or not such treatment works meet the design specifications and effluent limitations contained in the grant agreement and permit pursuant to section 1342 of this title for such works. If the owner and operator of such treatment works cannot certify that such treatment works meet such design specifications and effluent limitations, any failure to meet such design specifications and effluent limitations shall be corrected in a timely manner, to allow such affirmative certification, at other than Federal expense.

(3) Nothing in this section shall be construed to prohibit a grantee under this subchapter from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a contract pertaining to a project assisted under this subchapter, than those provided under this subsection.

(June 30, 1948, ch. 758, title II, §204, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 835; amended Pub. L. 95-217, §§20-24, Dec. 27, 1977, 91 Stat. 1572, 1573; Pub. L. 96-483, §2(a), (b), Oct. 21, 1980, 94 Stat. 2360, 2361; Pub. L. 97-117, §§10(a), (b), 11, 12, Dec. 29, 1981, 95 Stat. 1626, 1627; Pub. L. 100-4, title II, §205(a)-(c), Feb. 4, 1987, 101 Stat. 18.)

### Editorial Notes

#### AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-4, §205(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “that such works are included in any applicable areawide waste treatment management plan developed under section 1288 of this title;”.

Subsec. (a)(2). Pub. L. 100-4, §205(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “that such works are in conformity with any applicable State plan under section 1313(e) of this title;”.

Subsec. (b)(1). Pub. L. 100-4, §205(c), inserted at end “A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge

system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.”

1981—Subsec. (a)(5). Pub. L. 97-117, §10(a), inserted provision that beginning Oct. 1, 1984, no grant be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs on the date of approval of a grant for the erection, building, etc., of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on Oct. 1, 1990, and that in any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal financial assistance under this subchapter, the incremental costs of the additional reserve capacity be paid by the applicant.

Subsec. (a)(6). Pub. L. 97-117, §11, struck out “, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words ‘or equal’” after “parts and equipment” and inserted provision that when in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description be used as a means to define performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

Subsec. (c). Pub. L. 97-117, §10(b), added subsec. (c).

Subsec. (d). Pub. L. 97-117, §12, added subsec. (d).

1980—Subsec. (b)(1). Pub. L. 96-483, §2(a), redesignated cl. (C) as (B). Former cl. (B) relating to payment, as a condition of approval of a grant, to an applicant by industrial users of that portion of cost of construction allocable to the treatment of such industrial waste to the extent attributable to the Federal share of the cost of construction, was struck out.

Subsec. (b)(3) to (6). Pub. L. 96-483, §2(b), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) relating to a formula determining the amount the grantee shall retain of the revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable to the Federal share of eligible project costs, and former par. (6) relating to the exemption from the requirements of par. (1)(B) of industrial users with a flow of twenty-five thousand gallons or less per day, were struck out.

1977—Subsec. (a)(3). Pub. L. 95-217, §20, provided that any priority list developed pursuant to section 1313(e)(3)(H) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title and for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 1283(a) of this title which utilizes processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title.

Subsec. (a)(5). Pub. L. 95-217, §21, provided that efforts to reduce total flow of sewage and unnecessary water consumption be taken into account, in accordance with regulations promulgated by the Administrator, that the amount of reserve capacity eligible for a grant under this subchapter be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under section 1288 of this title, or an applicable municipal master plan of development, and that, for the purpose of this

paragraph, section 1288 of this title, and any such plan, projected population be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate.

Subsec. (b)(1). Pub. L. 95-217, §§22(a)(1), (2), 24(c), inserted "(except as otherwise provided in this paragraph)" after "proportionate share" in cl. (A) and "(which such portion, in the discretion of the applicant, may be recovered from industrial users of the total waste treatment system as distinguished from the treatment works for which the grant is made)" in cl. (B) and, at end of existing provisions, inserted sentences under which a dedicated ad valorem tax system is to be deemed the user charge system meeting the requirements of cl. (A) for the residential user class and such small non-residential user classes as defined by the Administrator in cases where an applicant, as of Dec. 27, 1977, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the wastes, and other appropriate factors), and such applicant is otherwise in compliance with cl. (A) of this paragraph with respect to each industrial user.

Subsec. (b)(3). Pub. L. 95-217, §§23, 24(a), substituted "necessary for the administrative costs associated with the requirement of paragraph (1)(B) of this subsection and future expansion" for "necessary for future expansion" in cl. (B) and, at end of existing provisions, inserted sentence under which, subject to the approval of the Administrator, the following: "Not a grantee that received a grant prior to Dec. 27, 1977, may reduce the amounts required to be paid to such grantee by any industrial user of waste treatment services under such paragraph, if such grantee requires such industrial user to adopt other means of reducing the demand for waste treatment services through reduction in the total flow of sewage or unnecessary water consumption, in proportion to such reduction as determined in accordance with regulations promulgated by the Administrator".

Subsec. (b)(5), (6). Pub. L. 95-217, §§22(b), 24(b), added pars. (5) and (6).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-4, title II, §205(d), Feb. 4, 1987, 101 Stat. 18, provided that: "This section [amending this section] shall take effect on the date of the enactment of this Act [Feb. 4, 1987], except that the amendments made by subsections (a) and (b) [amending this section] shall take effect on the last day of the two-year period beginning on such date of enactment."

##### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-483 effective Dec. 27, 1977, see section 2(g) of Pub. L. 96-483, set out as a note under section 1281 of this title.

##### ELIMINATION OF INAPPLICABLE CONDITIONS OR REQUIREMENTS FROM CERTAIN GRANTS

Pub. L. 96-483, §2(c), Oct. 21, 1980, 94 Stat. 2361, provided that: "The Administrator of the Environmental Protection Agency shall take such action as may be necessary to remove from any grant made under section 201(g)(1) of the Federal Water Pollution Control Act [section 1281(g)(1) of this title] after March 1, 1973, and prior to the date of enactment of this Act [Oct. 21, 1980], any condition or requirement no longer applicable as a result of the repeals made by subsections (a) and (b) of this section [amending subsec. (b) of this section] or release any grant recipient of the obligations established by such conditions or other requirement."

Section 2(c) of Pub. L. 96-483, set out above, effective Dec. 27, 1977, see section 2(g) of Pub. L. 96-483, set out as an Effective Date of 1980 Amendment note under section 1281 of this title.

##### COST RECOVERY; SUSPENSION OF GRANT REQUIREMENTS THAT INDUSTRIAL USERS MAKE PAYMENTS

Pub. L. 95-217, §75, Dec. 27, 1977, 91 Stat. 1609, as amended by Pub. L. 96-148, §1, Dec. 16, 1979, 93 Stat. 1088; Pub. L. 96-483, §2(f), Oct. 21, 1980, 94 Stat. 2361, directed Administrator of Environmental Protection Agency to study and report to Congress not later than last day of twelfth month which begins after Dec. 27, 1977, cost recovery procedures from industrial users of treatment works to the extent construction costs are attributable to the Federal share of the cost of construction.

#### § 1285. Allotment of grant funds

##### (a) Funds for fiscal years during period June 30, 1972, and September 30, 1977; determination of amount

Sums authorized to be appropriated pursuant to section 1287 of this title for each fiscal year beginning after June 30, 1972, and before September 30, 1977, shall be allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment for fiscal year 1973 shall be made not later than 30 days after October 18, 1972. Such sums shall be allotted among the States by the Administrator in accordance with regulations promulgated by him, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States. For the fiscal years ending June 30, 1973, and June 30, 1974, such ratio shall be determined on the basis of table III of House Public Works Committee Print No. 92-50. For the fiscal year ending June 30, 1975, such ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93-28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print. Allotments for fiscal years which begin after the fiscal year ending June 30, 1975, shall be made only in accordance with a revised cost estimate made and submitted to Congress in accordance with section 1375(b) of this title and only after such revised cost estimate shall have been approved by law specifically enacted after October 18, 1972.

##### (b) Availability and use of funds allotted for fiscal years during period June 30, 1972, and September 30, 1977; reallocation

(1) Any sums allotted to a State under subsection (a) shall be available for obligation under section 1283 of this title on and after the date of such allotment. Such sums shall continue available for obligation in such State for a period of one year after the close of the fiscal year for which such sums are authorized. Any amounts so allotted which are not obligated by the end of such one-year period shall be immediately reallocated by the Administrator, in accordance with regulations promulgated by him,