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Protecting People and the Environment

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FOREWORD

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PART I: DOMESTIC LEGISLATION

1. Transportation of Hazardous Materials

1. Transportation of Hazardous Materials

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A. HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990, AS AMENDED

Public Law 101–615 **104 Stat. 3244**

November 16, 1990

* * * *

NOTE: This Act was recodified in P.L. 103–272 (108 Stat. 759); July 5, 1994. Prior to recodification, this Act was found at 49 USC sections 1801–1819. In this Volume we have set out the recodified version.

* * * *

49 USCA, Chapter 51–Transportation of Hazardous Material

49 USC 5101. **Sec. 5101. Purpose**

The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.[1]

49 USC 5102. **Sec. 5102. Definitions**

In this chapter [49 USCS §§ 5101 et seq.]—

(1) "commerce" means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State;

(B) that affects trade or transportation between a place in a State and a place outside of the State; or

(C) on a United States–registered aircraft.

(2) "hazardous material" means a substance or material the Secretary designates under section 5103(a) of this title [49 USCS § 5103(a)].

(3) "hazmat employee"—

(A) means an individual—

(i) who—

(I) is employed on a full time, part time, or temporary basis by a hazmat employer; or

(II) is self–employed (including an owner–operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) who during the course of such full time, part time, or temporary employment, or such self employment, directly affects hazardous material transportation safety as the Secretary decides by regulation; and

(B) includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or self employed, who during the course of employment—

(i) loads, unloads, or handles hazardous material;

(ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

(iii) prepares hazardous material for transportation;

(iv) is responsible for the safety of transporting hazardous material; or

(v) operates a vehicle used to transport hazardous material.

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[1] Amended by P.L. 109–59, Title VII, § 7101(b), 119 Stat. 1891 (2005).

(C) [Redesignated]

(4) "hazmat employer"—

(A) means a person—

(i) who—

(I) employs or uses at least 1 hazmat employee on a full time, part time, or temporary basis; or

(II) is self–employed (including an owner–operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) who—

(I) transports hazardous material in commerce;

(II) causes hazardous material to be transported in commerce; or

(III) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; and

(B) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in clause (ii).

(5) "imminent hazard" means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(6) "Indian tribe" has the same meaning given that term in section 4 of the Indian Self–Determination and Education Assistance Act (25 U.S.C. 450b).

(7) "motor carrier"—

(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102 [49 USCS § 13102]; but

(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.

(8) "National Response Team" means the National Response Team established under the National Contingency Plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

(9) "person", in addition to its meaning under section 1 of title 1 [1 USCS § 1]—

(A) includes a government, Indian tribe, or authority of a government or tribe that—

(i) offers hazardous material for transportation in commerce;

(ii) transports hazardous material to further a commercial enterprise; or

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; but

(B) does not include—

(i) the United States Postal Service; and

(ii) in sections 5123 and 5124 of this title [49 USCS §§ 5123 and 5124], a department, agency, or instrumentality of the Government.

(10) "public sector employee"—

(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;

(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and

(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) "Secretary" means the Secretary of Transportation except as otherwise provided.

(12) "State" means—

(A) except in section 5119 of this title [49 USCS § 5119], a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and

(B) in section 5119 of this title [49 USCS § 5119], a State of the United States and the District of Columbia.

(13) "transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

(14) "United States" means all of the States.[2]

49 USC 5103.

Sec. 5103. General Regulatory Authority

(a) Designating material as hazardous. The Secretary shall designate material (including an explosive, radioactive material, infectious substance, flammable or combustible liquid, solid, or gas, toxic, oxidizing, or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary determines that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) Regulations for safe transportation.

(1) The Secretary shall prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The regulations—

(A) apply to a person who—

(i) transports hazardous material in commerce;

(ii) causes hazardous material to be transported in commerce;

(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

(iv) prepares or accepts hazardous material for transportation in commerce;

(v) is responsible for the safety of transporting hazardous material in commerce;

(vi) certifies compliance with any requirement under this chapter [49 USCS §§ 5101 et seq.]; or

(vii) misrepresents whether such person is engaged in any activity under clause (i) through (vi); and

(B) shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate.

(C) [Deleted]

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[2] Amended by P.L. 103–311, Title I, § 117(a)(1), 108 Stat. 1678 (1994); P.L. 104–88, Title III, Subtitle A, § 308(d), 109 Stat. 947 (1995); P.L. 109–59, Title VII, Subtitle A, §§ 7102, 7126, 119 Stat. 1892, 1909 (2005); P.L. 110–244, Title III, § 302(a), 122 Stat. 1618 (2008).

(2) A proceeding to prescribe the regulations must be conducted under section 553 of title 5 [5 USCS § 553], including an opportunity for informal oral presentation.

(c) Consultation. When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary of Transportation.

(d) Biennial report. The Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate Committee on Commerce, Science, and Transportation a biennial report providing information on whether the Secretary has designated as hazardous materials for purposes of chapter 51 of such title [this chapter] [49 USCS §§ 5101 et seq.] all by–products of the methamphetamine–production process that are known by the Secretary to pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form.[3]

49 USC 5103a.

Sec. 5103a. Limitation on Issuance of Hazmat Licenses

(a) Limitation.

(1) Issuance of licenses. A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Homeland Security has first determined, upon receipt of a notification under subsection (d)(1)(B), that the individual does not pose a security risk warranting denial of the license.

(2) Renewals included. For the purposes of this section, the term "issue", with respect to a license, includes renewal of the license.

(b) Hazardous materials described. The limitation in subsection (a) shall apply with respect to any material defined as hazardous material by the Secretary of Transportation for which the Secretary of Transportation requires placarding of a commercial motor vehicle transporting that material in commerce.

(c) Recommendations on chemical and biological materials. The Secretary of Health and Human Services shall recommend to the Secretary of Transportation any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) [49 USCS § 5103(a)] if the Secretary of Health and Human Services determines that such material or agent poses a significant risk to the health of individuals.

(d) Background records check.

(1) In general. Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

(A) shall carry out a background records check regarding the individual; and

(B) upon completing the background records check, shall notify the Secretary of Homeland Security of the completion and results of the background records check.

(2) Scope. A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history data bases.

(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

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[3] Amended by P.L. 103–311, Title I, § 117(a)(2), 108 Stat. 1678 (1994); P.L. 103–429, § 6(3), 108 Stat. 4378 (1994); P.L. 107–296, Title XVII, § 1711(a), 116 Stat. 2319 (2002); P.L. 109–59, Title VII, Subtitle A, §§ 7103, 7126, 119 Stat. 1893, 1909, (2005); P.L. 109–177, Title VII, Subtitle D, § 741, 120 Stat. 272, (2006).

(C) As appropriate, a check of the relevant international data bases through Interpol–U.S. National Central Bureau or other appropriate means.

(e) Reporting requirement. Each State shall submit to the Secretary of Homeland Security, at such time and in such manner as the Secretary of Homeland Security may prescribe, the name, address, and such other information as the Secretary of Homeland Security may require, concerning—

(1) each alien to whom the State issues a license described in subsection (a); and

(2) each other individual to whom such a license is issued, as the Secretary of Homeland Security may require.

(f) Alien defined. In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act [8 USC § 1101(a)(3)].

(g) Background checks for drivers hauling hazardous materials.

(1) In general.

(A) Employer notification. Not later than 90 days after the date of enactment of this subsection [enacted Aug. 10, 2005], the Director of the Transportation Security Administration, after receiving comments from interested parties, shall develop and implement a process for notifying hazmat employers designated by an applicant of the results of the applicant's background record check, if—

(i) such notification is appropriate considering the potential security implications; and

(ii) the Director, in a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in regulations issued to carry out this section.

(B) Relationship to other background records checks.

(i) Elimination of redundant checks. An individual with respect to whom the Transportation Security Administration—

(I) has performed a security threat assessment under this section; and

(II) has issued a final notification of no security threat,

is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required under this section.

(ii) Determination by Director. Not later than 60 days after the date of issuance of the report under paragraph (5), but no later than 120 days after the date of enactment of this subsection [enacted Aug. 10, 2005], the Director shall initiate a rulemaking proceeding, including notice and opportunity for comment, to determine which background checks required for purposes of Federal laws applicable to transportation workers are equivalent to, or less stringent than, those required under this section.

(iii) Future rulemakings. The Director shall make a determination under the criteria established under clause (ii) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this subsection.

(2) Appeals process for more stringent State procedures. If a State establishes its own standards for applicants for a hazardous materials endorsement to a commercial driver's license, the State shall also provide—

(A) an appeals process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may appeal that denial; and

(B) a waiver process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver's license by that State may apply for a waiver.

(3) Clarification of term defined in regulations. The term "transportation security incident", as defined in part 1572 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee–related action resulting from an employer–employee dispute. Not later than 30 days after the date of enactment of this subsection [enacted Aug. 10, 2005], the Director shall modify the definition of that term to reflect the preceding sentence.

(4) Background check capacity. Not later than October 1, 2005, the Director shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives a report on the implementation of fingerprint–based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint–based security threat assessments for individuals holding commercial driver's licenses who are applying to renew hazardous materials endorsements.

(5) Report.

(A) In general. Not later than 60 days after the date of enactment of this subsection [enacted Aug. 10, 2005], the Director shall transmit to the committees referred to in paragraph (4) a report on the Director's plans to reduce or eliminate redundant background checks for holders of hazardous materials endorsements performed under this section.

(B) Contents. The report shall—

(i) include a list of background checks and other security or threat assessment requirements applicable to transportation workers under Federal laws for which the Department of Homeland Security is responsible and the process by which the Secretary of Homeland Security will determine whether such checks or assessments are equivalent to, or less stringent than, the background check performed under this section; and

(ii) provide an analysis of how the Director plans to reduce or eliminate redundant background checks in a manner that will continue to ensure the highest level of safety and security.

(h) Commercial motor vehicle operators registered to operate in Mexico or Canada.

(1) In general. Beginning on the date that is 6 months after the date of enactment of this subsection [enacted Aug. 10, 2005], a commercial motor vehicle operator registered to operate in Mexico or Canada shall not operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(2) Extension. The Director of the Transportation Security Administration may extend the deadline established by paragraph (1) for

a period not to exceed 6 months if the Director determines that such an extension is necessary.

(3) Commercial motor vehicle defined. In this subsection, the term "commercial motor vehicle" has the meaning given that term by section 31101 [49 USCS § 31101].[4]

49 USC 5104.

Sec. 5104. Representation and Tampering

(a) REPRESENTATION. A person may represent, by marking or otherwise, that—

(1) a package, component of a package, or packaging for transporting hazardous material is safe, certified, or complies with this chapter [49 USCS §§ 5101 et seq.] only if the package, component of a package, or packaging meets the requirements of each applicable regulation prescribed under this chapter [49 USCS §§ 5101 et seq.]; or

(2) hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel only if the material is present.

(b) TAMPERING. No person may alter, remove, destroy, or otherwise tamper unlawfully with—

(1) a marking, label, placard, or description on a document required under this chapter [49 USCS §§ 5101 et seq.] or a regulation prescribed under this chapter [49 USCS §§ 5101 et seq.]; or

(2) a package, component of a package, or packaging, container, motor vehicle, rail freight car, aircraft, or vessel used to transport hazardous material.[5]

49 USC 5105.

Sec. 5105. Transporting Certain Highly Radioactive Material

(a) DEFINITIONS. In this section, "high–level radioactive waste" and "spent nuclear fuel" have the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(b) TRANSPORTATION SAFETY STUDY. In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high–level radioactive waste and spent nuclear fuel, the Secretary shall conduct a study comparing the safety of using trains operated only to transport high–level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary shall submit to Congress not later than November 16, 1991, a report on the results of the study.

(c) SAFE RAIL TRANSPORTATION REGULATIONS. Not later than November 16, 1992, after considering the results of the study conducted under subsection (b) of this section, the Secretary shall prescribe amendments to existing regulations that the Secretary considers appropriate to provide for the safe rail transportation of high–level radioactive waste and spent nuclear fuel, including trains operated only for transporting high–level radioactive waste and spent nuclear fuel.

(d) INSPECTIONS OF MOTOR VEHICLES TRANSPORTING CERTAIN MATERIAL.

(1) Not later than November 16, 1991, the Secretary shall require by regulation that before each use of a motor vehicle to transport a highway–route–controlled quantity of radioactive material in commerce,

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[4] Added by P.L. 107–56, Title X, § 1012(a)(1), 115 Stat. 396, (2001). Amended by P.L. 109–59, Title VII, Subtitle A, §§ 7104, 7105, 7126, 119 Stat. 1894, 1909 (2005); P.L. 110–53, Title XV, Subtitle D, § 1556(a), 121 Stat. 475 (2007); P.L. 110–244, Title III, § 302(b), 122 Stat. 1618 (2008).

[5] Amended by P.L. 103–311, Title I, § 117(b), 108 Stat. 1678 (1994); P.L. 103–429, § 6(4), 108 Stat. 4378 (1994); P.L. 109–59, Title VII, Subtitle A, § 7106, 119 Stat. 1897 (2005).

the vehicle shall be inspected and certified as complying with this chapter [49 USCS §§ 5101 et seq.] and applicable United States motor carrier safety laws and regulations. The Secretary may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures.

(2) The Secretary may allow a person, transporting or causing to be transported a highway–route–controlled quantity of radioactive material, to inspect the motor vehicle used to transport the material and to certify that the vehicle complies with this chapter [49 USCS §§ 5101 et seq.]. The inspector qualification requirements the Secretary prescribes for an individual inspecting a motor vehicle apply to an individual conducting an inspection under this paragraph.[6]

49 USC 5106.

Sec. 5106. Handling Criteria

The Secretary may prescribe criteria for handling hazardous material, including–

(1) a minimum number of personnel;

(2) minimum levels of training and qualifications for personnel;

(3) the kind and frequency of inspections;

(4) equipment for detecting, warning of, and controlling risks posed by the hazardous material;

(5) specifications for the use of equipment and facilities used in handling and transporting the hazardous material; and

(6) a system of monitoring safety procedures for transporting the hazardous material.[7]

49 USC 5107.

Sec. 5107. HAZMAT Employee Training Requirements and Grants

(a) Training requirements. The Secretary shall prescribe by regulation requirements for training that a hazmat employer must give hazmat employees of the employer on the safe loading, unloading, handling, storing, and transporting of hazardous material and emergency preparedness for responding to an accident or incident involving the transportation of hazardous material. The regulations—

(1) shall establish the date, as provided by subsection (b) of this section, by which the training shall be completed; and

(2) may provide for different training for different classes or categories of hazardous material and hazmat employees.

(b) Beginning and completing training. A hazmat employer shall begin the training of hazmat employees of the employer not later than 6 months after the Secretary prescribes the regulations under subsection (a) of this section. The training shall be completed within a reasonable period of time after—

(1) 6 months after the regulations are prescribed; or

(2) the date on which an individual is to begin carrying out a duty or power of a hazmat employee if the individual is employed as a hazmat employee after the 6–month period.

(c) Certification of training. After completing the training, each hazmat employer shall certify, with documentation the Secretary may require by regulation, that the hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility, including at least one of the following:

(1) recognizing and understanding the Department of Transportation hazardous material classification system.

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[6] Amended by P.L. 109–59, Title VII, Subtitle A, §§ 7107, 7126, 119 Stat. 1897, 1909 (2005).

[7] Amended by P.L. 109–59, Title VII, Subtitle A, § 7126, 119 Stat. 1909 (2005).

(2) the use and limitations of the Department hazardous material placarding, labeling, and marking systems.

(3) general handling procedures, loading and unloading techniques, and strategies to reduce the probability of release or damage during or incidental to transporting hazardous material.

(4) health, safety, and risk factors associated with hazardous material and the transportation of hazardous material.

(5) appropriate emergency response and communication procedures for dealing with an accident or incident involving hazardous material transportation.

(6) the use of the Department Emergency Response Guidebook and recognition of its limitations or the use of equivalent documents and recognition of the limitations of those documents.

(7) applicable hazardous material transportation regulations.

(8) personal protection techniques.

(9) preparing a shipping document for transporting hazardous material.

(d) Coordination of training requirements. In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary shall ensure that the training requirements prescribed under this section do not conflict with or duplicate—

(1) the requirements of regulations the Secretary of Labor prescribes related to hazard communication, and hazardous waste operations, and emergency response that are contained in part 1910 of title 29, Code of Federal Regulations; and

(2) the regulations the Agency prescribes related to worker protection standards for hazardous waste operations that are contained in part 311 of title 40, Code of Federal Regulations.

(e) Training grants.

(1) In general. Subject to the availability of funds under section 5128(c) [49 USCS § 5128(c)], the Secretary shall make grants under this subsection—

(A) for training instructors to train hazmat employees; and

(B) to the extent determined appropriate by the Secretary, for such instructors to train hazmat employees.

(2) Eligibility. A grant under this subsection shall be made to a nonprofit hazmat employee organization that demonstrates—

(A) expertise in conducting a training program for hazmat employees; and

(B) the ability to reach and involve in a training program a target population of hazmat employees.

(f) Training of certain employees. The Secretary shall ensure that maintenance–of–way employees and railroad signalmen receive general awareness and familiarization training and safety training pursuant to section 172.704 of title 49, Code of Federal Regulations.

(g) Relationship to other laws.

(1) Chapter 35 of title 44 [44 USCS §§ 3501 et seq.] does not apply to an activity of the Secretary under subsections (a)–(d) of this section.

(2) An action of the Secretary under subsections (a)–(d) of this section and section 5106 [49 USCS § 5106] is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(h) Existing effort. No grant under subsection (e) shall supplant or replace existing employer–provided hazardous materials training efforts or obligations.[8]

49 USC 5108.

Sec. 5108. Registration

(a) Persons required to file.

(1) A person shall file a registration statement with the Secretary under this subsection if the person is transporting or causing to be transported in commerce any of the following:

(A) a highway–route–controlled quantity of radioactive material.

(B) more than 25 kilograms of a Division 1.1, 1.2, or 1.3 explosive material in a motor vehicle, rail car, or transport container.

(C) more than one liter in each package of a hazardous material the Secretary designates as extremely toxic by inhalation.

(D) hazardous material in a bulk packaging, container, or tank, as defined by the Secretary, if the bulk packaging, container, or tank has a capacity of at least 3,500 gallons or more than 468 cubic feet.

(E) a shipment of at least 5,000 pounds (except in a bulk packaging) of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required under regulations prescribed under this chapter [49 USCS §§ 5101 et seq.].

(2) The Secretary may require any of the following persons to file a registration statement with the Secretary under this subsection:

(A) a person transporting or causing to be transported hazardous material in commerce and not required to file a registration statement under paragraph (1) of this subsection.

(B) a person designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

(3) A person required to file a registration statement under this subsection may transport or cause to be transported, or design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package, container packaging component, or container for use in transporting, hazardous material, only if the person has a statement on file as required by this subsection.

(4) The Secretary may waive the filing of a registration statement, or the payment of a fee, required under this subsection, or both, for any person not domiciled in the United States who solely offers hazardous materials for transportation to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer.

(b) Form, contents, and limitation on filings.

(1) A registration statement under subsection (a) of this section shall be in the form and contain information the Secretary requires by regulation. The Secretary may use existing forms of the Department of Transportation and the Environmental Protection Agency to carry out this subsection. The statement shall include—

(A) the name and principal place of business of the registrant;

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[8] Amended by P.L. 103–311, Title I, §§ 106, 119(c)(1)–(3), 108 Stat. 1674, 1680 (1994); P.L. 109–59, Title VII, Subtitle A, §§ 7108, 7126, 119 Stat. 1897, 1909 (2005).

(B) a description of each activity the registrant carries out for which filing a statement under subsection (a) of this section is required; and

(C) each State in which the person carries out any of the activities.

(2) A person carrying out more than one activity, or an activity at more than one location, for which filing is required only has to file one registration statement to comply with subsection (a) of this section.

(c) Filing. Each person required to file a registration statement under subsection (a) shall file the statement in accordance with regulations prescribed by the Secretary.

(d) Simplifying the registration process. The Secretary may take necessary action to simplify the registration process under subsections (a)–(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter [49 USCS §§ 5101 et seq.] and other laws of the United States.

(e) Cooperation with Administrator. The Administrator of the Environmental Protection Agency shall assist the Secretary in carrying out subsections (a)–(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)–(g)(1) and (h).

(f) Availability of statements. The Secretary shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 552(b) of title 5 or otherwise protected by law from disclosure to the public.

(g) Fees.

(1) The Secretary shall establish, impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2) (A) In addition to a fee established under paragraph (1) of this subsection, the Secretary shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least $ 250 but not more than $ 3,000 from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

(i) gross revenue from transporting hazardous material.

(ii) the type of hazardous material transported or caused to be transported.

(iii) the amount of hazardous material transported or caused to be transported.

(iv) the number of shipments of hazardous material.

(v) the number of activities that the person carries out for which filing a registration statement is required under this section.

(vi) the threat to property, individuals, and the environment from an accident or incident involving the hazardous material transported or caused to be transported.

(vii) the percentage of gross revenue derived from transporting hazardous material.

(viii) the amount to be made available to carry out sections 5108(g)(2), 5115, and 5116 of this title [49 USCS §§ 5108(g)(2), 5115, and 5116].

(ix) other factors the Secretary considers appropriate.

(B) The Secretary shall adjust the amount being collected under this paragraph to reflect any unexpended balance in the account established under section 5116(i) of this title [49 USCS § 5116(i)]. However, the Secretary is not required to refund any fee collected under this paragraph.

(C) The Secretary shall transfer to the Secretary of the Treasury amounts the Secretary collects under this paragraph for deposit in the Hazardous Materials Emergency Preparedness Fund established under section 5116(i) of this title [49 USCS § 5116(i)].

(3) Fees on exempt persons. Notwithstanding subsection (a)(4), the Secretary shall impose and collect a fee of $ 25 from a person who is required to register under this section but who is otherwise exempted by the Secretary from paying any fee under this section. The fee shall be used to pay the costs incurred by the Secretary in processing registration statements filed by such persons.

(h) Maintaining proof of filing and payment of fees. The Secretary may prescribe regulations requiring a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) Relationship to other laws.

(1) Chapter 35 of title 44 [44 USCS §§ 3501 et seq.] does not apply to an activity of the Secretary under subsections (a)–(g)(1) and (h) of this section.

(2)

(A) This section does not apply to an employee of a hazmat employer.

(B) Subsections (a)–(h) of this section do not apply to a department, agency, or instrumentality of the United States Government, an authority of a State or political subdivision of a State, an Indian tribe, or an employee of a department, agency, instrumentality, or authority carrying out official duties.[9]

49 USC 5109.

Sec. 5109. Motor Carrier Safety Permits

a) REQUIREMENT.–A motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit the Secretary issues[10] under this section authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able–

(1) to provide the transportation to be authorized by the permit;

(2) to comply with this chapter and regulations the Secretary prescribes to carry out this chapter; and

(3) to comply with applicable United States motor carrier safety laws and regulations and applicable minimum financial responsibility laws and regulations.

(b) APPLICABLE TRANSPORTATION.–The Secretary shall prescribe by regulation the hazardous material and amounts of hazardous material to which this section applies. However, this section shall apply at least to transportation by a motor carrier, in amounts the Secretary establishes, of–

(1) a class A or B explosive;

(2) liquefied natural gas;

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[9] Amended by P.L. 103–311, Title I, §§ 104, 117(a)(3), 119(d)(1), 108 Stat. 1673, 1678, 1680 (1994); P.L. 105–102, § 2(3), 111 Stat. 2204 (1997); P.L. 105–225, § 7(b)(1), 112 Stat. 1511, (1998); P.L. 109–59, Title VII, Subtitle A, §§ 7109(a)–(c), (e), (f), 7114(d)(3), 7126, 119 Stat. 1897, 1898, 1900, 1909 (2005).

[10] Amended by P.L. 109–59, Title VII, Subtitle A, § 7126, 119 Stat. 1909 (2005).

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway–route–controlled quantity of radioactive material, as defined by the Secretary.

(c) APPLICATIONS.–A motor carrier shall file an application with the Secretary for a safety permit to provide transportation under this section. The Secretary may approve any part of the application or deny the application. The application shall be under oath and contain information the Secretary requires by regulation.

(d) AMENDMENTS, SUSPENSIONS, AND REVOCATIONS.–

(1) After notice and an opportunity for a hearing, the Secretary may amend, suspend, or revoke a safety permit, as provided by procedures prescribed under subsection (e) of this section, when the Secretary decides the motor carrier is not complying with a requirement of this chapter, a regulation prescribed under this chapter, or an applicable United States motor carrier safety law or regulation or minimum financial responsibility law or regulation.

(2) If the Secretary decides an imminent hazard exists, the Secretary may amend, suspend, or revoke a permit before scheduling a hearing.

(e) PROCEDURES.–The Secretary shall prescribe by regulation–

(1) application procedures, including form, content, and fees necessary to recover the complete cost of carrying out this section;

(2) standards for deciding the duration, terms, and limitations of a safety permit;

(3) procedures to amend, suspend, or revoke a permit; and

(4) other procedures the Secretary considers appropriate to carry out this section.

(f) SHIPPER RESPONSIBILITY.–A person offering hazardous material for motor vehicle transportation in commerce may offer the material to a motor carrier only if the carrier has a safety permit issued under this section authorizing the transportation.

(g) CONDITIONS.–A motor carrier may provide transportation under a safety permit issued under this section only if the carrier complies with conditions the Secretary finds are required to protect public safety.

(h) REGULATIONS.–The Secretary shall prescribe regulations necessary to carry out this section not later than November 16, 1991.

49 USC 5110.

Sec. 5110. Shipping Papers and Disclosure

(a) PROVIDING SHIPPING PAPERS. Each person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes in regulations.

(b) KEEPING SHIPPING PAPERS ON THE VEHICLE.

(1) A motor carrier, and the person offering the hazardous material for transportation if a private motor carrier, shall keep the shipping paper on the vehicle transporting the material.

(2) Except as provided in paragraph (1) of this subsection, the shipping paper shall be kept in a location the Secretary specifies in a motor vehicle, train, vessel, aircraft, or facility until—

(A) the hazardous material no longer is in transportation; or

(B) the documents are made available to a representative of a department, agency, or instrumentality of the United States Government

or a State or local authority responding to an accident or incident involving the motor vehicle, train, vessel, aircraft, or facility.

(c) DISCLOSURE TO EMERGENCY RESPONSE AUTHORITIES. When an incident involving hazardous material being transported in commerce occurs, the person transporting the material, immediately on request of appropriate emergency response authorities, shall disclose to the authorities information about the material.

(d) RETENTION OF PAPERS.

(1) offerors. The person who provides the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 2 years after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the offeror's principal place of business.

(2) Carriers. The carrier required to keep the shipping paper under this section, shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the carrier's principal place of business.

(3) Availability to government agencies. Any person required to keep a shipping paper under this subsection shall, upon request, make it available to a Federal, State, or local government agency at reasonable times and locations.[11]

49 USC 5111. **Sec. 5111. Rail Tank Cars [Repealed]**[12]

49 USC 5112. **Sec. 5112. Highway Routing of Hazardous Material**

(a) Application.

(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter [49 USCS §§ 5101 et seq.]. However, the Secretary by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to—

(A) any use of a vehicle under this paragraph to transport any hazardous material in commerce; and

(B) any motor vehicle used to transport hazardous material in commerce.

(2) Except as provided by subsection (d) of this section and section 5125(c) of this title [49 USCS § 5125(c)], each State and Indian tribe may establish, maintain, and enforce—

(A) designations of specific highway routes over which hazardous material may and may not be transported by motor vehicle; and

(B) limitations and requirements related to highway routing.

(b) Standards for States and Indian tribes.

(1) The Secretary, in consultation with the States, shall prescribe by regulation standards for States and Indian tribes to use in carrying out subsection (a) of this section. The standards shall include—

(A) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;

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[11] Amended by P.L. 103–311, Title I, § 115, 108 Stat. 1678, (1994); P.L. 109–59, Title VII, Subtitle A, §§ 7110, 7126, 119 Stat. 1898, 1909, (2005); P.L. 110–244, Title III, § 302(i), 122 Stat. 1618 (2008).

[12] Repealed by P.L. 109–59, Title VII, Subtitle A, § 7111, 119 Stat. 1899, (2005).

(B) minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;

(C) a requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of that State or tribe establishing the designation, limitation, or requirement and with affected industries;

(D) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;

(E) a requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or tribe may be established, maintained, and enforced by the State or tribe establishing the designation, limitation, or requirement only if—

(i) the designation, limitation, or requirement is agreed to by the other State or tribe within a reasonable period or is approved by the Secretary under subsection (d) of this section; and

(ii) the designation, limitation, or requirement is not an unreasonable burden on commerce;

(F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely way;

(G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;

(H) a requirement that a State be responsible—

(i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that, in carrying out subsection (a) of this section, a State or Indian tribe shall consider—

(i) population densities;

(ii) the types of highways;

(iii) the types and amounts of hazardous material;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain considerations;

(viii) the continuity of routes;

(ix) alternative routes;

(x) the effects on commerce;

(xi) delays in transportation; and

(xii) other factors the Secretary considers appropriate.

(2) The Secretary may not assign a specific weight that a State or Indian tribe shall use when considering the factors under paragraph (1)(I) of this subsection.

(c) List of route designations. In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(d) Dispute resolution.

(1) The Secretary shall prescribe regulations for resolving a dispute related to through highway routing or to an agreement with a proposed highway route designation, limitation, or requirement between or among States, political subdivisions of different States, or Indian tribes.

(2) A State or Indian tribe involved in a dispute under this subsection may petition the Secretary to resolve the dispute. The Secretary shall resolve the dispute not later than one year after receiving the petition. The resolution shall provide the greatest level of highway safety without being an unreasonable burden on commerce and shall ensure compliance with standards prescribed under subsection (b) of this section.

(3) (A) After a petition is filed under this subsection, a civil action about the subject matter of the dispute may be brought in a court only after the earlier of—

(i) the day the Secretary issues a final decision; or

(ii) the last day of the one–year period beginning on the day the Secretary receives the petition.

(B) A State or Indian tribe adversely affected by a decision of the Secretary under this subsection may bring a civil action for judicial review of the decision in an appropriate district court of the United States not later than 89 days after the day the decision becomes final.

(e) Relationship to other laws. This section and regulations prescribed under this section do not affect sections 31111 and 31113 of this title [49 USCS §§ 31111 and 31113] or section 127 of title 23.

(f) Existing radioactive material routing regulations. The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and may not be transported by motor vehicles, and limitations and requirements related to the routing, that were in effect on November 16, 1990.[13]

49 USC 5113.

Sec. 5113. Unsatisfactory Safety Rating

A violation of section 31144(c)(3) [49 USCS § 31144(c)(3)] shall be considered a violation of this chapter [49 USCS §§ 5101 et seq.], and shall be subject to the penalties in sections 5123 and 5124 [49 USCS §§ 5123 and 5124].[14]

49 USC 5114.

Sec. 5114. Air Transportation of Ionizing Radiation Material

(a) TRANSPORTING IN AIR COMMERCE.–Material that emits ionizing radiation spontaneously may be transported on a passenger–carrying aircraft in air commerce (as defined in section 40102(a) of this title) only if the material is intended for a use in, or incident to, research or medical diagnosis or treatment and does not present an unreasonably hazard to health and safety when being prepared for, and during, transportation.

(b) PROCEDURES.–The Secretary[15] shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

(c) NON–APPLICATION.–This section does not apply to material the Secretary decides does not pose a significant hazard to health or safety when transported because of its low order of radioactivity.

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[13] Amended by P.L. 109–59, Title VII, Subtitle A, § 7126, 119 Stat. 1909 (2005).

[14] Amended by P.L. 105–178, Title IV, § 4009(b), 112 Stat. 407, (1998); P.L. 109–59, Title VII, Subtitle A, § 7112(a), 119 Stat. 1899 (2005).

[15] Amended by P.L. 109–59, Title VII, Subtitle A, § 7126, 119 Stat. 1909 (2005).

49 USC 5115.

Sec. 5115. Training Curriculum for the Public Sector

(a) IN GENERAL. In coordination with the Director [Administrator] of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretaries of Labor, Energy, and Health and Human Services, and the Director of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall maintain, and update periodically, a current curriculum of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right–To–Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) REQUIREMENTS. The curriculum maintained and updated under subsection (a) of this section—

(1) shall include—

(A) a recommended course of study to train public sector employees to respond to an accident or incident involving the transportation of hazardous material and to plan for those responses;

(B) recommended basic courses and minimum number of hours of instruction necessary for public sector employees to be able to respond safely and efficiently to an accident or incident involving the transportation of hazardous material and to plan those responses; and

(C) appropriate emergency response training and planning programs for public sector employees developed with Federal financial assistance, including programs developed with grants made under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

(2) may include recommendations on material appropriate for use in a recommended basic course described in clause (1)(B) of this subsection.

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS. A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

(1) regulations related to hazardous waste operations and emergency response contained in part 1910 of title 29, Code of Federal Regulations, prescribed by the Secretary of Labor;

(2) regulations related to worker protection standards for hazardous waste operations contained in part 311 of title 40, Code of Federal Regulations, prescribed by the Administrator; and

(3) standards related to emergency response training prescribed by the National Fire Protection Association and such other voluntary consensus standard–setting organizations as the Secretary of Transportation determines appropriate.

(d) DISTRIBUTION AND PUBLICATION. With the National Response Team—

(1) the Secretary shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right–To–Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary may publish and distribute a list of programs and courses maintained and updated under this section and of any programs utilizing such courses.[16]

49 USC 5116.

Sec. 5116. Planning and Training Grants, Monitoring, and Review

(a) Planning grants.

(1) The Secretary shall make grants to States and Indian tribes—

(A) to develop, improve, and carry out emergency plans under the Emergency Planning and Community Right–To–Know Act of 1986 (42 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous material on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe; and

(B) to decide on the need for a regional hazardous material emergency response team.

(2) The Secretary may make a grant to a State or Indian tribe under paragraph (1) of this subsection in a fiscal year only if —

(A) the State or Indian tribe certifies that the total amount the State or Indian tribe expends (except amounts of the United States Government) to develop, improve, and carry out emergency plans under the Act [42 USCS §§ 11001 et seq.] will at least equal the average level of expenditure for the last 5 fiscal years; and

(B) the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year to local emergency planning committees established under section 301(c) of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the Act [42 USCS §§ 11001 et seq.].

(3) A State or Indian tribe receiving a grant under this subsection shall ensure that planning under the grant is coordinated with emergency planning conducted by adjacent States and Indian tribes.

(b) Training grants.

(1) The Secretary shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material.

(2) The Secretary may make a grant under paragraph (1) of this subsection in a fiscal year—

(A) to a State or Indian tribe only if the State or tribe certifies that the total amount the State or tribe expends (except amounts of the Government) to train public sector employees to respond to an accident or incident involving hazardous material will at least equal the average level of expenditure for the last 5 fiscal years;

(B) to a State or Indian tribe only if the State or tribe makes an agreement with the Secretary that the State or tribe will use in that fiscal year, for training public sector employees to respond to an accident or incident involving hazardous material—

(i) a course developed or identified under section 5115 of this title [49 USCS § 5115]; or

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[16] Amended by P.L. 103–429, § 6(5), 108 Stat. 4378 (1994); P.L. 109–59, Title VII, Subtitle A, §§ 7113, 7126, 119 Stat. 1899, 1909 (2005).

(ii) another course the Secretary decides is consistent with the objectives of this section; and

(C) to a State only if the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year for training public sector employees a political subdivision of the State employs or uses.

(3) A grant under this subsection may be used—

(A) to pay—

(i) the tuition costs of public sector employees being trained;

(ii) travel expenses of those employees to and from the training facility;

(iii) room and board of those employees when at the training facility; and

(iv) travel expenses of individuals providing the training;

(B) by the State, political subdivision, or Indian tribe to provide the training; and

(C) to make an agreement the Secretary approves authorizing a person (including an authority of a State or political subdivision of a State or Indian tribe) to provide the training—

(i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and

(ii) if the State or tribe conducts at least one on–site observation of the training each year.

(4) The Secretary shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider—

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the tribe;

(B) the types and amounts of hazardous material transported in the State or on that land;

(C) whether the State or tribe imposes and collects a fee on transporting hazardous material;

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; and

(E) other factors the Secretary decides are appropriate to carry out this subsection.

(c) Compliance with certain law. The Secretary may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right–To–Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) Applications. A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) Government's share of costs. A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of the State or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part of the non–Government share under this subsection.

(f) Monitoring and technical assistance. In coordination with the Secretaries of Transportation and Energy, Administrator of the

Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the Director [Administrator] of the Federal Emergency Management Agency shall monitor public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the Secretaries, Administrator, and Directors each shall provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(g) Delegation of authority. To minimize administrative costs and to coordinate Federal financial assistance for emergency response training and planning, the Secretary may delegate to the Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences [Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences], Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

(1) authority to receive applications for grants under this section.

(2) authority to review applications for technical compliance with this section.

(3) authority to review applications to recommend approval or disapproval.

(4) any other ministerial duty associated with grants under this section.

(h) Minimizing duplication of effort and expenses. The Secretaries of Transportation, Labor, and Energy, Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences [Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences], Chairman of the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(i) Annual registration fee account and its uses. The Secretary of the Treasury shall establish an account in the Treasury (to be known as the "Hazardous Materials Emergency Preparedness Fund") into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title [49 USCS § 5108(g)(2)(C)]. Without further appropriation, amounts in the account are available—

(1) to make grants under this section;

(2) to monitor and provide technical assistance under subsection (f) of this section;

(3) to publish and distribute an emergency response guide; and

(4) to pay administrative costs of carrying out this section and sections 5108(g)(2) and 5115 of this title [49 USCS §§ 5108(g)(2) and 5115], except that not more than 2 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

(j) Supplemental training grants.

(1) In order to further the purposes of subsection (b), the Secretary shall, subject to the availability of funds, make grants to national nonprofit employee organizations engaged solely in fighting fires for the purpose of training instructors to conduct hazardous materials response training programs for individuals with statutory responsibility to respond to hazardous materials accidents and incidents.

(2) For the purposes of this subsection the Secretary, after consultation with interested organizations, shall—

(A) identify regions or locations in which fire departments or other organizations which provide emergency response to hazardous materials transportation accidents and incidents are in need of hazardous materials training; and

(B) prioritize such needs and develop a means for identifying additional specific training needs.

(3) Funds granted to an organization under this subsection shall only be used—

(A) to train instructors to conduct hazardous materials response training programs;

(B) to purchase training equipment used exclusively to train instructors to conduct such training programs; and

(C) to disseminate such information and materials as are necessary for the conduct of such training programs.

(4) The Secretary may only make a grant to an organization under this subsection in a fiscal year if the organization enters into an agreement with the Secretary to train instructors to conduct hazardous materials response training programs in such fiscal year that will use—

(A) a course or courses developed or identified under section 5115 of this title [49 USCS § 5115]; or

(B) other courses which the Secretary determines are consistent with the objectives of this subsection;

for training individuals with statutory responsibility to respond to accidents and incidents involving hazardous materials. Such agreement also shall provide that training courses shall be open to all such individuals on a nondiscriminatory basis.

(5) The Secretary may impose such additional terms and conditions on grants to be made under this subsection as the Secretary determines are necessary to protect the interests of the United States and to carry out the objectives of this subsection.

(k) Reports. The Secretary shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available to the public information on the allocation and uses of the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107 [49 USCS § 5107]. The report shall identify the ultimate recipients of training grants and include a detailed accounting of all grant expenditures by grant recipients, the number of persons trained under the grant programs, and an evaluation of the efficacy of training programs carried out.[17]

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[17] Amended by P.L. 103–311, Title I, §§ 105, 119(a), (d)(2), (3), 108 Stat. 1673, 1679, 1680 (1994); P.L. 103–429, § 7(c), 108 Stat. 4389 (1994); P.L. 104–287, §§ 5(8), 6(b), 110 Stat. 3389, 3398 (1996); P.L. 109–59, Title VII, Subtitle A, §§ 7114(a)–(d)(2), (e), 7126, 119 Stat. 1900, 1909 (2005).

49 USC 5117.

Sec. 5117. Special Permits and Exclusions

(a) Authority to issue special permits.

(1) As provided under procedures prescribed by regulation, the Secretary may issue, modify, or terminate a special permit authorizing a variance from this chapter [49 USCS §§ 5101 et seq.] or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title [49 USCS § 5103(b), 5104, 5110, or 5112] to a person performing a function regulated by the Secretary under section 5103(b)(1) [49 USCS § 5103(b)(1)] in a way that achieves a safety level—

(A) at least equal to the safety level required under this chapter [49 USCS §§ 5101 et seq.]; or

(B) consistent with the public interest and this chapter [49 USCS §§ 5101 et seq.], if a required safety level does not exist.

(2) A special permit issued under this section shall be effective for an initial period of not more than 2 years and may be renewed by the Secretary upon application for successive periods of not more than 4 years each or, in the case of a special permit relating to section 5112 [49 USCS § 5112], for an additional period of not more than 2 years.

(b) Applications. When applying for a special permit or renewal of a special permit under this section, the person must provide a safety analysis prescribed by the Secretary that justifies the special permit. The Secretary shall publish in the Federal Register notice that an application for a special permit has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. This subsection does not require the release of information protected by law from public disclosure.

(c) Applications to be dealt with promptly. The Secretary shall issue or renew the special permit for which an application was filed or deny such issuance or renewal within 180 days after the first day of the month following the date of the filing of such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the special permit is delayed, along with an estimate of the additional time necessary before the decision is made.

(d) Exclusions.

(1) The Secretary shall exclude, in any part, from this chapter [49 USCS §§ 5101 et seq.] and regulations prescribed under this chapter [49 USCS §§ 5101 et seq.]—

(A) a public vessel (as defined in section 2101 of title 46);

(B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46 [46 USCS §§ 3701 et seq.]; and

(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

(2) This chapter [49 USCS §§ 5101 et seq.] and regulations prescribed under this chapter [49 USCS §§ 5101 et seq.] do not prohibit—

(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

(B) transportation of a firearm or ammunition in commerce.

(e) Limitation on authority. Unless the Secretary decides that an emergency exists, a special permit or renewal granted under this section is the only way a person subject to this chapter [49 USCS §§ 5101 et

seq.] may be granted a variance from this chapter [49 USCS §§ 5101 et seq.].[18]

49 USC 5118. **Sec. 5118. Inspectors [Repealed]**[19]

49 USC 5119. **Sec. 5119. Uniform Forms and Procedures**

(a) ESTABLISHMENT OF WORKING GROUP. The Secretary shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the National Conference of State Legislatures, and the Alliance for Uniform Hazmat Transportation Procedures.

(b) PURPOSE OF WORKING GROUP. The purpose of the working group shall be to develop uniform forms and procedures for a State to register, and to issue permits to, persons that transport, or cause to be transported, hazardous material by motor vehicle in the State.

(c) LIMITATION ON WORKING GROUP. The working group may not propose to define or limit the amount of a fee a State may impose or collect.

(d) PROCEDURE. The Secretary shall develop a procedure for the working group to employ in developing recommendations for the Secretary to harmonize existing State registration and permit laws and regulations relating to the transportation of hazardous materials, with special attention paid to each State's unique safety concerns and interest in maintaining strong hazmat safety standards.

(e) REPORT OF WORKING GROUP. Not later than 18 months after the date of enactment of this subsection [enacted Aug. 10, 2005], the working group shall transmit to the Secretary a report containing recommendations for establishing uniform forms and procedures described in subsection (b).

(f) REGULATIONS. Not later than 18 months after the date the working group's report is delivered to the Secretary, the Secretary shall issue regulations to carry out such recommendations of the working group as the Secretary considers appropriate. In developing such regulations, the Secretary shall consider the State needs associated with the transition to and implementation of a uniform forms and procedures program.

(g) LIMITATION ON STATUTORY CONSTRUCTION. Nothing in this section shall be construed as prohibiting a State from voluntarily participating in a program of uniform forms and procedures until such time as the Secretary issues regulations under subsection (f).[20]

49 USC 5120. **Sec. 5120. International Uniformity of Standards and Requirements**

(a) PARTICIPATION IN INTERNATIONAL FORUMS. Subject to guidance and direction from the Secretary of State, the Secretary of Transportation shall participate in international forums that establish or recommend mandatory standards and requirements for transporting hazardous material in international commerce.

(b) CONSULTATION. The Secretary may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this title [49 USCS §§ 5103(b), 5104, 5110, and 5112] are consistent with

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[18] Amended by P.L. 103–311, Title I, § 120(a), 108 Stat. 1680 (1994); P.L. 109–59, Title VII, Subtitle A, §§ 7115(a)(1), (b)–(g), 7126, 119 Stat. 1901, 1909 (2005).

[19] Repealed by P.L. 109–59, Title VII, Subtitle A, § 7115(h), 119 Stat. 1901 (2005).

[20] Amended by P.L. 104–287, § 5(9), 110 Stat. 3389 (1996); P.L. 109–59, Title VII, Subtitle A, § 7116, 119 Stat. 1901 (2005).

standards and requirements related to transporting hazardous material that international authorities adopt.

(c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS. This section—

(1) does not require the Secretary to prescribe a standard or requirement identical to a standard or requirement adopted by an international authority if the Secretary decides the standard or requirement is unnecessary or unsafe; and

(2) does not prohibit the Secretary from prescribing a safety standard or requirement more stringent than a standard or requirement adopted by an international authority if the Secretary decides the standard or requirement is necessary in the public interest.[21]

49 USC 5121.

Sec. 5121. Administrative

(a) GENERAL AUTHORITY. To carry out this chapter [49 USCS §§ 5101 et seq.], the Secretary may investigate, conduct tests, make reports, issue subpenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. Except as provided in subsections (c) and (d), after notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter [49 USCS §§ 5101 et seq.] or a regulation prescribed, or an order, special permit, or approval issued, under this chapter [49 USCS §§ 5101 et seq.].

(b) RECORDS, REPORTS, AND INFORMATION. A person subject to this chapter [49 USCS §§ 5101 et seq.] shall—

(1) maintain records and property, make reports, and provide information the Secretary by regulation or order requires; and

(2) make the records, property, reports, and information available for inspection when the Secretary undertakes an investigation or makes a request.

(c) INSPECTIONS AND INVESTIGATIONS.

(1) In general. A designated officer, employee, or agent of the Secretary—

(A) may inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1) [49 USCS § 5103(b)(1)];

(B) except in the case of packaging immediately adjacent to its hazardous material contents, may gain access to, open, and examine a package offered for, or in, transportation when the officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material;

(C) may remove from transportation a package or related packages in a shipment offered for or in transportation for which—

(i) such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

(ii) such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

(D) may gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package, to ascertain the nature and hazards of the contents of the package;

(E) as necessary, under terms and conditions specified by the Secretary, may order the offeror, carrier, packaging manufacturer or

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[21] Amended by P.L. 109–59, Title VII, Subtitle A, §§ 7117, 7126, 119 Stat. 1902, 1909 (2005).

tester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis; and

(F) when safety might otherwise be compromised, may authorize properly qualified personnel to assist in the activities conducted under this subsection.

(2) Display of credentials. An officer, employee, or agent acting under this subsection shall display proper credentials when requested.

(3) Safe resumption of transportation. In instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist—

(A) in the safe and prompt resumption of transportation of the package concerned; or

(B) in any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material.

(d) EMERGENCY ORDERS.

(1) In general. If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a provision of this chapter [49 USCS §§ 5101 et seq.], or a regulation prescribed under this chapter [49 USCS §§ 5101 et seq.], or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out–of–service orders, without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

(2) Written orders. The action of the Secretary under paragraph (1) shall be in a written emergency order that—

(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

(B) states the restrictions, prohibitions, recalls, or out–of–service orders issued or imposed; and

(C) describes the standards and procedures for obtaining relief from the order.

(3) Opportunity for review. After taking action under paragraph (1), the Secretary shall provide for review of the action under section 554 of title 5 [5 USCS § 554] if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.

(4) Expiration of effectiveness of order. If a petition for review of an action is filed under paragraph (3) and the review under that paragraph is not completed by the end of the 30–day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

(5) Out–of–service order defined. In this subsection, the term "out–of–service order" means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

(e) REGULATIONS.

(1) Temporary regulations. Not later than 60 days after the date of enactment of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 [enacted Aug. 10, 2005], the Secretary shall issue temporary regulations to carry out subsections (c) and (d). The

temporary regulations shall expire on the date of issuance of the regulations under paragraph (2).

(2) Final regulations. Not later than 1 year after such date of enactment, the Secretary shall issue regulations to carry out subsections (c) and (d) in accordance with subchapter II of chapter 5 of title 5 [5 USCS §§ 551 et seq.].

(f) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.

(1) The Secretary shall—

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous;

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material; and

(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(g) GRANTS AND COOPERATIVE AGREEMENTS. The Secretary may enter into grants and cooperative agreements with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

(2) to enhance emergency communications capacity as determined necessary by the Secretary, including the use of integrated, interoperable emergency communications technologies where appropriate;

(3) to conduct research, development, demonstration, risk assessment, and emergency response planning and training activities; or

(4) to otherwise carry out this chapter [49 USCS §§ 5101 et seq.].

(h) REPORT. The Secretary shall, once every 2 years, prepare and transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. The report shall include—

(1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;

(2) a list and summary of applicable Government regulations, criteria, orders, and special permits;

(3) a summary of the basis for each special permit;

(4) an evaluation of the effectiveness of enforcement activities relating to a function regulated by the Secretary under section 5103(b)(1) [49 USCS § 5103(b)(1)] and the degree of voluntary compliance with regulations;

(5) a summary of outstanding problems in carrying out this chapter [49 USCS §§ 5101 et seq.] in order of priority; and

(6) recommendations for appropriate legislation.[22]

49 USC 5122. **Sec. 5122. Enforcement**

(a) GENERAL. At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter [49 USCS §§ 5101 et seq.] or a regulation prescribed or order, special permit, or approval issued under this chapter [49 USCS §§ 5101 et seq.]. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123 [49 USCS § 5123].

(b) IMMINENT HAZARDS.

(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States—

(A) to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

(B) to eliminate or mitigate the hazard.

(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.

(c) WITHHOLDING OF CLEARANCE.

(1) If any owner, operator, or individual in charge of a vessel is liable for a civil penalty under section 5123 of this title [49 USCS § 5123] or for a fine under section 5124 of this title [49 USCS § 5124], or if reasonable cause exists to believe that such owner, operator, or individual in charge may be subject to such a civil penalty or fine, the Secretary of Homeland Security, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 60105 of title 46.

(2) Clearance refused or revoked under this subsection may be granted upon the filing of a bond or other surety satisfactory to the Secretary.[23]

49 USC 5123. **Sec. 5123. Civil Penalty**

(a) PENALTY.

(1) A person that knowingly violates this chapter [49 USCS §§ 5101 et seq.] or a regulation, order, special permit, or approval issued under this chapter [49 USCS §§ 5101 et seq.] is liable to the United States Government for a civil penalty of at least $ 250 but not more than $ 50,000 for each violation. A person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person or substantial destruction of property, the Secretary may increase the amount of the civil penalty for such violation to not more than $ 100,000.

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[22] Amended by P.L. 103–311, Title I, §§ 108, 117(a)(2), 108 Stat. 1674, 1678 (1994); P.L. 109–59, Title VII, Subtitle A, §§ 7118, 7126, 119 Stat. 1902, 1909 (2005); P.L. 110–244, Title II, § 302(e), 122 Stat. 1618 (2008).

[23] Amended by P.L. 104–324, Title III, § 312(a), 110 Stat. 3920 (1996); P.L. 109–59, Title VII, Subtitle A, §§ 7119, 7126, 119 Stat. 1905, 1909 (2005); P.L. 109–304, § 17(h)(1), 120 Stat. 1709 (2006).

(3) If the violation is related to training, paragraph (1) shall be applied by substituting "$ 450" for "$ 250".

(4) A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) HEARING REQUIREMENT. The Secretary may find that a person has violated this chapter [49 USCS §§ 5101 et seq.] or a regulation prescribed or order, special permit, or approval issued under this chapter [49 USCS §§ 5101 et seq.] only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

(c) PENALTY CONSIDERATIONS. In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) other matters that justice requires.

(d) CIVIL ACTIONS TO COLLECT. The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

(e) COMPROMISE. The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(f) SETOFF. The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(g) DEPOSITING AMOUNTS COLLECTED. Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.[24]

49 USC 5124.

Sec. 5124. Criminal Penalty

(a) IN GENERAL. A person knowingly violating section 5104(b) [49 USCS § 5104(b)] or willfully or recklessly violating this chapter [49 USCS §§ 5101 et seq.] or a regulation, order, special permit, or approval issued under this chapter [49 USCS §§ 5101 et seq.] shall be fined under title 18, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

(b) KNOWING VIOLATIONS. For purposes of this section—

(1) a person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

(2) knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary, is not an element of an offense under this section.

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[24] Amended by P.L. 109–59, Title VII, Subtitle A, §§ 7120(a)–(c), 7126, 119 Stat. 1905, 1909 (2005).

(c) WILLFUL VIOLATIONS. For purposes of this section, a person acts willfully when—

(1) the person has knowledge of the facts giving rise to the violation; and

(2) the person has knowledge that the conduct was unlawful.

(d) RECKLESS VIOLATIONS. For purposes of this section, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of that person's conduct.[25]

49 USC 5125.

Sec. 5125. Preemption

(a) GENERAL. Except as provided in subsections (b), (c), and (e) of this section and unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter [49 USCS §§ 5101 et seq.], a regulation prescribed under this chapter [49 USCS §§ 5101 et seq.], or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter [49 USCS §§ 5101 et seq.], a regulation prescribed under this chapter [49 USCS §§ 5101 et seq.], or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

(b) SUBSTANTIVE DIFFERENCES.

(1) Except as provided in subsection (c) of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter [49 USCS §§ 5101 et seq.], a regulation prescribed under this chapter [49 USCS §§ 5101 et seq.], or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

(2) If the Secretary prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title [49 USCS § 5103(b), 5104, 5110, or 5112] or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter [49

[25] Amended by P.L. 109–59, Title VII, Subtitle A, § 7121, 119 Stat. 1906 (2005).

USCS §§ 5101 et seq.] or a regulation prescribed or order issued under this chapter [49 USCS §§ 5101 et seq.]. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title [49 USCS § 5103(b)] for any regulation or standard about any of those subjects that the Secretary prescribes. The effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2–year period beginning on the date the Secretary prescribes the regulation or standard.

(3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

(c) COMPLIANCE WITH SECTION 5112(B) REGULATIONS.

(1) Except as provided in paragraph (2) of this subsection, after the last day of the 2–year period beginning on the date a regulation is prescribed under section 5112(b) of this title [49 USCS § 5112(b)], a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b) [49 USCS § 5112(b)].

(2) (A) A highway routing designation, limitation, or requirement established before the date a regulation is prescribed under section 5112(b) of this title [49 USCS § 5112(b)] does not have to comply with section 5112(b)(1)(B), (C), and (F) [49 USCS § 5112(b)(1)(B), (C) and (F)].

(B) This subsection and section 5112 of this title [49 USCS § 5112] do not require a State or Indian tribe to comply with section 5112(b)(1)(I) [49 USCS § 5112(b)(1)(I)] if the highway routing designation, limitation, or requirement was established before November 16, 1990.

(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this title [49 USCS § 5112(d)].

(d) DECISIONS ON PREEMPTION.

(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a), (b)(1), or (c) of this section or section 5119(f) [49 USCS § 5119(f)]. The Secretary shall publish notice of the application in the Federal Register. The Secretary shall issue a decision on an application for a determination within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.

(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court of competent jurisdiction instead of applying to the Secretary under paragraph (1) of this subsection.

(e) WAIVER OF PREEMPTION. A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section or section 5119(f). Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

(1) provides the public at least as much protection as do requirements of this chapter [49 USCS §§ 5101 et seq.] and regulations prescribed under this chapter [49 USCS §§ 5101 et seq.]; and

(2) is not an unreasonable burden on commerce.

(f) FEES.

(1) A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

(2) A State or political subdivision thereof or Indian tribe that levies a fee in connection with the transportation of hazardous materials shall, upon the Secretary's request, report to the Secretary on—

(A) the basis on which the fee is levied upon persons involved in such transportation;

(B) the purposes for which the revenues from the fee are used;

(C) the annual total amount of the revenues collected from the fee; and

(D) such other matters as the Secretary requests.

(g) APPLICATION OF EACH PREEMPTION STANDARD. Each standard for preemption in subsection (a), (b)(1), or (c), and in section 5119(f) [49 USCS § 5119(f)], is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

(h) NON–FEDERAL ENFORCEMENT STANDARDS. This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.[26]

49 USC 5126.

Sec. 5126. Relationship to Other Laws

(a) CONTRACTS. A person under contract with a department, agency, or instrumentality of the United States Government that transports hazardous material, or causes hazardous material to be transported, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented as qualified for use in transporting hazardous material shall comply with this chapter [49 USCS §§ 5101 et seq.], regulations prescribed and orders issued under this chapter [49 USCS §§ 5101 et seq.], and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement

[26] Amended by P.L. 103–311, Title I, §§ 107, 117(a)(2), 120(b), 108 Stat. 1674, 1678, 1681 (1994); P.L. 103–429, § 6(6), 108 Stat. 4378 (1994); P.L. 107–296, Title XVII, § 1711(b), 116 Stat. 2320 (2002); P.L. 109–59, Title VII, Subtitle A, §§ 122, 7123(a), 7126, 119 Stat. 1907, 1909 (2005); P.L. 110–244, Title III, § 302(c), 122 Stat. 1618 (2008).

preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION. This chapter [49 USCS §§ 5101 et seq.] does not apply to—

(1) a pipeline subject to regulation under chapter 601 of this title [49 USCS §§ 60101 et seq.]; or

(2) any matter that is subject to the postal laws and regulations of the United States under this chapter [49 USCS §§ 5101 et seq.] or title 18 or 39.[27]

49 USC 5127.

Sec. 5127. Judicial Review

(a) FILING AND VENUE. Except as provided in section 20114(c) [49 USCS § 20114(c)], a person adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not more than 60 days after the Secretary's action becomes final.

(b) JUDICIAL PROCEDURES. When a petition is filed under subsection (a), the clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued, as provided in section 2112 of title 28 [28 USCS § 2112].

(c) AUTHORITY OF COURT. The court has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5 [5 USCS §§ 551 et seq.], to affirm or set aside any part of the Secretary's final action and may order the Secretary to conduct further proceedings.

(d) REQUIREMENT FOR PRIOR OBJECTION. In reviewing a final action under this section, the court may consider an objection to a final action of the Secretary only if the objection was made in the course of a proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.[28]

49 USC 5128.

Sec. 5128. Authorization of Appropriations

(a) IN GENERAL. In order to carry out this chapter [49 USCS §§ 5101 et seq.] (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119 [49 USCS §§ 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119]), the following amounts are authorized to be appropriated to the Secretary:

(1) For fiscal year 2005, $ 24,940,000.

(2) For fiscal year 2006, $ 29,000,000.

(3) For fiscal year 2007, $ 30,000,000.

(4) For fiscal year 2008, $ 30,000,000.

(b) HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND. There shall be available to the Secretary, from the account established pursuant to section 5116(i) [49 USCS § 5116(i)], for each of fiscal years 2005 through 2008 the following:

(1) To carry out section 5115 [49 USCS § 5115], $ 200,000.

(2) To carry out sections 5116(a) and (b) [49 USCS § 5116(a) and (b)], $ 21,800,000 to be allocated as follows:

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[27] Amended by P.L. 103–311, Title I, § 117(a)(2), 108 Stat. 1678 (1994); P.L. 109–59, Title VII, Subtitle A, § 7124, 119 Stat. 1908 (2005); P.L. 110–244, Title III, § 302(d), 122 Stat. 1618 (2008).

[28] Added P.L. 109–59, Title VII, Subtitle A, § 7123(b), 119 Stat. 1907 (2005).

(A) $ 5,000,000 to carry out section 5116(a) [49 USCS § 5116(a)].

(B) $ 7,800,000 to carry out section 5116(b) [49 USCS § 5116(b)].

(C) of the amount provided for by this paragraph for a fiscal year in excess of the suballocations in subparagraphs (A) and (B)—

(i) 35 percent shall be used to carry out section 5116(a) [49 USCS § 5116(a)]; and

(ii) 65 percent shall be used to carry out section 5116(b) [49 USCS § 5116(b)],

except that the Secretary may increase the proportion to carry out section 5116(b) [49 USCS § 5116(b)] and decrease the proportion to carry out section 5116(a) [49 USCS § 5116(a)] if the Secretary determines that such reallocation is appropriate to carry out the intended uses of these funds as described in the applications submitted by States and Indian tribes.

(3) To carry out section 5116(f) [49 USCS § 5116(f)], $ 150,000.

(4) To publish and distribute the Emergency Response Guidebook under section 5116(i)(3) [49 USCS § 5116(i)(3)], $ 625,000.

(5) To carry out section 5116(j) [49 USCS § 5116(j)], $ 1,000,000.

(c) HAZMAT TRAINING GRANTS. There shall be available to the Secretary, from the account established pursuant to section 5116(i) [49 USCS § 5116(i)], to carry out section 5107(e) [49 USCS § 5107(e)] $ 4,000,000 for each of fiscal years 2005 through 2008.

(d) ISSUANCE OF HAZMAT LICENSES. There are authorized to be appropriated for the Department of Transportation such amounts as may be necessary to carry out section 5103a [49 USCS § 5103a].

(e) CREDITS TO APPROPRIATIONS. The Secretary may credit to any appropriation to carry out this chapter [49 USCS §§ 5101 et seq.] an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

(f) AVAILABILITY OF AMOUNTS. Amounts made available by or under this section remain available until expended.[29]

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[29] Amended by P.L. 103–311, Title I, §§ 103, 119(b), (c)(4), 108 Stat. 1673, 1680 (1994); P.L. 109–59, Title VII, Subtitle A, §§ 7123(b), 7125, 119 Stat. 1907, 1908 (2005); P.L. 110–244, Title III, § 302(f), 122 Stat. 1618 (2008).

B. AIR TRANSPORTATION OF PLUTONIUM—(P.L. 94-79)[1]

42 USC 5841. Note.

Sec. 201.

Section 201(a) of the Energy Reorganization Act of 1974 is amended:

The Nuclear Regulatory Commission shall not license any shipments by air transport of plutonium in any form, whether exports, imports or domestic shipments: *Provided, however,* That any plutonium in any form contained in a medical device designed for individual human application is not subject to this restriction. This restriction shall be in force until the Nuclear Regulatory Commission has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast–testing equivalent to the crash and explosion of a high–flying aircraft.

* * * *

C. AIR TRANSPORTATION OF PLUTONIUM—(P.L. 94–187)

42 USC 5817. Note.

Sec. 501.

The Energy Research and Developments Administration shall not ship plutonium in any form by aircraft whether exports, imports, or domestic shipment: *Provided*, that any exempts shipments of plutonium, as defined by section 502, are not subject to this restriction. This restriction shall be in force until the Energy Research and Development Administration has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast testing equivalent to the crash and explosion of a high–flying aircraft.

42 USC 5817. Note.

Sec. 502.

For the purpose of this title, the term "exempt shipments of plutonium" shall include the following:

(1) Plutonium shipments in any form designed for medical application.

(2) Plutonium shipments which pursuant to rules promulgated by the Administrator of the Energy Research and Development Administration are determined to be made for purposes of national security, public health and safety, or emergency maintenance operations.

(3) Shipments of small amounts of plutonium deemed by the Administrator of the Energy Research and Development Administration to require rapid shipment by air in order to preserve the chemical, physical, or isotopic properties of the transported item or material.

* * * *

[1] This section consists of § 201 of P.L. 94–79, 89 Stat. 413, enacted on August 9, 1975. The paragraph shown appears in the United States Code at 42 U.S.C. 5841 note.

D. SECTION 5062 OF OMNIBUS BUDGET RECONCILIATION ACT OF 1987 REGARDING AIR TRANSPORTATION OF PLUTONIUM

P.L. 100–202 AND 100–203

42 USC 5841. Note.

Sec. 5062. Transportation of Plutonium by Aircraft Through United States Air Space

(a)[1] IN GENERAL–Notwithstanding any other provision of law, no form of plutonium may be transported by aircraft through the air space of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with subsection (b), the second undesignated paragraph under section 201 of Public Law 94–79 (89 Stat. 413; 42 USC 5841 note), and all other applicable laws.

(b) RESPONSIBILITIES OF THE NUCLEAR REGULATORY COMMISSION–

(1) DETERMINATION OF SAFETY–The Nuclear Regulatory Commission shall determine whether the container referred to in subsection (a) is safe for use in the transportation of plutonium by aircraft and transmit to Congress a certification for the purposes of such subsection in the case of each container determined to be safe.

(2) TESTING–In order to make a determination with respect to a container under paragraph (1), the Nuclear Regulatory Commission shall–

(A) require an actual drop test from maximum cruising altitude of a full–scale sample of such container loaded with test materials; and

(B) require an actual crash test of a cargo aircraft fully loaded with full–scale samples of such container loaded with test material unless the Commission determines, after consultation with an independent scientific review panel, that the stresses on the container produced by other tests used in developing the container exceed the stresses which would occur during a worst case plutonium air shipment accident.

(3) LIMITATION–The Nuclear Regulatory Commission may not certify under this section that a container is safe for use in the transportation of plutonium by aircraft if the container ruptured or released its contents during testing conducted in accordance with paragraph (2).

(4) EVALUATION–The Nuclear Regulatory Commission shall evaluate the container certification required by title II of the Energy Reorganization Act of 1974 (42 USC 5841 *et seq.*) and subsection (a) in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 USC 4321 *et seq.*) and all other applicable law.

(c) CONTENT OF CERTIFICATION–A certification referred to in subsection (a) with respect to a container shall include–

(1) the determination of the Nuclear Regulatory Commission as to the safety of such container;

(2) a statement that the requirements of subsection (b)(2) were satisfied in the testing of such container; and

---

[1] This title consists of § 5062 of P.L. 100–203, 101 Stat. 1330–251, (1987), and was also enacted in identical form by P.L. 100–202, 101 Stat. 1329–121, (1987). The section appears in the United States Code at 42 U.S.C. 5841 note.

(3) a statement that the container did not rupture or release its contents into the environment during testing.

(d) DESIGN OF TESTING PROCEDURES–The tests required by subsection (b) shall be designed by the Nuclear Regulatory Commission to replicate actual worst case transportation conditions to the maximum extent practicable. In designing such tests, the Commission shall provide for public notice of the proposed test procedures, provide a reasonable opportunity for public comment on such procedures, and consider such comments, if any.

(e) TESTING RESULTS: REPORTS AND PUBLIC DISCLOSURE –The Nuclear Regulatory Commission shall transmit to Congress a report on the results of each test conducted under this section and shall make such results available to the public.

President of U.S.

(f) ALTERNATIVE ROUTES AND MEANS OF TRANSPORTATION–With respect to any shipments of plutonium from a foreign nation to a foreign nation which are subject to United States consent rights contained in an Agreement for Peaceful Nuclear Cooperation, the President is authorized to make every effort to pursue and conclude arrangements for alternative routes and means of transportation, including sea shipment. All such arrangements shall be subject to stringent physical security conditions, and other conditions designed to protect the public health and safety, and provisions of this section, and all other applicable laws.

(g) INAPPLICABILITY TO MEDICAL DEVICES–Subsections (a) through (e) shall not apply with respect to plutonium in any form contained in a medical device designed for individual human application.

(h) INAPPLICABILITY TO MILITARY USES–Subsections (a) through (e) shall not apply to plutonium in the form of nuclear weapons nor to other shipments of plutonium determined by the Department of Energy to be directly connected with the United States national security or defense programs.

(i) INAPPLICABILITY TO PREVIOUSLY CERTIFIED CONTAINERS–This section shall not apply to any containers for the shipment of plutonium previously certified as safe by the Nuclear Regulatory Commission under Public Law 94–79 (89 Stat. 413; 42 USC 5841 note).

(j) PAYMENT OF COSTS–All costs incurred by the Nuclear Regulatory Commission associated with the testing program required by this section, and administrative costs related thereto, shall be reimbursed to the Nuclear Regulatory Commission by any foreign country receiving plutonium shipped through United States airspace in containers specified by the Commission.

* * * *

E. SHIPMENTS OF PLUTONIUM BY SEA

P.L. 102–486

Sec. 2904. Study and Implementation Plan on Safety of Shipments of Plutonium by Sea[1]

(a) STUDY–The President, in consultation with the Nuclear Regulatory Commission, shall conduct a study on the safety of shipments of plutonium by sea. The study shall consider the following:

(1) The safety of the casks containing the plutonium.

(2) The safety risks to the States of such shipments.

(3) Upon the request of any State, the adequacy of that State's emergency plans with respect to such shipments.

(4) The Federal resources needed to assist the States on account of such shipments.

(b) REPORT–The President shall, not later than 60 days after the date of the enactment of this Act, transmit to the Congress a report on the study conducted under subsection (a), together with his recommendations based on the study.

(c) IMPLEMENTATION PLAN–The President, in consultation with the Nuclear Regulatory Commission, shall establish a plan to implement the recommendations contained in the study conducted under subsection (a) and shall, not later than 90 days after transmitting the report to the Congress under subsection (b), transmit to the Congress that implementation plan.

(d) DEFINITION–As used in this section, the term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

* * * *

[1] This title consists of § 2904 of the Energy Policy Act of 1992, P.L. 102–486, 106 Stat. 2776, (1992), and does not appear in the United States Code.

F. SECTION 411 OF RAIL SAFETY IMPROVEMENT ACT OF 2008

P.L. 110-432

49 USC 5103. Note.

Sec. 411. Railroad Carrier Employee Exposure to Radiation Study

(a) STUDY.—The Secretary of Transportation shall, in consultation with the Secretary of Energy, the Secretary of Labor, the Administrator of the Environmental Protection Agency, and the Chairman of the Nuclear Regulatory Commission, as appropriate, conduct a study of the potential hazards to which employees of railroad carriers and railroad contractors or subcontractors are exposed during the transportation of high–level radioactive waste and spent nuclear fuel (as defined in section 5101(a) of title 49, United States Code), supplementing the report submitted under section 5101(b) of that title, which may include—

(1) an analysis of the potential application of ''as low as reasonably achievable'' principles for exposure to radiation to such employees with an emphasis on the need for special protection from radiation exposure for such employees during the first trimester of pregnancy or who are undergoing or have recently undergone radiation therapy;

(2) the feasibility of requiring real–time dosimetry monitoring for such employees;

(3) the feasibility of requiring routine radiation exposure monitoring in fixed railroad locations, such as yards and repair facilities; and

(4) a review of the effectiveness of the Department's packaging requirements for radioactive materials.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall transmit a report on the results of the study required by subsection (a) and any recommendations to further protect employees of a railroad carrier or of a contractor or subcontractor to a railroad carrier from unsafe exposure to radiation during the transportation of high–level radioactive waste and spent nuclear fuel to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(c) REGULATORY AUTHORITY.—The Secretary of Transportation may issue regulations that the Secretary determines appropriate, pursuant to the report required by subsection (b), to protect railroad employees from unsafe exposure to radiation during the transportation of radioactive materials.

2. User Fees

2. User Fees

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A. TITLE V OF THE INDEPENDENT OFFICES APPROPRIATIONS ACT OF 1952

Public Law 82–137 **65 Stat. 268**

AUGUST 31, 1951

31 USC 9701.

Sec. 9701. Fees and Charges for Government Services and Things of Value

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed–ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self–sustaining to the extent possible.

(b) The head of each agency (except a mixed–ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be–

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States—

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.

B. PERTINENT PROVISIONS OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990, AS AMENDED

Public Law 101–508 **104 Stat. 1388**

NOVEMBER 5, 1990

Title VI–Energy and Environmental Programs

Subtitle B–NRC User Fees and Annual Charges

42 USC 2214. **Sec. 6101. NRC User Fees and Annual Charges**

(a) ANNUAL ASSESSMENT–

(1) IN GENERAL–The Nuclear Regulatory Commission (in this section referred to as the "Commission") shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

(2) FIRST ASSESSMENT–The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.

(3)[1]

(b) FEES FOR SERVICE OR THING OF VALUE–Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

(c) ANNUAL CHARGES–

42 USC 2214. (1) PERSONS SUBJECT TO CHARGE–Except as provided in paragraph (4), any licensee or certificate holder of the Commission may be required to pay, in addition to the fees set forth in subsection (b), an annual charge.

(2) AGGREGATE AMOUNT OF CHARGES–

(A) The aggregate amount of the annual charge collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year stated in subparagraph (B), less–

(i) amounts collected under subsection (b) during the fiscal year;

(ii) amounts appropriated to the Commission from the Nuclear Waste Fund for the fiscal year;

(iii) amounts appropriated to the Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; and

(iv) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 942 U.S.C. 2169) and the costs of conducting security inspections.[2]

(B) Percentages–The percentages referred to in subparagraph A) are–

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[1] Paragraphs (1) and (3) amended by P.L. 109–58, § 637, 119 Stat. 791, (2005).

[2] Amended by P.L. 109–58, § 637, 119 Stat. 791, (2005).

(i) 98 percent for fiscal year 2001;
(ii) 96 percent for fiscal year 2002;
(iii) 94 percent for fiscal year 2003;
(iv) 92 percent for fiscal year 2004; and
(v) 90 percent for fiscal year 2005[3] and each fiscal year thereafter.[4]

(3) AMOUNT PER LICENSEE–The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.

(4) EXEMPTION–

(A) IN GENERAL–Paragraph (1) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

(B) RESEARCH REACTOR.–For purposes of subparagraph (A), the term "research reactor" means a nuclear reactor that–

(i) is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 USC 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

(ii) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain–

(I) a circulating loop through the core in which the licensee conducts fuel experiments;

(II) a liquid fuel loading; or

(III) an experimental facility in the core in excess of 16 square inches in cross–section.

(d) DEFINITION–As used in this section, the term "Nuclear Waste Fund" means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 USC 10222(c)).

42 USC 2213.

(e) REPEALED: Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (42 USC 2213) is repealed.[5]

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[3] Amended by P.L. 105–245, Title V, § 505, 112 Stat. 1856, (1998); P.L. 106–60, Title VI, § 604, 113 Stat. 501, (1999); P.L. 106–377, § 1(a)(2),Title VIII, 114 Stat. 1441, 1441A–86 (2000); P.L. 109–58, § 637, 119 Stat. 791, (2005); P.L. 109–103, Title IV, 119 Stat. 2283, (2005).

[4] These fees were established in P.L. 106–377, (2000), and made permanent by P.L. 109–58, (2005). Previously, fees were established as follows: 33 percent in P.L. 99–272, (1986); 45 percent in P.L. 100–203, (1987); 100 percent in P.L. 101–508, (1990).

[5] Amended by P.L. 109–58, § 637(b), 119 Stat. 791, (2005), which repealed § 7601. Note: The prior language read as follows:

(e) CONFORMING AMENDMENT TO COBRA.–Paragraph(1)(a) of § 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99–272) is Amended by striking "except that for fiscal year of 1990 such maximum amount shall be estimated to be equal to 45 percent of the costs incurred by the Commission for fiscal year 1990" and inserting "except as otherwise provided by law."

3. Administrative Law Statutes

3. Administrative Law Statutes

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A. ADMINISTRATIVE PROCEDURES (5 U.S.C. 551–559)

Subchapter II–Administrative Procedures

5 USC 551.

Sec. 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; Subchapter II of chapter 471 of title 49; or sections 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 a 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 valuations, 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 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, amendments, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency–

(A) prohibition requirement, limitations, 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;

(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; and

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this Subchapter;

(P.L. 89–554, Sept. 6, 1966, 80 Stat. 381; amended P.L. 94–409, Sept. 13, 1976, 90 Stat. 1247.); Pub.L. 103–272, § 5(a), July 5, 1994, 108 Stat. 1373.

5 USC 552.

Sec. 552. Public Information; Agency Rules, Opinions, Orders, Records, and Proceeding

(a)[1] 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

[1] Amended by P.L. 104–231, 110 Stat. 3049–3054 (1996).

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;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D); unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. 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, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. 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. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. 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)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E),[2] each agency, upon any request for records which (i) reasonably describes such records and (ii) 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.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).[3]

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that–

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

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[2] Amended by P.L. 107–306, § 312, 116 Stat. 2383 (2002).

[3] Amended by P.L. 107–306, § 312, 116 Stat. 2383 (2002).

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

In this clause, the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term 'news' means information that is about current events or that would be of current interest to the public. Examples of news–media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all–inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news–media entities. A freelance journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.[4]

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section–

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or;

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

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[4] Amended by P.L. 110–175, § 3, 121 Stat. 2524 (2007).

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter *de novo*: Provided, That the court's review of the matter shall be limited to the record before the agency.

(viii) An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request.[5]

(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. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2C) and subsection (b) and reproducibility under paragraph (3B).

(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) Repealed. Public Law 98–620, title IV, section 402(2), Nov. 8, 1984, 98 Stat. 3357.

(E)(i) 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.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

(I) a judicial order, or an enforceable written agreement
or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.[6]

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses

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[5] Amended by P.L. 110–175, § 6(b)(1)(A), 121 Stat. 2524 (2007), which became effective December 31, 2008.

[6] Amended by P.L. 110–175, § 4(a), 121 Stat. 2524 (2007).

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 Special Counsel 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 Special Counsel, after investigation and consideration of the evidence submitted, shall submit his 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 of his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall—

(I) notify the Special Counsel of each civil action described
under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).[7]

(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 20 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.

The 20–day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20–day period shall not be tolled by the agency except—

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[7] Amended by P.L. 110–175, § 5, 121 Stat. 2524 (2007).

(I) that the agency may make one request to the requester for information and toll the 20–day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period. [8]

(B)(i) 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 settling forth the unusual circumstances 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, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.[9] Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests–

(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.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the

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[8] Amended by P.L. 110–175, § 6(a)(1), 121 Stat. 2524 (2007), which became effective December 31, 2008.

[9] Amended by P.L. 110–175, § 6(b)(1)(B), 121 Stat. 2524 (2007), which became effective December 31, 2008.

aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) 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 any 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.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records–

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure–

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making

the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means–

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.[10]

(b) This section does not apply to matters that are–

[10] Amended by P.L. 110–175, § 7(a), 121 Stat. 2524 (2007), which became effective December 31, 2008.

(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)[11] specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—

(A) (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009 [enacted Oct. 28, 2009], specifically cites to this paragraph.

(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) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in a case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(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. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is

[11] Amended by P.L. 111–83, Title V, § 564(b), 123 Stat. 2184 (2009).

made,[12] shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and–

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) 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.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include–

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) 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; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), the number of occasions on which each statute was relied upon,[13] a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average[14] number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

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[12] Amended by P.L. 110–175, § 12 , 121 Stat. 2524 (2007).
[13] Amended by P.L. 110–175, § 8(a)(1), 121 Stat. 2524 (2007).
[14] Amended by P.L. 110–175, § 8(a)(2), 121 Stat. 2524 (2007).

(E) the median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;[15]

(F) the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(G) based on the number of business days that have elapsed since each request was originally received by the agency—

(i) the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20–day increments up to and including 200 days;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;[16]

(N) the total amount of fees collected by the agency for processing requests; and

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[15] Amended by P.L. 110–175, § 8(a)(3), 121 Stat. 2524 (2007).

[16] Amended by P.L. 110–175, § 8(a), 121 Stat. 2524 (2007).

(O) the number of full–time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.[17]

(3) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means. In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.[18]

(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(6) The Attorney General of the United States shall submit an annual report on or before April 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 subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term–

(1) "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; and

(2) 'record' and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.[19] (2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the

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[17] Amended by P.L. 110–175, § 8(b), 121 Stat. 2524 (2007).
[18] Amended by P.L. 110–175, § 8(c), 121 Stat. 2524 (2007).
[19] Amended by P.L. 110–175, § 9, 121 Stat. 2524 (2007).

requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including–

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.[20]

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) recommend policy changes to Congress and the President to improve the administration of this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a nonexclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA officer of each agency shall, subject to the authority of the head of the agency—

(1) have agency–wide responsibility for efficient and appropriate compliance with this section;

(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by

[20] Amended, P.L. 104–231, §§ 3–11, 110 Stat. 3049 to3054 (1996).

providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.[21]

5 USC 552a.

Sec. 552a. Records Maintained on Individuals

(a) Definitions. For purposes of this section—

(1) the term "agency" means agency as defined in section 552[(f)](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;

(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; and

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non–Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in–kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non–Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

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[21] Amended by P.L. 110–175, § 10(a), 121 Stat. 2524 (2007).

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986 [26 USCS § 6103(d)], (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code [26 USCS § 6103(b)(4)], (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act [42 USCS § 604(e), 664, or 1337]; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act [42 USCS § 1320b–7];

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986 [26 USCS § 6103(k)(8)];

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1)); or

(ix) matches performed by the Secretary of Health and Human Services or the Inspector General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non–Federal records;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non–Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or

State on behalf of the Federal Government, providing cash or in–kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(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 [5 USCS § 552];

(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 and Records Administration 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 Archivist of the United States or the designee of the Archivist 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 [Government Accountability Office];

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(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 request, 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 refusal, 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 requirements. 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 party of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision 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 or 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;

(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; and

(12) [Caution: For effective date, see 1988 Amendment note] if such agency is a recipient agency or a source agency in a matching program with a non–Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(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 [5 USCS § 553], 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 biennially 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) Civil remedies.

(1) 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 recovery 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 September 27, 1975.

(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) Criminal penalties.

(1) 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 [5 USCS §§ 553(b)(1), (2), and (3), (c), and (e)], 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 the 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 [5 USCS § 553(c)], 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 [5 USCS §§ 553(b)(1), (2), and (3), (c), and (e)], 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 provisions of section 552(b)(1) of this title [5 USCS § 552(b)(1)];

(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 [5 USCS § 553(c)], the reasons why the system of records is to be exempted from a provision of this section.

(l) Archival records.

(1) Each agency record which is accepted by the Archivist of the United States 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 Archivist of the United States 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 [effective 270 days following Dec. 31, 1974], 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.

(1) 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.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(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) Matching agreements.

(1) No record which is contained in a system of records may be disclosed to a recipient agency or non–Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non–Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that

will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non–Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non–Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non–Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non–Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2) (A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and opportunity to contest findings.

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non–Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A) (i) the agency has independently verified the information; or

(ii) the Date Integrity Board of the agency, or in the case of a non–Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C) (i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30–day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of––

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions.

(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non–Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non–Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on new systems and matching programs. Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of

the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial report. The President shall biennally submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974 [note to this section].

(t) Effect of other laws.

(1) No agency shall rely on any exemption contained in section 552 of this title [5 USCS § 552] to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title [5 USCS § 552].

(u) Data Integrity Boards.

(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost–benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4) (A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost–benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost–benefit analysis is not required.

(C) A cost–benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost–benefit analysis of the program as conducted under the preceding approval of such agreement.

(5) (A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost–effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget responsibilities. The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(w) Applicability to Bureau of Consumer Financial Protection. Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.[22]

5 USC 552b.

Sec. 552b. Open Meetings

(a) For purposes of this section–

(1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberation required or permitted by subsection (d) or (e); and

(3) the term "members" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply any portion of any agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the

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[22] Added by P.L. 93–579, § 3, 88 Stat. 1897 (1974); P.L. 94–183, § 2(2), 89 Stat 1057 (1975); P.L. 97–365, § 2, 96 Stat. 1749 (1982); P.L. 97–375, Title II, § 201(a), (b), 96 Stat. 1821 (1982); P.L. 97–452, § 2(a)(1), 96 Stat. 2478 (1983); P.L. 98–477, § 2(c), 98 Stat. 2211 (1984); P.L. 98–497, Title I, § 107(g), 98 Stat. 2292 (1984); P.L. 100–503, §§ 2–5, 6(a), 7, 8, 102 Stat. 2507–2514 (1988); P.L. 101–508, Title VII, Subtitle C, § 7201(b)(1), 104 Stat. 1388–334 (1990); P.L. 103–66, Title XIII, Ch. 2, Subch. A, Part V, § 13581(c), 107 Stat. 611 (1993); P.L. 104–193, Title I, § 110(w), 110 Stat. 2175 (1996); P.L. 104–226, § 1(b)(3), 110 Stat. 3033 (1996); P.L. 104–316, Title I, § 115(g)(2)(B), 110 Stat. 3835 (1996); P.L. 105–34, Title IX, Subtitle C, § 1026(b)(2), 111 Stat. 925 (1997); P.L. 105–362, Title XIII, § 1301(d), 112 Stat. 3293 (1998); P.L. 106–170, Title IV, § 402(a)(2), 113 Stat. 1908 (1999). Amended P.L. 111–148, Title VI, Subtitle E, § 6402(b)(2), 124 Stat. 756 (2010); P.L. 111–203, Title X, Subtitle H, § 1082, 124 Stat. 2080 (2010).

agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to–

(1) disclose matters that are (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) in fact properly classified pursuant to such Executive Order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552, of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information 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 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) disclose information 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;

(9) disclose information the premature disclosure of which would–

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action,

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or internecine tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case

of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsections (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided,* That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an

earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the chance was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll–call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each

meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and an opportunity for written comments by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold

information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsections (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1–year period.

(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.[23]

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title. (P.L. 94–409, section 3(a), Sept. 13, 1976, 90 Stat. 1241., and amended Public Law 104–66, title III, section 3002 (109 Stat. 734), Dec. 21, 1995.)

5 USC 553.

Sec. 553. Rulemaking

(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

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[23] Amended by P.L. 104–66, Title III, § 3002, 109 Stat. 734 (1995).

(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. (P.L. 89–554, Sept. 6, 1966, 80 Stat. 383.)

5 USC 554.

Sec. 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 an administrative law judge 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. (Public Law 89–554, Sept. 6, 1966, 80 Stat. 384; amended Public Law 95–251, Mar. 27, 1978, 92 Stat. 183.)

5 USC 555.

Sec. 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. (P.L. 89–554, Sept. 6, 1966, 80 Stat. 385.)

5 USC 556.

Sec. 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 administrative law judges 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 before 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 of simplification of the issues by consent of the parties; or by the use of alternative means of dispute resolution as provided in Subchapter IV of this chapter;

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy.[24]

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with section 557 of this title; and

(11) take other action authorized by agency rule consistent with this Subchapter.

(d) Except as otherwise provided by statute, the proponents 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. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. 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 proceedings, 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. (P.L. 89–554, Sept. 6, 1966, 80 Stat. 386; amended P.L. 94–409, Sept. 13, 1976, 90 Stat. 1247; P.L. 95–251, Mar. 27, 1978, 92 Stat. 183; Public Law 101–552 (104 Stat. 2736) section 4(a), November 15, 1990.)

5 USC 557.

Sec. 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

[24] Amended by P.L. 101–552, 104 Stat. 2736 (1990).

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 exception of 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.

(d)(1) In an agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law–

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that is will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress. (P.L. 89–554, Sept. 6, 1966, 80 Stat. 837; amended P.L. 94–409, Sept. 13, 1976, 90 Stat. 1246.)

5 USC 558.

Sec. 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. (P.L. 89–554, Sept. 6, 1966, 80 Stat. 388.)

5 USC 559.

Sec. 559. Effect on Other Laws; Effect of Subsequent Statute

This Subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, 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), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly. (Public Law 89–554, Sept. 6, 1966, 80 Stat. 388; amended Public Law 90–623, section 1(1), Oct 22, 1968, 82 Stat. 1312; Public Law 95–251, Mar. 27, 1978, 92 Stat. 183; Public Law 95–454, Oct. 13, 1978, 92 Stat. 1221.)

B. NEGOTIATED RULEMAKING ACT OF 1990 (5 U.S.C. 561–570)

Public Law 101–648 **104 Stat. 4976**

November 29, 1990

An Act

To establish a framework for the conduct of negotiated rulemaking by Federal agencies.

Negotiated Rulemaking Act of 1990.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

5 USC 561.

Sec. 1. Short Title

This Act may be cited as the "Negotiated Rulemaking Act of 1990."

5 USC 561.

Sec. 2. Findings

The Congress makes the following findings:

(1) Government regulation has increased substantially since the enactment of the Administrative Procedure Act.

(2) Agencies currently use rulemaking procedures that may discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions and to engage in expensive and time–consuming litigation over agency rules.

(3) Adversarial rulemaking deprives the affected parties and the public of the benefits of face–to–face negotiations and co–operation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.

(4) Negotiated rulemaking, in which the parties who will be significantly affected by a rule participate in the development of the rule, can provide significant advantages over adversarial rulemaking.

(5) Negotiated rulemaking can increase the acceptability and improve the substance of rules, making it less likely that the affected parties will resist enforcement or challenge such rules in court. It may also shorten the amount of time needed to issue final rules.

(6) Agencies have the authority to establish negotiated rule making committees under the laws establishing such agencies and their activities and under the Federal Advisory Committee Act (5 USC App.). Several agencies have successfully used negotiated rulemaking. The process has not been widely used by other agencies, however, in part because such agencies are unfamiliar with the process or uncertain as to the authority for such rulemaking.

Sec. 3. Negotiated Rulemaking Procedure

(a) IN GENERAL.–Chapter 5 of title 5, United States Code, is amended by adding at the end the following new Subchapter:

5 USC 561.

Sec. 561. Purpose

The purpose of this Subchapter is to establish a framework for the conduct of negotiated rulemaking, consistent with section 553 of this title, to encourage agencies to use the process when it enhances the informal rulemaking process. Nothing in this Subchapter should be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or with other innovative rulemaking procedures otherwise authorized by law.

5 USC 562.

Sec. 562. Definitions

For the purposes of this Subchapter, the term–

(1) "agency" has the same meaning as in section 551(1) of this title;

(2) "consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this Subchapter, unless such committee–

(A) agrees to define such term to mean a general but not unanimous concurrence; or

(B) agrees upon another specified definition;

(3) "convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking;

(4) "facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule;

(5) "interest" means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner;

(6) "negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee;

(7) "negotiated rulemaking committee" or "committee" means an advisory committee established by an agency in accordance with this Subchapter and the Federal Advisory Committee Act to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;

(8) "party" has the same meaning as in section 551(3) of this title;

(9) "person" has the same meaning as in section 551(2) of this title;

(10) "rule" has the same meaning as in section 551(4) of this title; and

(11) "rulemaking" means "rulemaking" as that term is defined in section 551(5) of this title.

5 USC 563.

Sec. 563. Determination of Need for Negotiated Rulemaking Committee

(a) DETERMINATION OF NEED BY THE AGENCY.–An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule, if the head of the agency determines that the use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the head of the agency shall consider whether–

(1) there is a need for a rule;

(2) there are a limited number of identifiable interests that will be significantly affected by the rule;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who–

(A) can adequately represent the interests identified under paragraph (2); and

(B) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(6) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

(b) USE OF CONVENERS.–

(1) PURPOSES OF CONVENERS.–An agency may use the services of a convener to assist the agency in–

(A) identifying person who will be significantly affected by a proposed rule, including residents of rural areas; and

(B) conducting discussions with such persons to identify the issues of concern to such persons, and to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking.

Reports.

(2) DUTIES OF CONVENERS.–The convener shall report findings and may make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule, including residents of rural areas. The report and any recommendations of the convener shall be made available to the public upon request.

5 USC 564.

Sec. 564. Publication of Notice; Applications for Membership on Committees

(a) PUBLICATION OF NOTICE.–If, after considering the report of a convener or conducting its own assessment, an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Federal Register and, as appropriate, in trade or other specialized publications, a notice which shall include–

(1) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(2) a description of the subject and scope of the rule to be developed, and the issues to be considered;

(3) a list of the interests which are likely to be significantly affected by the rule;

(4) a list of the persons proposed to represent such interests and the person or persons proposed to represent the agency;

(5) a proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of a proposed rule for notice and comment;

(6) a description of administrative support for the committee to be provided by the agency, including technical assistance;

(7) a solicitation for comments on the proposal to establish the committee, and the proposed membership of the negotiated rulemaking committee; and

(8) an explanation of how a person may apply or nominate another person for membership on the committee, as provided under subsection (b).

(b) APPLICATIONS FOR MEMBERSHIP OR COMMITTEE.–Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice under subsection (a)(4) may apply for, or nominate another person for, membership on the negotiated rulemaking

committee to represent such interests with respect to the proposed rule. Each application or nomination shall include–

(1) the name of the applicant or nominee and a description of the interests such person shall represent;

(2) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;

(3) a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and

(4) the reasons that the persons specified in the notice under subsection (a)(4) do not adequately represent the interests of the person submitting the application or nomination.

(c) PERIOD FOR SUBMISSION OF COMMENTS AND APPLICATIONS.–The agency shall provide for a period of at least 30 calendar days for the submission of comments and applications under this section.

5 USC 565.

Sec. 565. Establishment of Committee

(a) ESTABLISHMENT.–

(1) DETERMINATION TO ESTABLISH COMMITTEE.–If after considering comments and applications submitted under section 564, the agency determines that a negotiated rulemaking committee can adequately represent the interests that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee. In establishing and administering such a committee, the agency shall comply with the Federal Advisory Committee Act with respect to such committee, except as otherwise provided in this Subchapter.

(2) DETERMINATION NOT TO ESTABLISH COMMITTEE.–If after considering such comments and applications, the agency decides not to establish a negotiated rulemaking committee, the agency shall promptly publish notice of such decision and the reasons therefor in the Federal Register and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the negotiating rulemaking committee to represent such interests with respect to the proposed rule.

(b) MEMBERSHIP.–The agency shall limit membership on a negotiated rulemaking committee to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. Each committee shall include at least one person representing the agency.

(c) ADMINISTRATIVE SUPPORT.–The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance.

5 USC 566.

Sec. 566. Conduct of Committee Activity

(a) DUTIES OF COMMITTEE.–Each negotiated rulemaking committee established under this Subchapter shall consider the matter proposed by the agency for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule.

(b) REPRESENTATIVES OF AGENCY ON COMMITTEE.–The person or persons representing the agency on a negotiated rulemaking

committee shall participate in the deliberations and activities of the committee with the same rights and responsibilities as other members of the committee, and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(c) SELECTING FACILITATOR.–Notwithstanding section 10(e) of the Federal Advisory Committee Act, an agency may nominate either a person from the Federal Government or a person from outside the Federal Government to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the nominee of the agency for facilitator, the agency shall submit a substitute nomination. If a committee does not approve any nominee of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or otherwise chair the committee.

(d) DUTIES OF FACILITATOR.–A facilitator approved or selected by a negotiated rulemaking committee shall–

(1) chair the meetings of the committee in an impartial manner;

(2) impartially assist the members of the committee in conducting discussions and negotiations; and

(3) manage the keeping of minutes and records as required under section 10 (b) and (c) of the Federal Advisory Committee Act, except that any personal notes and materials of the facilitator or of the members of a committee shall not be subject to section 552 of this title.

(e) COMMITTEE PROCEDURES.–A negotiated rulemaking committee established under this Subchapter may adopt procedures for the operation of the committee. No provision of section 553 of this title shall apply to the procedures of a negotiated rulemaking committee.

(f) REPORT OF COMMITTEE.–If a committee reaches a consensus on a proposed rule, at the conclusion of negotiations the committee shall transmit to the agency that established the committee a report containing the proposed rule. If the committee does not reach a consensus on a proposed rule, the committee may transmit to the agency a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations, or materials.

(g) RECORDS OF COMMITTEE.–In addition to the report required by subsection (f), a committee shall submit to the agency the records required under section 10 (b) and (c) of the Federal Advisory Committee Act.

5 USC 567.

Sec. 567. Termination of Committee

A negotiated rulemaking committee shall terminate upon promulgation of the final rule under consideration, unless the committee's charter contains an earlier termination date or the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

5 USC 568.

Sec. 568. Services, Facilities, and Payment of Committee Member Expenses

(a) SERVICES OF CONVENERS AND FACILITATORS.–

(1) IN GENERAL.–An agency may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for a negotiated rulemaking committee under

this Subchapter, or may use the services of a Government employee to act as a convener or a facilitator for such a committee.

(2) DETERMINATION OF CONFLICTING INTERESTS.– An agency shall determine whether a person under consideration to serve as a convener or facilitator of a committee under paragraph (1) has any financial or other interest that would preclude such person from serving in an impartial and independent manner.

(b) SERVICES AND FACILITIES OF OTHER ENTITIES.– For purposes of this Subchapter, an agency may use the services and facilities of other Federal agencies and public and private agencies and instrumentalities with the consent of such agencies and instrumentalities, and with or without reimbursement to such agencies and instrumentalities, and may accept voluntary and uncompensated services without regard to the pro visions of section 1342 of title 31. The Federal Mediation and Conciliation Service may provide services and facilities, with or without reimbursement, to assist agencies under this Subchapter, including furnishing conveners, facilitators, and training in negotiated rulemaking.

(c) EXPENSES OF COMMITTEE MEMBERS.–Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation in such committee, except that an agency may, in accordance with section 7(d) of the Federal Advisory Committee Act, pay for a member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if–

(1) such member certifies a lack of adequate financial resources to participate in the committee; and

(2) the agency determines that such member's participation in the committee is necessary to assure an adequate representation of the member's interest.

(d) STATUS OF MEMBER AS FEDERAL EMPLOYEE.–A member's receipt of funds under this section or section 569 shall not conclusively deter mine for purposes of sections 202 through 209 of title 18 whether that member is an employee of the United States Government.

5 USC 569.

Sec. 569. Encouraging Negotiated Rulemaking

(a) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of negotiated rulemaking. An agency that is considering, planning, or conducting a negotiated rulemaking may consult with such agency or committee for information and assistance.

(b) To carry out the purposes of this Subchapter, an agency planning or conducting a negotiated rulemaking may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal if that agency's acceptance and use of such gifts, devises, or bequests do not create a conflict of interest. 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 head of such agency. 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.[1]

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[1] Amended by P.L. 101–648, § 3(a), 104 Stat. 4975 (1990); P.L. 102–354, §§ 3(a)(2), (5), 106 Stat. 944 (1992); P.L. 104–320, § 11(b), 110 Stat. 3873 (1996).

5 USC 570.

Sec. 570. Judicial Review

Any agency action relating to establishing, assisting, or terminating a negotiated rulemaking committee under this Subchapter shall not be subject to judicial review. Nothing in this section shall bar judicial review of a rule if such judicial review is otherwise provided by law. A rule which is the product of negotiated rulemaking and is subject to judicial review shall not be accorded any greater deference by a court than a rule which is the product of other rulemaking procedures.

Sec. 570a. Authorization of Appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Subchapter.[2]

5 USC 561 note.

Sec. 4. Authorization of Appropriations

In order to carry out this Act and the amendments made by this Act, there are authorized to be appropriated to the Administrative Conference of the United States, in addition to amounts authorized by section 596 of title 5, United States Code, not in excess of $500,000 for each of the fiscal years 1991, 1992, and 1993.

5 USC 561 note.

Sec. 5. Sunset and Savings Provisions

Subchapter III of chapter 5, United States Code, (enacted as Subchapter IV of chapter 5 of title 5, United States Code, by section 3 of this Act and redesignated as Subchapter II of chapter 5 by section (3)(a) of the Administrative Procedure Technical Amendments Act of 1991); and that portion of the table of sections at the beginning of chapter 5 of title 5, United States Code, relating to Subchapter III, are repealed, effective 6 years after the date of the enactment of this Act, except that the provisions of such Subchapter shall continue to apply after the date of the repeal with respect to then pending negotiated rulemaking proceedings initiated before the date of repeal which, in the judgment of the agencies which are convening or have convened such proceedings, require such continuation, until such negotiated rulemaking proceedings terminate pursuant to such Subchapter.

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[2] Added by P.L. 104–320, § 11(d)(1), 110 Stat. 3874 (1996).

C. ADMINISTRATIVE DISPUTE RESOLUTION ACT, AS AMENDED

Public Law 101–552 **104 Stat. 2736**

November 15, 1990

An Act

To authorize and encourage Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

This Act may be cited as the "Administrative Dispute Resolution Act."[1]

Sec. 2. Findings

The Congress finds that–

(1) administrative procedure, as embodied in chapter 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;

(2) administrative proceedings have become increasingly formal, costly, and lengthy resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes;

(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;

(4) such alternative means can lead to more creative, efficient, and sensible outcomes;

(5) such alternative means may be used advantageously in a wide variety of administrative programs;

(6) explicit authorization of the use of well–tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

(7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques; and

(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public.

5 USC 571 note.

Sec. 3. Promotion of Alternative Means of Dispute Resolution

(a) PROMULGATION OF AGENCY POLICY.–Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall–

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[1] When originally enacted, this law was codified at 5 U.S.C. 581 note. P.L. 102–354, 106 Stat. 943, redesignated section numbers and U.S. Code cites and made minor amendments to the act.

(1) consult with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service; and

(2) examine alternative means of resolving disputes in connection with–

(A) formal and informal adjudications;
(B) rulemakings;
(C) enforcement actions;
(D) issuing and revoking licenses or permits;
(E) contract administration;
(F) litigation brought by or against the agency; and
(G) other agency actions.

(b) DISPUTE RESOLUTION SPECIALISTS.–The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for the implementation of–

(1) the provisions of this Act and the amendments made by this Act; and

(2) the agency policy developed under subsection (a).

(c) TRAINING.–Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

(d) PROCEDURES FOR GRANTS AND CONTRACTS.–

(1) Each agency shall review each of its standard agreements for contracts, grants, and other assistance and shall determine whether to amend any such standard agreements to authorize and encourage the use of alternative means of dispute resolution.

(2)(A) Within 1 year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act and the amendments made by this Act.

(B) For purposes of this section, the term "Federal Acquisition Regulation" means the single system of Government–wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act (41 USC 405(a)).

Sec. 4. Administrative Procedures

(a) ADMINISTRATIVE HEARINGS.–Section 556(c) of title 5, United States Code, is amended–

(1) in paragraph (6) by inserting before the semicolon at the end thereof the following: "or by the use of alternative means of dispute resolution as provided in Subchapter IV of this Chapter"; and

(2) by redesignating paragraphs (7) through (9) as paragraphs (9) through (11), respectively, and inserting after paragraph (6) the following new paragraphs:

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(b) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.–Chapter 5 of title 5, United States Code, is amended by adding at the end the following new Subchapter:

Subchapter IV–Alternative Means of Dispute Resolution in the Administrative Process

5 USC 571.

Sec. 571. Definitions

For the purposes of this Subchapter, the term–[2]

(1) "agency" has the same meaning as in section 551(1) of this title;

(2) "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;

(3) "alternative means of dispute resolution" means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact–finding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(4) "award" means any decision by an arbitrator resolving the issues in controversy;

(5) "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) "dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) "in confidence" means, with respect to information, that the information is provided–

(A) with the expressed intent of the source that it not be disclosed; or

(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) "issue in controversy" means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement–

(A) between an agency and persons who would be substantially affected by the decision; or

(B) between persons who would be substantially affected by the decision;

(9) "neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) "party" means–

(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

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[2] Amended by P.L.102–354, § 3(b)(1), 106 Stat. 944 (1992). Further amended by P.L. 104–320, § 2, 110 Stat. 3870, (1996).

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) "person" has the same meaning as in section 551(2) of this title; and

(12) "roster" means a list of persons qualified to provide services as neutrals.[3]

5 USC 572. **Sec. 572. General Authority**

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if–

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decision are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this Subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

5 USC 573. **Sec. 573. Neutrals**

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

(c) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of dispute resolution under this Subchapter. Such agency or interagency committee, in consultation with other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution, shall–

(1) encourage and facilitate agency use of alternative means of dispute resolution; and

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[3] Amended by P.L. 101–552, § 4(b), 104 Stat. 2738 (1990); P.L. 102–354, §§ 3(b)(2), 5(b)(1), (2), 106 Stat. 944, 946 (1992); P.L. 104–320, § 2, 110 Stat. 3870 (1996).

(2) develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.

(d) An agency may use the services or one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with any person for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.[4]

5 USC 574.

Sec. 574. Confidentiality

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless–

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to–

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communications unless–

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the dispute resolution proceeding consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to–

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

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[4] Amended by P.L. 101–552, § 4(b), 104 Stat. 2739 (1990); P.L. 102–354, § 3(b)(2), 106 Stat. 944 (1992); P.L. 104–320, § 7(b), 110 Stat. 3872 (1996).

(C) prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution communication or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of sub–section (a) or (b),[5] shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d)(1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(2) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand of disclosure, by way of discovery request or other legal process is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

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[5] The comma probably is unnecessary. The error is in the original law.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).[6]

5 USC 575. **Sec. 575. Authorization of Arbitration**

(a)(1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to–

(A) submit only certain issues in controversy to arbitration; or

(B) arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitting to the arbitration shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

(b) An officer or employee of an agency shall not offer to use arbitration for the resolution of issues in controversy unless such officer or employee–

(1) would otherwise have authority to enter into a settlement concerning the matter; or

(2) is otherwise specifically authorized by the agency to consent to the use of arbitration.

(c) Prior to using binding arbitration under this Subchapter, the head of an agency, in consultation with the Attorney General and after taking into account the factors in section 572(b), shall issue guidance on the appropriate use of binding arbitration and when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration.[7]

5 USC 576. **Sec. 576. Enforcement of Arbitration Agreements**

An agreement to arbitrate a matter to which this Subchapter applies is enforcement pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

5 USC 577. **Sec. 577. Arbitrators**

(a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

(b) The arbitrator shall be a neutral who meets the criteria of section 573 of this title.

5 USC 578. **Sec. 578. Authority of the Arbitrator**

An arbitrator to whom a dispute is referred under this Subchapter may–

(1) regulate the course of and conduct arbitral hearings;

(2) administer oaths and affirmations;

(3) compel the attendance of witnesses and production of evidence at the hearing under the provisions of section 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and

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[6] Amended by P.L. 101–552, § 4(b), 104 Stat. 2740 (1990); P.L. 102–354, § 3(b)(2), 106 Stat. 944 (1992); P.L. 104–320, § 3, 110 Stat. 3870 (1996).

[7] Amended by P.L. 101–552, § 4(b), 104 Stat. 2742 (1990); P.L. 102–354, § 3(b)(2), 106 Stat. 944 (1992); P.L. 104–320, § 8(c), 110 Stat. 3872 (1996).

(4) make awards.

5 USC 579. **Sec. 579. Arbitration Proceedings**

(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

(b) Any party wishing a record of the hearing shall–

(1) be responsible for the preparation of such record;

(2) notify the other parties and the arbitrator of the preparation of such record;

(3) furnish copies to all identified parties and the arbitrator; and

(4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c)(1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross–examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(d) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless–

(1) the parties agree to some other time limit; or

(2) the agency provides by rule for some other time limit.

5 USC 580. **Sec. 580. Arbitration Awards**

(a)(1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) The prevailing parties shall file the award with all relevant agencies, along with proof of service on all parties.

(b) The award in an arbitration proceeding shall become final 30 days after it is served on all parties. Any agency that is a party to the proceeding may extend this 30–day period for an additional 30–day period by serving a notice of such extension on all other parties before the end of the first 30–day period.

(c) A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of

title 9. No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(d) An award entered under this subchapter in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding, whether conducted under this subchapter, by an agency, or in a court, or in any other arbitration proceeding.[8]

5 USC 581. **Sec. 581. Judicial Review**

(a) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

(b)(1) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 10(b) of title 9.

(2) A decision by the head of an agency under section 580 to terminate an arbitration proceeding or vacate an arbitral award shall be committed to the discretion of the agency and shall not be subject to judicial review.[9]

5 USC 582. **Sec. 582. Repealed**[10]

5 USC 583. **Sec. 583. Support Services**

For the purposes of this subchapter, an agency may use (with or without reimbursement) the services and facilities of other Federal agencies, state, local, and tribal governments,[11] public and private organizations and agencies, and individuals with the consent of such agencies, organizations, and individuals. An agency may accept voluntary and uncompensated services for purposes of this subchapter without regard to the provisions of section 1342 of title 31.

5 USC 584. **Sec. 584. Authorization of Appropriations**

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

Sec. 5. Judicial Review of Arbitration Awards.

Section 10 of title 9, United States Code, is amended–

(1) by redesignating subsections (a) through (e) as paragraphs (1) through (5), respectively;

(2) by striking out "In either" and inserting in lieu thereof "(a) In any"; and

(3) by adding at the end thereof the following:

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 590 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 582 of title 5.

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[8] Amended by P.L. 101–552, § 4(b), 104 Stat. 2743 (1990); P.L. 102–354, §§ 3(b)(2), 5(b)(3), 106 Stat. 944, 946 (1992); P.L. 104–320, § 8(a), 110 Stat. 3872 (1996).

[9] Amended by P.L. 101–552, § 4(b), 104 Stat. 2744 (1990); P.L. 102–354, § 3(b)(2), (4), 106 Stat. 944 (1992); P.L. 104–320, § 8(b), 110 Stat. 3872 (1996).

[10] Amended by P.L. 104–320, § 4(b)(1), 110 Stat. 3871 (1996).

[11] Amended by P.L. 104–320, § 5, 110 Stat. 3871 (1996).

Sec. 6. Government Contract Claims

(a) ALTERNATIVE MEANS OF DISPUTE RESOLUTION.–Section 6 of the Contract Disputes Act of 1978 (41 USC 606) is amended by adding at the end the following new subsections:

41 USC 605.

(d) Notwithstanding any other provision of this Act, a contractor and a contracting officer may use any alternative means of dispute resolution under Subchapter IV of chapter 5 of title 5, United States Code, or other mutually agreeable procedures, for resolving claims. In a case in which such alternative means of dispute resolution or other mutually agreeable procedures are used, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his or her knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. All provisions of Subchapter IV of chapter 5 of title 5, United States Code, shall apply to such alternative means of dispute resolution.

(e) The authority of agencies to engage in alternative means of dispute resolution proceedings under subsection (d) shall cease to be effective on October 1, 1995, except that such authority shall continue in effect with respect to then pending dispute resolution proceedings which, in the judgment of the agencies that are parties to such proceedings, require such continuation, until such proceedings terminate.

(b) JUDICIAL REVIEW OF ARBITRAL AWARDS.–Section 8(g) of the Contract Disputes Act of 1978 (41 USC 607(g)) is amended by adding at the end the following new paragraph:

(3) An award by an arbitrator under this Act shall be reviewed pursuant to sections 9 through 13 of title 9, United States Code, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statue.

Sec. 7. Federal Mediation and Conciliation Service

Section 203 of the Labor Management Relations Act, 1947 (29 USC 173) is amended by adding at the end the following new subsection:

(f) The Service may make its services available to Federal agencies to aid in the resolution of disputes under the provisions of Subchapter IV of chapter 5 of title 5, United States Code. Functions performed by the Service may include assisting parties to disputes related to administrative programs, training persons in skills and procedures employed in alternative means of dispute resolution, and furnishing officers and employees of the Service to act as neutrals. Only officers and employees who are qualified in accordance with section 583 of title 5, United States Code, may be assigned to act as neutrals. The Service shall consult with the Administrative Conference of the United States and other agencies in maintaining rosters of neutrals and arbitrators, and to adopt such procedures and rules as are necessary to carry out the services authorized in this subsection.

Sec. 8. Government Tort and Other Claims

(a) FEDERAL TORT CLAIMS.–Section 2672 of title 28, United States Code, is amended by adding at the end of the first paragraph the following:

Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney

General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of Subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

(b) CLAIMS OF THE GOVERNMENT.–Section 3711(a)(2) of title 31, United States Code, is amended by striking out "$20,000 (excluding interest)" and inserting in lieu thereof "$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe."

5 USC 581 note.

Sec. 9. Use of Non–Attorneys

(a) REPRESENTATION OF PARTIES.–Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act, shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine–

(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

(b) REPRESENTATION AND ASSISTANCE BY NON–ATTORNEYS.–A person who is not an attorney may provide representation or assistance to any individual in a claim or dispute with an agency, if–

(1) such claim or dispute concerns an administrative program identified under subsection (a);

(2) such agency determines that the proceeding or procedure does not necessitate representation or assistance by an attorney under subsection (a)(2); and

(3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

(c) DISQUALIFICATION OF REPRESENTATION OR ASSISTANCE.–Any agency that adopts regulations under Subchapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to–

(1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and

(2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons.

5 USC 581 note.

Sec. 10. Definitions

As used in this Act, the terms "agency", "administrative program", and "alternative means of dispute resolution" have the meanings given such terms in section 581 of title 5, United States Code, as added by section 4(b) of this Act.

5 USC 581 note.

Sec. 11. Sunset Provision

The authority of agencies to use dispute resolution proceedings under this Act and the amendments made by this Act shall terminate on October 1, 1995, except that such authority shall continue in effect with respect to then pending proceedings which, in the judgment of the

agencies that are parties to the dispute resolution proceedings, require such continuation, until such proceedings terminate.

D. REGULATORY FLEXIBILITY ACT, AS AMENDED (5 U.S.C. 601–612)

Public Law 96–354 **94 Stat. 1164**

September 19, 1980

Chapter 6–The Analysis of Regulatory Functions

5 USC 601–612

5 USC 601. **Sec. 601. Definitions**

For purposes of this Chapter–

(1) the term "agency" means an agency as defined in section 551 of this title;

(2) The term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register;

(4) the term "small organization" means any not–for–profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes definition(s) in the Federal Register; and

(6) the term "small entity" shall have the same meaning as the terms "small business," "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section.

(7) the term "collection of information"–

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or

opinions by or for an agency, regardless of form or format, calling for either–

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) Recordkeeping Requirement.–The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.[1]

5 USC 602.

Sec. 602. Regulatory Agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain–

(1) a brief description of the subject area of any rule which the agency expects to proposed or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda. (Added P.L. 96–354, Sept. 19, 1980, 94 Stat. 1166.)

5 USC 603.

Sec. 603. Initial Regulatory Flexibility Analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule

[1] Amended by P.L. 104–121, Title II, Subtitle D, § 241(a)(2), 110 Stat. 864 (1996).

involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain–

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as–

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.[2]

5 USC 604.

Sec. 604. Final Regulatory Flexibility Analysis

a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain–

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change

[2] Amended by P.L. 104–121, Title II, Subtitle D, § 241(a)(1), 110 Stat. 864 (1996).

made to the proposed rule in the final rule as a result of the comments;[3]

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.[4]

5 USC 605. **Sec. 605. Avoidance of Duplicative or Unnecessary Analyses**

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.[5]

5 USC 606. **Sec. 606. Effect on Other Law**

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

5 USC 607. **Sec. 607. Preparation of Analyses**

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

5 USC 608. **Sec. 608. Procedure for Waiver or Delay of Completion**

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a

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[3] Amended by P.L. 111–240, 124 Stat. 2551, Amended § 204 and added subparagraph (3).

[4] Amended by P.L. 104–121, Title II, Subtitle D, § 241(b), 110 Stat. 864 (1996).

[5] Amended by P.L. 104–121, Title II, Subtitle D, § 243(a), 110 Stat. 866 (1996).

written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated to response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency. (Added Public Law 96–354, Sept. 19, 1980, 94 Stat. 1168.)

5 USC 609.

Sec. 609. Procedures for Gathering Comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques[2] such as–

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this Chapter–

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the Office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);[3]

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c),[4] provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term "covered agency" means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel of Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.[6]

5 USC 610.

Sec. 610. Periodic Review of Rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within

[6] Amended by P.L. 104–121, Title II, Subtitle D, § 244(a), 110 Stat. 867 (1996).

ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors–

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule. (Added P.L. 96–354, Sept. 19, 1980, 94 Stat. 1168.)

5 USC 611.

Sec. 611. Judicial Review

(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with section 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than–

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1–year period, the number of days

specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to–

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.[7]

5 USC 612.

Sec. 612. Reports and Intervention Rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief counsel is authorized to present his or her views with respect to compliance of this chapter, the adequacy of the rulemaking record with respect to small entities.[8]

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b). (Added P.L. 96–354, Sept. 19, 1980, 94 Stat. 1170.)

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[7] Amended by P.L. 104–121, Title II, Subtitle D, § 242, 110 Stat. 865 (1996).

[8] Amended by P.L. 104–121, Title II, Subtitle D, § 243(b), 110 Stat. 866 (1996).

E. JUDICIAL REVIEW (5 U.S.C. 701–706)

Chapter 7–Judicial Review

5 USC 701.

Sec. 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; Subchapter II of chapter 471 of title 49; or sections 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.[1]

5 USC 702.

Sec. 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. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in Office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.[2]

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[1] Amended by P.L. 103–272, § 5(a), 108 Stat. 1373 (1994).

[2] Amended by P.L. 94–574, § 1, 90 Stat. 2721 (1976).

5 USC 703. **Sec. 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. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. 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.[3]

5 USC 704. **Sec. 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.

5 USC 705. **Sec. 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.

5 USC 706. **Sec. 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, an 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.

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[3] Amended by P.L. 94–574, § 1, 90 Stat. 2721 (1976).

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.

F. CONGRESSIONAL REVIEW (5 U.S.C. 801–808)

Chapter 8–Congressional Review of Agency Rulemaking[1]

5 USC 801. **Sec. 801. Congressional Review**

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing–

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress–

(i) a complete copy of the cost–benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of–

(A) the later of the date occurring 60 days after the date on which–

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date–

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[1] Amended by P.L. 104–121, Title II, Subtitle E, § 251, 110 Stat. 868, (1996), (effective on enactment, as provided by § 252 of such Act, which appears as 5 U.S.C.S. § 801 note).

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, not for this section (unless a joint resolution of disapproval under section 802 is enacted.

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is–

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with sub–section (a)(1)(A) during the period beginning on the date occurring–

(A) in the case of the Senate, 60 sessions days, or

(B) in the case of the House of Representatives, 60 legislative days, before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though–

(i) such rule were published in the Federal Register (as a rule that shall take effect) on–

(I) in the case of the Senate, the 15th session day, or

(II) in the case of the House of Representatives, the 15th legislative day, after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though–

(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

5 USC 802.

Sec. 802. Congressional Disapproval Procedure

(a) For purposes of this section, the term "joint resolution" means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: "That Congress disapproves the rule submitted by the _____ relating to _____, and such rule shall have no force or effect." (The blank spaces being appropriately filled in.)

(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(2) For purposes of this section, the term "submission or publication date" means the later of the date on which–

(A) the Congress receives the report submitted under section 801(a)(1); or

(B) the rule is published in the Federal Register, if so published.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) have not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule–

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution–

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(g) This section is enacted by Congress–

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a

joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

5 USC 803. **Sec. 803. Special Rule on Statutory, Regulatory, and Judicial Deadlines**

(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

(b) The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

5 USC 804. **Sec. 804. Definitions**

For purposes of this Chapter–

(1) The term "Federal agency" means any agency as that term is defined in section 551(1).

(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in–

(A) an annual effect on the economy of $100,000,000 or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States–based enterprises to compete with foreign–based enterprises in domestic and export markets. The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

(3) The term "rule" has the meaning given such term in section 551, except that such term does not include–

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non–agency parties.

5 USC 805. **Sec. 805. Judicial Review**

No determination, finding, action, or omission under this chapter shall be subject to judicial review.

5 USC 806. **Sec. 806. Applicability; Severability**

(a) This chapter shall apply notwithstanding any other provision of law.

(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the

application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

5 USC 807.

Sec. 807. Exemption for Monetary Policy

Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

5 USC 808.

Sec. 808. Effective Date of Certain Rule

Notwithstanding section 801–

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.

G. FEDERAL ADVISORY COMMITTEE ACT, AS AMENDED

Public Law 92–463 **86 Stat. 770**

October 6, 1972

5 USC APPENDIX 2

Sec. 1. Short Title

This Act may be cited as the "Federal Advisory Committee Act."

Sec. 2. Findings and Purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that–

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

Sec. 3. Definitions

For the purpose of this Act–

(1) The term "Administrator" means the Administrator of General Services.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is–

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

(3) The term "agency" has the same meaning as in section 551 (1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

Sec. 4. Applicability; Restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by–

(1) the Central Intelligence Agency; or

(2) The Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

Sec. 5. Responsibilities of Congressional Committees; Review; Guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall–

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

Sec. 6. Responsibilities of the President; Report to Congress; Annual Report to Congress; Exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

Sec. 7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, Establishment; Review; Recommendations to President and Congress; Agency Cooperation; Performance Guidelines; Uniform Pay Guidelines; Travel Expenses; Expense Recommendations

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine–

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether is[1] should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of

[1] Error appears in the original.

improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that –

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS–18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members–

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 USC 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102 (a)(1) of such title 5), may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent–

(A) an individual who (without regard to his service with an advisory committee) is a full–time employee of the United States; or

(B) an individual who immediately before his service with an advisory committee was such an employee, from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full–time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

Sec. 8. Responsibilities of Agency Heads; Advisory Committee Management Officer, Designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under sections 7 and 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management officer who shall–

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 52 of title 5, United States Code, with respect to such reports, records, and other papers.

Sec. 9. Establishment and Purpose of Advisory Committees; Publication in *Federal Register*; Charter; Filing; Contents; Copy

(a) No advisory committee shall be established unless such establishment is–

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man–years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

Sec. 10. Advisory Committee Procedures; Meetings; Notice, Publication in *Federal Register*; Regulations; Minutes; Certification; Annual Report; Federal Officer or Employee; Attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to

insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of title 5 United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5 United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee of designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees) with an agenda approved by such officer or employee.

Sec. 11. Availability of Transcripts; Agency Proceeding

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

Sec. 12. Fiscal and Administrative Provisions; Recordkeeping; Audit; Agency Support Services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or

any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

Sec. 13. Responsibilities of Library of Congress; Reports and Background Papers; Depository

Subject to section 552 of title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

Sec. 14. Termination of Advisory Committees; Renewal; Continuation

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two–year period following such effective date unless–

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two–year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two–year period beginning on the date of its establishment unless–

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two–year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two–year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

Sec. 15. Requirements

(a) In General–An agency may not use any advice or recommendation provided by the National Academy of Sciences or

National Academy of Public Administration that was developed by use of a committee created by that academy under an agreement with an agency, unless–

(1) the committee was not subject to any actual management or control by an agency or an officer of the Federal Government;

(2) in the case of a committee created after the date of the enactment of the Federal Advisory Committee Act Amendments of 1997, the membership of the committee was appointed in accordance with the requirements described in subsection (b)(1); and

(3) in developing the advice or recommendation, the academy complied with–

(A) subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of Sciences; or

(B) subsection (b)(2) and (5), in the case of any advice or recommendation provided by the National Academy of Public Administration.

(b) Requirements–The requirements referred to in subsection (a) are as follows:

(1) The Academy shall determine and provide public notice of the names and brief biographies of individuals that the Academy appoints or intends to appoint to serve on the committee. The Academy shall determine and provide a reasonable opportunity for the public to comment on such appointments before they are made or, if the Academy determines such prior comment is not practicable, in the period immediately following the appointments. The Academy shall make its best efforts to ensure that (A) no individual appointed to serve on the committee has a conflict of interest that is relevant to the functions to be performed, unless such conflict is promptly and publicly disclosed and the Academy determines that the conflict is unavoidable, (B) the committee membership is fairly balanced as determined by the Academy to be appropriate for the functions to be performed, and (C) the final report of the Academy will be the result of the Academy's independent judgment. The Academy shall require that individuals that the Academy appoints or intends to appoint to serve on the committee inform the Academy of the individual's conflicts of interest that are relevant to the functions to be performed.

(2) The Academy shall determine and provide public notice of committee meetings that will be open to the public.

(3) The Academy shall ensure that meetings of the committee to gather data from individuals who are not officials, agents, or employees of the Academy are open to the public, unless the Academy determines that a meeting would disclose matters described in section 552(b) of title 5, United States Code. The Academy shall make available to the public, at reasonable charge if appropriate, written materials presented to the committee by individuals who are not officials, agents, or employees of the Academy, unless the Academy determines that making material available would disclose matters described in that section.

(4) The Academy shall make available to the public as soon as practicable, at reasonable charge if appropriate, a brief summary of any committee meeting that is not a data gathering meeting, unless the Academy determines that the summary would disclose matters described in section 552(b) of title 5, United States Code. The summary shall identify the committee members present, the topics

discussed, materials made available to the committee, and such other matters that the Academy determines should be included.

(5) The Academy shall make available to the public its final report, at reasonable charge if appropriate, unless the Academy determines that the report would disclose matters described in section 552(b) of title 5, United States Code. If the Academy determines that the report would disclose matters described in that section, the Academy shall make public an abbreviated version of the report that does not disclose those matters.

(6) After publication of the final report, the Academy shall make publicly available the names of the principal reviewers who reviewed the report in draft form and who are not officials, agents, or employees of the Academy.

(c) REGULATIONS–The Administrator of General Services may issue regulations implementing this section.

(d) EFFECTIVE DATE AND APPLICATION

(1) In General–Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Retroactive Effect–Subsection (a) and the amendments made by subsection (a) shall be effective as of October 6, 1972, except that they shall not apply with respect to or otherwise affect any particular advice or recommendations that are subject to any judicial action filed before the date of the enactment of this Act.[2]

Sec. 16. Effective Date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

[2] Amended by P.L. 105–153, 111 Stat. 2689 (1997).

H. ALTERNATIVE DISPUTE RESOLUTION ACT OF 1998

Public Law 105–315 **112 Stat. 2993**

October 30, 1998

28 USC 1 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Alternative Resolution Act of 1998.

Sec. 1. Short Title

This Act may be cited as the "Alternative Dispute Resolution Act of 1998."

28 USC 651 note.

Sec. 2. Findings and Declaration of Policy

Congress finds that–

(1) alternative dispute resolution, when supported by the bench and bar, and utilizing properly trained neutrals in a program adequately administered by the court, has the potential to provide a variety of benefits, including greater satisfaction of the parties, innovative methods of resolving disputes, and greater efficiency in achieving settlements;

(2) certain forms of alternative dispute resolution, including mediation, early neutral evaluation, minitrials, and voluntary arbitration, may have potential to reduce the large backlog of cases now pending in some Federal courts throughout the United States, thereby allowing the courts to process their remaining cases more efficiently; and

(3) the continued growth of Federal appellate court–annexed mediation programs suggests that this form of alternative dispute resolution can be equally effective in resolving disputes in the Federal trial courts; therefore, the district courts should consider including mediation in their local alternative dispute resolution programs.

Sec. 3. Alternative Dispute Resolution Process to be Authorized in All District Courts

Section 651 of title 28, United States Code is amended to read as follows:

Sec. 651. Authorization of alternative dispute resolution

(a) DEFINITION–For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in section 654 through 658.

(b) AUTHORITY– Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

(c) EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS– In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness

of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

(d) ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS–Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court's alternative dispute resolution program.

(e) TITLE 9 NOT AFFECTED– This chapter shall not affect title 9, United States Code.

(f) PROGRAM SUPPORT– The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.

Sec. 4. Jurisdiction

Section 652 of title 28, United States Code, is amended to read as follows:

Sec. 652. Jurisdiction

(a) CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION IN APPROPRIATE CASES–Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule adopted under section 2071(a), require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of alternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

(b) ACTIONS EXEMPTED FROM CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION–Each district court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult with members of the bar, including the United States Attorney for that district.

(c) AUTHORITY OF THE ATTORNEY GENERAL–Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

(d) CONFIDENTIALITY PROVISIONS–Until such time as rules are adopted under chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each district court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.

Sec. 5. Mediators and Neutral Evaluators

Section 653 of title 28, United States Code, is amended to read as follows:

Sec. 653. Neutrals

(a) PANEL OF NEUTRALS–Each district court that authorizes the use of alternative dispute resolution processes shall adopt appropriate processes for making neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

(b) QUALIFICATIONS AND TRAINING–Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted under chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules under section 2071(a) relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).

Sec. 6. Actions Referred to Arbitration

Section 654 of title 28, United States Code, is amended to read as follows:

Sec. 654. Arbitration

(a) REFERRAL OF ACTIONS TO ARBITRATION–Notwithstanding any provision of law to the contrary and except as provided in subsections (a), (b), and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it when the parties consent, except that referral to arbitration may not be made where–

(1) the action is based on an alleged violation of a right secured by the Constitution of the United States;

(2) jurisdiction is based in whole or in part on section 1343 of this title; or

(3) the relief sought consists of money damages in an amount greater than $150,000.

(b) SAFEGUARDS IN CONSENT CASES–Until such time as rules are adopted under chapter 131 of this title relating to procedures described in this subsection, the district court shall, by local rule adopted under section 2071(a), establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)–

(1) consent to arbitration is freely and knowingly obtained; and

(2) no party or attorney is prejudiced for refusing to participate in arbitration.

(c) PRESUMPTIONS–For purposes of subsection (a)(3), a district court may presume damages are not in excess of $150,000 unless counsel certifies that damages exceed such amount.

(d) EXISTING PROGRAMS–Nothing in this chapter is deemed to affect any program in which arbitration is conducted pursuant to section IX of the Judicial Improvements and Access to Justice Act (Public Law 100–702), as amended by section 1 of Public Law 105–53.

Sec. 7. Arbitrators

Section 655 of title 28, United States Code, is amended to read as follows:

Sec. 655. Arbitrators

(a) POWERS OF ARBITRATORS–An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial district of the district court which referred the action to arbitration–

(1) to conduct arbitration hearings;

(2) to administer oaths and affirmations; and

(3) to make awards.

(b) STANDARDS FOR CERTIFICATION–Each district court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator–

(1) shall take the oath or affirmation described in section 453; and

(2) shall be subject to the disqualification rules under section 455.

(c) IMMUNITY–All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi–judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

Sec. 8. Subpoenas

Section 656 of title 28, United States Code, is amended to read as follows:

Sec. 656. Subpoenas

Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

Sec. 9. Arbitration Award and Judgment

Section 657 of title 28, United States Code, is amended to read as follows:

Sec. 654. Arbitration award and judgment

(a) FILING AND EFFECT OF ARBITRATION AWARD–An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, expect that the judgment shall not be subject to review in any other court by appeal or otherwise.

(b) SEALING OF ARBITRATION AWARD–The district court shall provide, by local rule adopted under section 2071(a), that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise terminated.

(c) TRIAL DE NOVO OF ARBITRATION AWARDS–

(1) TIME FOR FILING DEMAND–Within 30 days after he filing of an arbitration award with a district court under subsection (a), any party may file a written demand for a trial de novo in the district court.

(2) ACTION RESTORED TO COURT DOCKET–Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

(3) EXCLUSION OF EVIDENCE OF ARBITRATION–The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless–

(A) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

(B) the parties have otherwise stipulated.

Sec. 10. Compensation of Arbitrators and Neutrals

Section 658 of title 28, United States Code, is amended to read as follows:

Sec. 658. Compensation of arbitrators and neutrals

(a) COMPENSATION–The district court shall, subject to regulations approved by the Judicial Conference of the United States, establish the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

Regulations.

(b) TRANSPORTATION ALLOWANCES–Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators and other neutrals for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

Sec. 11. Authorization of Appropriations

28 USC 651 note.

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out chapter 44 of title 28, United States Code, as amended by this Act.

Sec. 12. Conforming Amendments

(a) LIMITATION ON MONEY DAMAGES–Section 901 of the Judicial Improvements and Access to Justice Act (28 USC 652 note), is amended by striking subsection (c).

(b) OTHER CONFORMING AMENDMENTS–

(1) The chapter heading for chapter 44 of title 28, United States Code, is amended to read as follows:

"Chapter 44–ALTERNATIVE DISPUTE RESOLUTION"

(2) The table of contents for chapter 44 of title 28, United States Code, is amended to read as follows:

Sec.
651. Authorization of alternative dispute resolution.
652. Jurisdiction.
653. Neutrals.
654. Arbitration.
655. Arbitrators.
656. Subpoenas.
657. Arbitration award and judgment.
658. Compensation of arbitrators and neutrals.

(3) The item relating to chapter 44 in the table of chapters for Part III of title 28, United States Code, is amended to read as follows:

44. Alternative Dispute Resolution..... 651.

I. FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990, AS AMENDED

Public Law 101–410 **104 Stat. 890**

October 5, 1990

Title III, Chapter 10

Federal Civil Penalties Inflation Adjustment Act of 1990.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

28 USC 2461 note.

This Act may be cited as the "Federal Civil Penalties Inflation Adjustment Act of 1990."

28 USC 2461 note.

Sec. 2. Findings and Purpose

(a) FINDINGS.

The Congress finds that–

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE.–The purpose of this Act is to establish a mechanism that shall–

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

28 USC 2461 note.

Sec. 3. Definitions

For purposes of this Act, the term–

(1) "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;

(2) "civil monetary penalty" means any penalty, fine, or other sanction that–

(A)(i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) "Consumer Price Index" means the Consumer Price Index for all–urban consumers published by the Department of Labor.

28 USC 2461 note.

Sec. 4. Civil Monetary Penalty Inflation Adjustment Reports

The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996, and at least once every 4 years thereafter–

Regulations.

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, or the Social Security Act, by the inflation adjustment described under section 5 of this Act; and

Federal Register, Publication.

(2) publish each such regulation in the Federal Register.

Sec. 5. Cost–of–Living Adjustments of Civil Monetary Penalties

28 USC 2461 note.

(a) ADJUSTMENT.–The inflation adjustment described under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost–of–living adjustment. Any increase determined under this subsection shall be rounded to the nearest–

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

(b) DEFINITION.–For purposes of subsection (a), the term "cost–of–living adjustment" means the percentage (if any) for each civil monetary penalty by which–

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Sec. 6. Annual Report

Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.[1]

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[1] Amended by P.L. 104–134, Title III, Ch. 10, § 31001(s)(2), 110 Stat. 1321–373, (1996), (effective on enactment as provided by § 31001(a)(2)(A) of such Act, which appears as 31 U.S.C.S. § 3322 note), provides the following:

> The first adjustment of a civil monetary penalty made pursuant to the amendment made by paragraph (1) [amending §§ 4 and 5(a) and adding § 7 of Act Oct. 5, 1990, P.L. 101–410, which appears as a note to this section] may not exceed 10 percent of such penalty.

4. NRC Appropriation Acts

4. NRC Appropriation Acts

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Public Law 112–74 **125 Stat. 786**

December 23, 2011

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $25,000), $1,027,240,000, to remain available until expended: *Provided*, That of the amount appropriated herein, not more than $9,000,000 may be made available for salaries and other support costs for the Office of the Commission: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $899,726,000 in fiscal year 2012 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation estimated at not more than $127,514,000: *Provided further*, That of the amounts appropriated under this heading, $10,000,000 shall be for university research and development in areas relevant to their respective organization's mission, and $5,000,000 shall be for a Nuclear Science and Engineering Grant Program that will support multiyear projects that do not align with programmatic missions but are critical to maintaining the discipline of nuclear science and engineering.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $10,860,000, to remain available until September 30, 2013: *Provided*, That revenues from licensing fees, inspection services, and other services and collections estimated at $9,774,000 in fiscal year 2012 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding section 3302 of title 31, United States Code: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2012 so as to result in a final fiscal year 2012 appropriation estimated at not more than $1,086,000.

* * * * *

General Provisions–Independent Agencies

SEC. 401. (a) None of the funds provided in this title for "Nuclear Regulatory Commission--Salaries and Expenses" shall be available for obligation or expenditure through a reprogramming of funds that--

(1) increases funds or personnel for any program, project, or activity for which funds are denied or restricted by this Act; or

(2) reduces funds that are directed to be used for a specific program, project, or activity by this Act.

(b) The Chairman of the Nuclear Regulatory Commission may not terminate any program, project, or activity without the approval of a majority vote of the Commissioners of the Nuclear Regulatory Commission approving such action.

(c) The Nuclear Regulatory Commission may waive the restriction on reprogramming under subsection (a) on a case-by-case basis by certifying to the Committees on Appropriations of the House of Representatives and the Senate that such action is required to address national security or imminent risks to public safety. Each such waiver certification shall include a letter from the Chairman of the Commission that a majority of Commissioners of the Nuclear Regulatory Commission have voted and approved the reprogramming waiver certification.

SEC. 402. The Nuclear Regulatory Commission shall require reactor licensees to re-evaluate the seismic, tsunami, flooding, and other external hazards at their sites against current applicable Commission requirements and guidance for such licenses as expeditiously as possible, and thereafter when appropriate, as determined by the Commission, and require each licensee to respond to the Commission that the design basis for each reactor meets the requirements of its license, current applicable Commission requirements and guidance for such license. Based upon the evaluations conducted pursuant to this section and other information it deems relevant, the Commission shall require licensees to update the design basis for each reactor, if necessary.

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DEPARTMENT OF DEFENSE AND FULL–YEAR CONTINUING APPROPRIATIONS ACT, 2011

Public Law 112–10 125 Stat. 38

April 15, 2011

Title I–General Provisions

SEC. 1101. (a) Such amounts as may be necessary, at the level specified in subsection (c) and under the authority and conditions provided in applicable appropriations Acts for fiscal year 2010, for projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for, and for which appropriations, funds, or other authority were made available in the following appropriations Acts:

(1) The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Public Law 111–80).

(2) The Energy and Water Development and Related Agencies Appropriations Act, 2010 (Public Law 111–85).

(3) The Department of Homeland Security Appropriations Act, 2010 (Public Law 111–83).

(4) The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (division A of Public Law 111–88).

(5) The Legislative Branch Appropriations Act, 2010 (division A of Public Law 111–68).

(6) The Consolidated Appropriations Act, 2010 (Public Law 111–117).

(7) Section 102(c) (except the last proviso relating to waiver of fees) of chapter 1 of title I of the Supplemental Appropriations Act, 2010 (Public Law 111–212) that addresses guaranteed loans in the rural housing insurance fund.

(b) For purposes of this division, the term "level" means an amount.

(c) The level referred to in subsection (a) shall be the amounts appropriated in the appropriations Acts referred to in such subsection, including transfers and obligation limitations, except that--

(1) such level shall not include any amount previously designated as an emergency requirement and necessary to meet emergency needs pursuant to sections 403(a) and 423(b) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010; and

(2) such level shall be calculated without regard to any rescission or cancellation of funds or contract authority.

* * * * *

SEC. 1423. Notwithstanding section 1101, for the "Nuclear Regulatory Commission, Salaries and Expenses", for necessary expenses in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $25,000), $1,043,483,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $10,000,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $906,220,000 in fiscal year 2011 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2011 so as to result in a final fiscal year 2011 appropriation estimated at not more than $137,263,000: *Provided further*, That the last proviso under such heading in title IV of Public Law 111–85 shall not apply to funds appropriated by this division.

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NRC FISCAL YEAR 2010 RESCISSION

Public Law 111–226 **124 Stat. 2389**

August 10, 2010

An Act

To modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. This Act may be cited as the ``_____Act of____".

* * * * *

Title III– Rescissions

SEC. 307. of the unobligated balances of funds provided under the heading ''Nuclear Regulatory Commission'' in prior appropriations Acts, $18,000,000 is permanently rescinded.

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ENERGY AND WATER DEVELOPMENT AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

Public Law 111–85 **123 Stat. 2845**

October 28, 2009

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $25,000), $1,056,000,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $29,000,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $902,402,000 in fiscal year 2010 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2010 so as to result in a final fiscal year 2010 appropriation estimated at not more

than $153,598,000: *Provided further*, That of the amounts appropriated, $10,000,000 is provided to support university research and development in areas relevant to their respective organization's mission, and $5,000,000 is to support a Nuclear Science and Engineering Grant Program that will support multiyear projects that do not align with programmatic missions but are critical to maintaining the discipline of nuclear science and engineering.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $10,860,000, to remain available until expended: *Provided*, That revenues from licensing fees, inspection services, and other services and collections estimated at $9,774,000 in fiscal year 2010 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2010 so as to result in a final fiscal year 2010 appropriation estimated at not more than $1,086,000.

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OMNIBUS APPROPRIATIONS ACT, 2009[1]

Public Law 111–8 **123 Stat. 524**

March 11, 2009

Division C—Energy and Water Development and Related Agencies Appropriations Act, 2009

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $25,000), $1,034,656,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $49,000,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $860,857,000 in fiscal year 2009 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2009 so as to result in a final fiscal year 2009 appropriation estimated at not more than $173,799,000: *Provided further*, That such funds as are made

[1] Between September 30, 2008, and March 11, 2009, the budget was funded by Continuing Resolutions, P.L. 110–329 and P.L. 111–6.

available for necessary expenses of the Commission by this Act or any other Act may be used for the acquisition and lease of additional Office space provided by the General Services Administration for personnel of the U.S. Nuclear Regulatory Commission as close as reasonably possible to the Commission's headquarters location in Rockville, Maryland, and of such square footage and for such lease term, as are determined by the Commission to be necessary to maintain the agency's regulatory effectiveness, efficiency, and emergency response capability: *Provided further*, That notwithstanding any other provision of law or any prevailing practice, the acquisition and lease of space for such purpose shall, to the extent necessary to obtain the space, be based on the prevailing rates in the immediate vicinity of the Commission's headquarters.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, $10,860,000, to remain available until expended: *Provided,* That revenues from licensing fees, inspection services, and other services and collections estimated at $9,774,000 in fiscal year 2009 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2009 so as to result in a final fiscal year 2009 appropriation estimated at not more than $1,086,000.

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CONSOLIDATED APPROPRIATIONS ACT, 2008

Public Law 110–161 **121 Stat. 1844**

December 26, 2007

Energy and Water Development and Related Agencies Appropriations Act, 2008.

Division C—Energy and Water Development and Related Agencies Appropriations Act, 2008

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Title IV–Independent Agencies

* * * *

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974 and the Atomic Energy Act of 1954, including official representation expenses (not to exceed $25,000), $917,334,000, to remain available until expended: *Provided,* That of the amount appropriated herein, $29,025,000 shall be derived from the Nuclear Waste Fund: *Provided further,* That revenues

from licensing fees, inspection services, and other services and collections estimated at $771,220,000 in fiscal year 2008 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2008 so as to result in a final fiscal year 2008 appropriation estimated at not more than $146,114,000: *Provided further,* That such funds as are made available for necessary expenses of the Commission by this Act or any other Act may be used for lease payments for additional Office space provided by the General Services Administration for personnel of the U.S. Nuclear Regulatory Commission as close as reasonably possible to the Commission's headquarters location in Rockville, Maryland, and of such square footage and for such lease term, as are determined by the Commission to be necessary to maintain the agency's regulatory effectiveness, efficiency, and emergency response capability: *Provided further,* That notwithstanding any other provision of law or any prevailing practice, the rental square foot rate paid for the lease of space for such purpose shall, to the extent necessary to obtain the space, be based on the prevailing lease rates in the immediate vicinity of the Commission's headquarters.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $8,744,000, to remain available until expended: *Provided,* That revenues from licensing fees, inspection services, and other services and collections estimated at $7,870,000 in fiscal year 2008 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2008 so as to result in a final fiscal year 2008 appropriation estimated at not more than $874,000.

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REVISED CONTINUING APPROPRIATIONS RESOLUTION, 2007[2]

Public Law 110–5 **121 Stat. 8**

February 15, 2007

Joint Resolution

Revised Continuing Appropriations Resolution, 2007.

Making further continuing appropriations for the fiscal year 2007, and for other purposes

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That this joint resolution may be cited as the ''Revised Continuing Appropriations Resolution, 2007''.

SEC. 2. The Continuing Appropriations Resolution, 2007 (Public Law 109–289, division B), as amended by Public Laws 109–369 and 109–383, is amended to read as follows:

''Division B—Continuing Appropriations Resolution, 2007

''The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for fiscal year 2007, and for other purposes, namely:

''SEC. 20317. Notwithstanding section 101, the level for necessary expenses of the Nuclear Regulatory Commission in carrying out the purposes of the Energy Reorganization Act of 1974 and the Atomic Energy Act of 1954, including official representation expenses (not to exceed $15,000), and including purchase of promotional items for use in the recruitment of individuals for employment, shall be $813,300,000, to remain available until expended: *Provided,* That of the amount appropriated herein, $45,700,000 shall be derived from the Nuclear Waste Fund: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $659,055,000 in fiscal year 2007 shall be retained and used for necessary salaries and expenses in this account, notwithstanding section 3302 of title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by

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[2] Total appropriations for fiscal year (FY 2007) were $824.9 million. P.L. 110–5, 121 Stat. 8, (2007), extended the Continuing Resolution enacted in P.L. 109–289, 120 Stat. 1257, (2006), for the entire year, with some amendments. § 101(a)(2), as Amended, extended FY 2006 energy and water appropriations for the entirety of FY 2007. § 101(c), as Amended, indicates that FY 2006 appropriations used for FY 2007 should be reduced by FY 2006 rescission. No specific exception was made for the NRC's Office of the Inspector General (OIG), so the OIG appropriation for FY 2007 was $8,307,690 after subtracting FY 2006 rescission ($8,310) from FY 2006 appropriation ($8,316,000). § 20317, as Amended, provided an exception from the funding in § 101 for the NRC's salaries and expenses, which amounted to $813,300,000. § 111, as Amended, provides that in addition to OIG appropriations in § 101 and salary and expenses appropriations in § 20317, both appropriations should receive additional amounts for pay raise costs. OMB Bulletin 07–03, February 26, 2007, provided guidance for determining pay raise costs. The NRC received approval of pay raise costs from OMB in the amounts of $51,928 for OIG and $3,228,889 for salary and expenses. Final appropriations for OIG were $8, 359,618, and final appropriations for salary and expenses were $816,528,889, for a total FY 2007 appropriation of $824.9 million (rounded up).

the amount of revenues received during fiscal year 2007 so as to result in a final fiscal year 2007 appropriation estimated at not more than $154,245,000.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2006

Public Law 109–103 **119 Stat. 2247**

November 19, 2005

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 2006, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Energy and Water Development Appropriation Act, 2006.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2006, for energy and water development, and for other purposes, namely:

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Title IV–Independent Agencies

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Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), purchase of promotional items for use in the recruitment of individuals for employment, $734,376,000, to remain available until expended: *Provided,* That of the amount appropriated herein, $46,118,000 shall be derived from the Nuclear Waste Fund: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $617,182,000 in fiscal year 2006 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2006 so as to result in a final fiscal year 2006 appropriation estimated at not more than $117,194,000: *Provided further*, That section 6101 of the Omnibus Budget Reconciliation Act of 1990 is amended by inserting before the period in subsection (c)(2)(B)(v) the words ‘‘and fiscal year 2006’’.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $8,316,000, to remain available until expended: *Provided,* That revenues from licensing fees, inspection services, and other services and collections estimated at $7,485,000 in fiscal year 2006 shall be retained and be available until expended, for necessary salaries and expenses in this account, notwithstanding 31 U.S.C. 3302: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2006 so as to result in a final fiscal year 2006 appropriation estimated at not more than $831,000.

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CONSOLIDATED APPROPRIATIONS ACT, 2005

Public Law 108–447 **118 Stat. 2961**

December 8, 2004

An Act

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), and purchase of promotional items for use in the recruitment of individuals for employment, $662,777,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $69,050,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $534,354,000 in fiscal year 2005 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at not more than $128,423,000.

* * * *

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $7,518,000, to remain available until expended: *Provided*, That revenues from licensing fees, inspection services, and other services and collections estimated at $6,766,200 in fiscal year 2005 shall be retained and be available until expended, for necessary salaries and expenses in this account notwithstanding 31 USC 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues

received during fiscal year 2005 so as to result in a final fiscal year 2005 appropriation estimated at not more than $751,800.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2004

Public Law 108–137 **117 Stat. 1867**

December 1, 2003

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Energy and Water Development Appropriation Act, 2004.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2004, for energy and water development, and for other purposes, namely:

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Title IV–Independent Agencies

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Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), and purchase of promotional items for use in the recruitment of individuals for employment, $618,800,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $33,100,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $538,844,000 in fiscal year 2004 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation estimated at not more than $79,956,000.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended,

$7,300,000, to remain available until expended: *Provided,* That revenues from licensing fees, inspection services, and other services and collections estimated at $6,716,000 in fiscal year 2004 shall be retained and be available until expended, for necessary salaries and expenses in this account notwithstanding 31 USC 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation estimated at not more than $584,000.

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CONSOLIDATION APPROPRIATIONS RESOLUTION, 2003

Public Law 108–7 **117 Stat. 157**

February 20, 2003

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DIVISION D – ENERGY AND WATER DEVELOPMENT APPROPRIATIONS, 2003

* * * * *

Joint Resolution

Making appropriations for energy and water development for the fiscal year ending September 30, 2003, and for other purposes.

Energy and Water Development Appropriation Act, 2004.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for energy and water development, and for other purposes, namely:

* * * * *

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), and purchase of promotional items for use in the recruitment of individuals for employment, $578,184,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $24,900,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $520,087,000 in fiscal year 2003 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2003 so as to result in

a final fiscal year 2003 appropriation estimated at not more than $58,097,000.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $6,800,000, to remain available until expended: *Provided,* That revenues from licensing fees, inspection services, and other services and collections estimated at $6,392,000 in fiscal year 2003 shall be retained and be available until expended, for necessary salaries and expenses in this account notwithstanding 31 USC 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2003 so as to result in a final fiscal year 2003 appropriation estimated at not more than $408,000.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2002

Public Law 107–66 115 Stat. 486

November 12, 2001

An Act

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), and purchase of promotional items for use in the recruitment of individuals for employment, $516,900,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $23,650,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $473,520,000 in fiscal year 2002 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2002 so as to result in a final fiscal year 2002 appropriation estimated at not more than $43,380,000: *Provided further*, That, notwithstanding any other provision of law, no funds made available under this or any other Act may be expended by the Commission to implement or enforce any part of 10 CFR Part 35, as adopted by the Commission on October 23, 2000, with respect to diagnostic nuclear medicine, except those parts which establish training and experience requirements for persons seeking licensing as authorized users, until such time as the Commission has reexamined 10 CFR Part 35 and provided a report to the Congress which explains why the burden imposed by 10 CFR Part 35 could not be further reduced.

* * * *

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $6,180,000, to remain available until expended: *Provided*, That revenues from licensing fees, inspection services, and other services and collections estimated at $5,933,000 in fiscal year 2002 shall be retained and be available until expended, for necessary salaries and expenses in this account notwithstanding 31 USC 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2002 so as to result in a final fiscal year 2002 appropriation estimated at not more than $247,000.

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DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT–APPROPRIATIONS

Public Law 106–377 114 Stat. 1441

October 27, 2000

An Act

Making appropriations for the Department of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) The provisions of the following bills of the 106th Congress are hereby enacted into law:

(1) H.R. 5482, as introduced on October 18, 2000.

(2) H.R. 5483, as introduced on October 18, 2000.

(b) In publishing this Act in slip form and in the United States Statutes at Large pursuant to section 112 of title 1, United States Code, the Archivist of the United States shall include after the date of approval at the end appendixes setting forth the texts of the bills referred to in subsection (a) of this section.

* * * *

H. R. 5483

Making appropriations for energy and water development for the fiscal year ending September 30, 2001, and for other purposes.

Title IV

INDEPENDENT AGENCIES

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), $481,900,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $21,600,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $447,958,000 in fiscal year 2001 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further*, That $3,200,000 of the funds herein appropriated for regulatory reviews and assistance to other Federal agencies and States shall be excluded from license fee revenues, notwithstanding 42 USC 2214: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2001 so as to result in a final fiscal year 2001 appropriation estimated at not more than $33,942,000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $5,500,000, to remain available until expended: *Provided,* That revenues from licensing fees, inspection services, and other services and collections estimated at $5,390,000 in fiscal year 2001 shall be retained and be available until expended, for necessary salaries and expenses in this account notwithstanding 31 USC 3302: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2001 so as to result in a final fiscal year 2001 appropriation estimated at not more than $110,000.

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MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2001

Public Law 106–246 **114 Stat. 511**

July 13, 2000

An Act

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes.

* * * *

Sec. 211. No funds appropriated to the Nuclear Regulatory Commission for fiscal years 2000 and 2001 may be used to relocate, or to plan or prepare for the relocation of, the functions or personnel of the Technical Training Center from its location at Chattanooga, Tennessee.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 2000

Public Law 106–60 **113 Stat. 483**

September 29, 1999

Nuclear Regulatory Commission

SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), $465,000,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $19,150,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $442,000,000 in fiscal year 2000 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further*, That $3,850,000 of the funds herein appropriated for regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies shall be excluded from license fee revenues, notwithstanding 42 USC 2214: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2000 so as to result in a final fiscal year 2000 appropriation estimated at not more than $23,000,000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $5,000,000, to remain available until expended: *Provided,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 2000 so as to result in a final fiscal year 2000 appropriation estimated at not more than $0.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

Public Law 105–245 **112 Stat. 1855**

October 7, 1998

Nuclear Regulatory Commission

SALARIES AND EXPENSES
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including official representation expenses (not to exceed $15,000), $465,000,000, to remain available until expended: *Provided*, That of the amount appropriated herein, $17,000,000 shall be derived from the Nuclear Waste Fund: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $444,800,000 in fiscal year 1999 shall be retained and used for necessary salaries *and expen*ses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further*, That $3,200,000 of the funds herein appropriated for regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies shall be excluded from license fee revenues, notwithstanding 42 USC 2214: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1999 so as to result in a final fiscal year 1999 appropriation estimated at no more than $20,200.00.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $4,800,000, to remain available until expended: *Provided*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1999 so as to result in a final fiscal year 1999 appropriation estimated at not more than $0.

42 USC 5852.

Sec. 506. (a) Funds appropriated for "Nuclear Regulatory Commission–Salaries and Expenses" shall be available to the Commission for the following additional purposes:

(1) Employment of aliens.

(2) Services authorized by section 3109 of Title 5, United States Code.

(3) Publication and dissemination of atomic information.

(4) Purchase, repair, and cleaning of uniforms.

(5) Reimbursements to the General Services Administration for security guard services.

(6) Hire of passenger motor vehicles and aircraft.

(7) Transfers of funds to other agencies of the Federal Government for the performance of the work for which such funds are appropriated, and such transferred funds may be merged with the appropriations to which they are transferred.

(8) Transfers to the Office of Inspector General of the Commission, not to exceed an additional amount equal to 5 percent of the amount otherwise appropriated to the Office for the fiscal year. Notice of such transfers shall be submitted to the Committees on Appropriations.

(b) Funds appropriated for "Nuclear Regulatory Commission–Office of Inspector General" shall be available to the Office for the additional purposes described in paragraphs (2) and (7) of subsection (a).

(c) Moneys received by the Commission for the cooperative nuclear research program, services rendered to State governments, foreign governments, and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act of 1954 (42 USC 2169) may be retained and used for salaries and expenses associated with those activities, notwithstanding 31 USC 3302, and shall remain available until expended.

(d) Notwithstanding section 663(c)(2)(D) of Public Law 104–208, and to facilitate targeted workforce downsizing and restructuring, the chairman of the Nuclear Regulatory Commission may use funds appropriated in this Act to exercise the authority provided by section 663 of that Act with respect to employees who voluntarily separate from the date of enactment of this Act through December 31, 2000. All of the requirements in section 663 of Public Law 104–208, except for section 663(c)(2)(D), apply to the exercise of authority under this section.

Applicability.

(e) Subsections (a), (b), and (c) of this section shall apply to fiscal year 1999 and each succeeding fiscal year.

* * * *

Formerly Utilized Sites Remedial Action Program
(INCLUDING TRANSFER OF FUNDS)

For expenses necessary to clean up contaminated sites throughout the United States where work was performed as part of the Nation's early atomic energy program, $140,000,000, to remain available until expended: *Provided,* That the response actions by the United States Army Corps of Engineers under this program shall consist of the following functions and activities to be performed at eligible sites where remediation has not been completed: sampling and assessment of contaminated areas, characterization of site conditions, determination of the nature and extent of contamination, selection of the necessary and appropriate response actions as the lead Federal agency, preparation of designation reports, cleanup and closeout of sites, and any other functions determined by the Chief of Engineers as necessary for remediation:

Provided further, That response actions by the United States Army Corps of Engineers under this program shall be subject to the administrative, procedural, and regulatory provisions of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.), and the National Oil and hazardous Substances pollution Contingency Plan, 40 CFR, Chapter 1, Part 300: *Provided further,* That, except as stated herein, these provisions do not alter, curtail or limit the authorities, functions or responsibilities of other agencies under the Atomic Energy Act (42 USC 2011 et seq.): *Provided further,* That any sums recovered under CERCLA for the response actions, or recovered from a contractor, insurer, surety, or other person to reimburse the United States Army Corps of Engineers for any expenditures for response actions, shall be credited to the account used to fund response actions on eligible sites, and will be available for the response action costs for any eligible site: *Provided further,* That the Secretary of Energy may exercise the authority of 42 USC 2208 to make payments in lieu of taxes for federally–owned property where Formerly Utilized Sites Remedial Action Program activities are conducted, regardless of which Federal agency has acquired the property and notwithstanding references to the "the activities of the Commission" in 42 USC 2208: *Provided further,* That the unexpended balances of prior appropriations provided for these activities in this Act or any previous Energy and Water Development Appropriations Act may be transferred to and merged with this appropriation account, and thereafter, may be accounted for as one fund for the same time period as originally enacted.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1998

Public Law 105–62 **111 Stat. 1337**

October 13, 1997

Nuclear Regulatory Commission

SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $468,000,000, to remain available until expended: *Provided,* That of the amount appropriated herein, $15,000,000 shall be derived from the Nuclear Waste Fund: *Provided further,* That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the

cooperative nuclear safety research program, services rendered to State governments, foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act may be retained and used for salaries and expenses associated with those activities, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $450,000,000 in fiscal year 1998 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That $3,000,000 of the funds herein appropriated for regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies shall be excluded from license fee revenues, notwithstanding 42 USC 2214: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1998 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to State governments, foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1998 appropriation estimated at not more than $18,000,000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by 5 USC 3109, $4,800,000, to remain available until expended; and in addition, an amount not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided,* That notice of such transfers shall be given to the Committees on Appropriations of the House of Representatives and Senate: *Provided further,* That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1998 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1998 appropriation estimated at not more than $0.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1997

Public Law 104–206 **110 Stat. 3000**

September 30, 1996

Nuclear Regulatory Commission

SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $471,800,000, to remain available until expended: *Provided,* That of the amount appropriated herein, $11,000,000 shall be derived from the Nuclear Waste Fund: *Provided further,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act may be retained and used for salaries and expenses associated with those activities, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $457,300,000 in fiscal year 1997 shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That the funds herein appropriated for regulatory reviews and other activities pertaining to waste stored at the Hanford site, Washington, shall be excluded from licensee fee revenues, notwithstanding 42 USC 2214: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1997 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1997 appropriation estimated at not more than $14,500,000.

Office of Inspector General (INCLUDING TRANSFER OF FUNDS)

Notice.

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by 5 USC 3109, $5,000,000, to remain

available until expended; and in addition, an amount not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided*, That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further,* That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1997 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1997 appropriation estimated at not more than $0.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1996

Public Law 104–46 **109 Stat. 417**

November 13, 1995

Nuclear Regulatory Commission

SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $468,300,000, to remain available until expended, of which $11,000,000 shall be derived from the Nuclear Waste Fund: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act of 1954, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $457,300,000 in fiscal year 1996 shall be

retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1996 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1996 appropriation estimated at not more than $11,000,000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

Notice.

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by section 3109 of Title 5, United States Code, $5,000,000, to remain available until expended; and in addition, an amount not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided*,
That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further,* That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding 31 USC 3302, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1996 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1996 appropriation estimated at not more than $0.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1995

Public Law 103–316 **108 Stat. 1721**

August 26, 1994

Nuclear Regulatory Commission

SALARIES AND EXPENSES
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to

exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $520,501,000, to remain available until expended, of which $22,000,000 shall be derived from the Nuclear Waste Fund: *Provided*, That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further*, That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act of 1954, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $498,501,000 in fiscal year 1995 shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1995 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1995 appropriation estimated at not more than $22,000,000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by section 3109 of Title 5, United States Code, $5,080,000, to remain available until expended; and in addition, an amount not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: Provided, That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further*, That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1995 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1995 appropriation estimated at not more than $0.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1994

Public Law 103–126 **107 Stat. 1332**

October 28, 1993

Nuclear Regulatory Commission

SALARIES AND EXPENSES
(Including Transfer of Funds)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $542,900,000, to remain available until expended, of which $22,000,000 shall be derived from the Nuclear Waste Fund: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further*, That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act of 1954, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $520,900,000 in fiscal year 1994 shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1994 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1994 appropriation estimated at not more than $22,000,000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by section 3109 of Title 5, United States Code, $4,800,000 to remain available until expended; and in addition, an

amount not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided,* That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further*, That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1994 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1994 appropriation estimated at not more than $0.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1993

Public Law 102–37 **106 Stat. 1340**

October 2, 1992

Nuclear Regulatory Commission

SALARIES AND EXPENSES (1993) (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $535,415,000, to remain available until expended, of which $21,100,000 shall be derived from the Nuclear Waste Fund: *Provided,* That from this appropriation transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act of 1954, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections

estimated at $514,315,000 in fiscal year 1993 shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1993 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program. services rendered to foreign governments and international organizations. and the material and information access authorization programs, so as to result in a final fiscal year 1993 appropriation estimated at not more than $21,100.000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by section 3109 of Title 5, United States Code, $4,585,000 to remain available until expended; and in addition, an amount not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided,* That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further*, That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1993 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1993 appropriation estimated at not more than $0.

5 USC 504 note.

Sec. 502 None of the funds in this Act or subsequent Energy and Water Development Appropriations Acts shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in such Acts.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1992

Public Law 102–104 **105 Stat. 534**

August 17, 1991

Nuclear Regulatory Commission

SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act of 1954, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $508,810,000, to remain available until expended, of which $19,962,000 shall be derived from the Nuclear Waste Fund: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further*, That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act of 1954, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $488,848,000 in fiscal year 1992 shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1992 from licensing fees, inspection services, and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1992 appropriation estimated at not more than $19,962,000.

Office of Inspector General (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by section 3109 of Title 5, United States Code, $3,690,000, to remain available until expended; and in addition, an amount not to exceed 5 percent of this sum may be transferred from

Salaries and Expenses, Nuclear Regulatory Commission: *Provided,* That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further,* That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1992 from licensing fees, inspection services, and other services and collections, so as to result in a final fiscal year 1992 appropriation estimated at not more than $0.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1991

Public Law 101–514 104 Stat. 2074

November 5, 1990

Nuclear Regulatory Commission

SALARIES AND EXPENSES (INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $461,320,000, to remain available until expended, of which $19,650,000 shall be derived from the Nuclear Waste Fund: *Provided*, That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further*, That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act of 1954, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further*, That revenues from licensing fees, inspection services, and other services and collections estimated at $153,450,000 in fiscal year 1991 shall be retained and used

for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1991 from licensing fees, inspection services and other services and collections, and from the Nuclear Waste Fund, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1991 appropriation estimated at not more than $307,870,000.

Office of Inspector General
(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by 5 USC 3109, $3,680,000, to remain available until expended; and in addition, not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided*, That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further,* That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1990

Public Law 101–101 **103 Stat. 641**

September 29, 1989

Nuclear Regulatory Commission
SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $442,100,000, to remain available until expended, of which $23,195,000 shall be derived from the Nuclear Waste Fund: *Provided*, That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international

organizations, and the material and information access authorization programs, including criminal history checks under section 149 of the Atomic Energy Act, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $146,850,000 in fiscal year 1990 shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1990 from licensing fees, inspection services and other services and collections, and from the Nuclear Waste Fund, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1990 appropriation estimated at not more than $295,250,000.

Office of Inspector General

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, including services authorized by 5 USC 3109, $2,900,000, to remain available until expended; and in addition, not to exceed 5 percent of this sum may be transferred from Salaries and Expenses, Nuclear Regulatory Commission: *Provided*, That notice of such transfers shall be given to the Committees on Appropriations of the House and Senate: *Provided further,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1989

Public Law 100–371 **102 Stat. 857**

July 19, 1988

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1989, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Energy and Water Development Appropriation Act, 1989.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1989, for energy and water development, and for other purposes, namely:

Title IV–Independent Agencies

Nuclear Regulatory Commission
SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $420,000,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs including criminal history checks under section 149 of the Atomic Energy Act, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $189,000,000 in fiscal year 1989 shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1989 from licensing fees, inspection services and other services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and

information access authorization programs, so as to result in a final fiscal year 1989 appropriation estimated at not more than $231,000,000.

Title V–General Provisions

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.
Sec. 502. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.
Sec. 503. None of the programs, projects or activities as defined in the report accompanying this Act, may be eliminated or disproportionately reduced due to the application of "Savings and Slippage", "general reduction", or the provision of Public Law 99–177 or Public Law 100–119.
Sec. 504. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of Title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.
Sec. 505. None of the funds appropriated in this Act shall be used to implement a program of retention contracts for senior employees of the Tennessee Valley Authority.
Sec. 509. Such sums as may be necessary for fiscal year 1989 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

This Act may be cited as the "Energy and Water Development Appropriations Act, 1989."

ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1988

Public Law 100–202 **101 Stat. 1329**

December 22, 1987

JOINT RESOLUTION

Making further continuing appropriations for the fiscal year 1988, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

2 USC 902 note.

Sec. 1. Because the spending levels included in this Resolution achieve the deficit reduction targets of the Economic Summit, sequestration is no longer necessary. Therefore:

(a) Upon the enactment of this Resolution the orders issued by the President on October 20, 1987, and November 20, 1987, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, are hereby rescinded.

(b) Any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequester able resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1988, and for other purposes, namely:

Sec. 101. (d) Such amounts, as may be necessary for programs, projects or activities provided for in the Energy and Water Development Appropriations Act, 1988, at a rate of operations and to the extent and in the manner provided for, the provisions of such Act to be effective as if it had been enacted into law as the regular appropriations Act, as follows:

An Act

Energy and Water Development Appropriation Act, 1988.

Making appropriations for energy and water development for the fiscal year ending September 30, 1988, and for other purposes.

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms, official representation expenses (not to exceed $20,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $392,800,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs including criminal history checks under section 149 of the Atomic Energy Act, as amended, may be retained and used for salaries and expenses associated with those activities, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That revenues from licensing fees, inspection services, and other services and collections estimated at $196,400,000 in fiscal year 1988 shall be retained and used for necessary salaries and expenses in this account, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended: *Provided further,* That the sum herein appropriated shall be reduced by the amount of revenues received during fiscal year 1988 from licensing fees, inspection services and other

services and collections, excluding those moneys received for the cooperative nuclear safety research program, services rendered to foreign governments and international organizations, and the material and information access authorization programs, so as to result in a final fiscal year 1988 appropriation estimated at not more than $196,400,000.

Title V–General Provisions

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 502. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act. This prohibition bars payment to a party intervening in an administrative proceeding for expenses incurred in appealing an administrative decision to the courts.

Sec. 503. None of the programs, projects or activities as defined in the report accompanying this Act, may be eliminated or disproportionately reduced due to the application of "Savings and Slippage", "general reduction", or the provision of Public Law 99–177 or Public Law 100–119.

Sec. 504. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of Title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Sec. 505. None of the funds appropriated in this Act shall be used to implement a program of retention contracts for senior employees of the Tennessee Valley Authority.

Sec. 506. Notwithstanding any other provision of this Act or any other provision of law, none of the funds made available under this Act or any other law shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required "at cost" to a "market rate" or any other noncost–based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted.

Sec. 507. None of the funds appropriated in this Act for Power Marketing Administrations or the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund or the Tennessee Valley Authority Fund, may be used to pay the costs of procuring extra high voltage (EHV) power equipment unless contract awards are made for EHV equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 percentum of the bid or offering price of the most competitive foreign bidder: *Provided,* That such agencies shall determine the incremental costs associated with implementing this section and defer or offset such incremental costs against otherwise existing repayment obligations: *Provided further,* That this section shall not apply to any procurement initiated prior to October 1, 1985, or to the acquisition of spare parts or accessory equipment

necessary for the efficient operation and maintenance of existing equipment and available only from the manufacturer of the original equipment: *Provided further,* That this section shall not apply to procurement of domestic end product as defined in 48 CFR section 25.101: *Provided further,* That this section shall not apply to EHV power equipment produced or manufactured in a country whose government has completed negotiations with the United States to extend the GATT Government Procurement Code, or a bilateral equivalent, to EHV power equipment, or which otherwise offers fair competitive opportunities in public procurements to United States manufacturers of such equipment.

Sec. 508. None of the funds in this Act may be used to construct or enter into an agreement to construct additional hydropower units at Denison Dam–Lake Texoma.

Sec. 509. In honor of Ernest Frederick Hollings, the building located at 83 Meeting Street in Charleston, South Carolina, shall hereafter be known and designated as the "Hollings Judicial Center", *Provided further,* That the lock and dam on the Tombigbee River in Pickens Country, Alabama, commonly known as the Aliceville Lock and Dam, and the resource management and visitor center at Aliceville Lake on the Tennessee–Tombigbee Waterway, shall hereafter be known and designated as the "Tom Bevill Lock and Dam" and the "Tom Bevill Resource Management and Visitor Center at Aliceville Lake on the Tennessee–Tombigbee Waterway", respectively. Any reference in a law, map, regulation, document, or paper of the United States to such lock and dam and any reference in a law, map, regulation, document, or paper of the United States to such resource management and visitor center shall be held to be a reference to the "Tom Bevill Lock and Dam" and the "Tom Bevill Resource Management and Visitor Center at Aliceville Lake on the Tennessee–Tombigbee Waterway", respectively.

This Act may be cited as the "Energy and Water Development Appropriation Act, 1988."

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1987

Public Law 99–591 **100 Stat. 3341**

October 30, 1986

JOINT RESOLUTION

Making continuing appropriations for the fiscal year 1987, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are hereby appropriated, out of any money in the treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organization units of the Government for the fiscal year 1987, and for other purposes, namely:

Sec. 101.(e) Such amounts as may be necessary for programs, projects or activities provided for in the Energy and Water Development Appropriations Act, 1987, at a rate of operations and to the extent and in the manner provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1987, and for other purposes.

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $8,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $401,000,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program and the material and information access authorization programs including criminal history checks under section 149 of the Atomic Energy Act, as amended, may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended.

Title V–General Provisions

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.
Sec. 502. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.
Sec. 503. None of the programs, projects or activities as defined in the report accompanying this Act, may be eliminated or disproportionately reduced due to the application of "Savings and Slippage", "general reductions" or the provisions of Public Law 99–177.
Sec. 504. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of Title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for

public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Sec. 505. None of the funds appropriated in the Act shall be used to implement a program of retention contracts for senior employees of the Tennessee Valley Authority.

Sec. 506. Notwithstanding any other provision of this Act or any other provision of law, none of the funds made available under this Act or any other law shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required "at cost" to a "market rate" or any other noncost–based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted.

Sec. 507. None of the funds appropriated in this Act shall be used to pay the salary of the Administrator of a Power Marketing Administration or the Board of Directors of the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, may be used to pay the salary of the Administrator of the Bonneville Power Administration, unless such Administrators or Directors award contracts for the procurement of extra high voltage (EHV) power equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 percentum of the bid or offering price of the most competitive foreign bidder: *Provided,* That such agencies shall determine the incremental costs associated with implementing this section and defer or offset such incremental costs against otherwise existing repayment obligations: *Provided further,* That this section shall not apply to any procurement initiated prior to October 1, 1985, or to the acquisition of spare parts or accessory equipment necessary for the efficient operation and maintenance of existing equipment and available only from the manufacturer of the original equipment: *Provided further,* That this section shall not apply to procurement of domestic end product as defined in 48 CFR section 25.101: *Provided further,* That this section shall not apply to EHV power equipment produced or manufactured in a country whose government has completed negotiations with the United States to extend the GATT Government Procurement Code, or a bilateral equivalent, to EHV power equipment, or which otherwise offers fair competitive opportunities in public procurements to United States manufacturers of such equipment.

Sec. 508. None of the funds in this Act may be used to construct or enter into an agreement to construct additional hydropower units at Denison Dam–Lake Texoma.

This Act may be cited as the "Energy and Water Development Appropriations Act, 1987."

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1987

Public Law 99–500 **100 Stat. 1783**

October 18, 1986

JOINT RESOLUTION

Making continuing appropriations for the fiscal year 1987, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1987, and for other purposes, namely:

Sec. 101. (e) Such amounts as may be necessary for programs, projects or activities provided for in the Energy and Water Development Appropriations Act, 1987, at a rate of operations and to the extent and in the manner provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1987, and for other purposes.

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by section 3109 of Title 5, United States Code; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $8,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $401,000,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* that moneys received by the Commission for the cooperative nuclear safety research program and the material and information access authorization programs including criminal history checks under section 149 of the Atomic Energy Act, as amended, may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions

of section 3302 of Title 31, United States Code, and shall remain available until expended.

Title V–General Provisions

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.
Sec. 502. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.
Sec. 503. None of the programs, projects or activities as defined in the report accompanying this Act, may be eliminated or disproportionately reduced due to the application of "Savings and Slippage", "general reductions", or the provisions of 99–177.
Sec. 504. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of Title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.
Sec. 505. None of the funds appropriated in this Act shall be used to implement a program of retention contracts for senior employees of the Tennessee Valley Authority.
Sec. 506. Notwithstanding any other provision of this Act or any other provision of law, none of the funds made available under this Act or any other law shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required "at cost" to a "market rate" or any other noncost–based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted.
Sec. 507. None of the funds appropriated in this Act shall be used to pay the salary of the Administrator of a Power Marketing Administration or the Board of Directors of the Tennessee Valley Authority, and none of the funds authorized to be expended by this or any previous Act from the Bonneville Power Administration Fund, established pursuant to Public Law 93–454, may be used to pay the salary of the Administrator of the Bonneville Power Administration, unless such Administrators or Directors award contracts for the procurement of extra high voltage (EHV) power equipment manufactured in the United States when such agencies determine that there are one or more manufacturers of domestic end product offering a product that meets the technical requirements of such agencies at a price not exceeding 130 percentum of the bid or offering price of the most competitive foreign bidder: *Provided,* That such agencies shall determine the incremental costs associated with implementing this section and defer or offset such incremental costs against otherwise existing repayment obligations: *Provided further,* That this section shall not apply to any procurement initiated prior to October 1, 1985, or to the acquisition of spare parts or accessory equipment necessary for the efficient operation and maintenance of existing equipment and available only from the manufacturer of the original equipment: *Provided further,* That this section shall not apply to procurements of domestic end product as defined in 48 CFR section

25.101: *Provided further,* That this section shall not apply to EHV power equipment produced or manufactured in a country whose government has completed negotiations with the United States to extend the GATT Government Procurement Code, or a bilateral equivalent, to EHV power equipment, or which otherwise offers fair competitive opportunities in public procurements to United States manufacturers of such equipment.

Sec. 508. None of the funds in this Act may be used to construct or enter into an agreement to construct additional hydropower units at Denison Dam–Lake Texoma.

This Act may be cited as the "Energy and Water Development Appropriations Act, 1987."

Note: When the President signed H.J. Res. 738 on October 18, 1986, it was assigned Public Law No. 99–500. The following statement was issued by the President in conjunction with his signing of Public Law 99–591:

On October 17, 1986, I was presented by the Congress with an enrolled resolution designated H.J. Res. 738, a joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes. I signed this measure into law on October 18, 1986. I have since learned that H.J. Res. 738 was not properly enrolled, in that a small number of paragraphs of text were omitted due to clerical error.

The provisions I signed into law on October 18 remain the law of the land. The Supreme Court has held that transmission errors of this sort do not in any way vitiate the legal effect of a President's signature. Accordingly, that which was signed became law.

H. J. Res. 738 has since been properly enrolled and has been presented to me for signature. My signing of H.J. Res. 738 today will enable the provisions previously omitted to become law as well.

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APPROPRIATIONS ACT, 1986

Public Law 99–141 **99 Stat. 564**

November 1, 1985

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1986, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1986, for energy and water development, and for other purposes, namely:

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $3,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $418,000,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1985

Public Law 98–360 **98 Stat. 403**

July 16, 1984

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1985, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1985, for energy and water development, and for other purposes, namely:

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 2011 note.
42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $3,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $448,200,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by Commission for the cooperative nuclear safety research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3302 of Title 31, United States Code, and shall remain available until expended.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1984

Public Law 98–50 **97 Stat. 247**

July 14, 1983

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Energy and Water Development Appropriation Act, 1984.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1984, for energy and water development, and for other purposes, namely:

Nuclear Regulatory Commission

SALARIES AND EXPENSES

31 USC 3302. 42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official representation expenses (not to exceed $3,000); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft, $465,800,000 to remain available until expended: *Provided* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research program and the material access authorization program may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of 31 USC 484, and shall remain available until expended.

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CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1983

Public Law 97–377 **96 Stat. 1830**

December 21, 1982

JOINT RESOLUTION

Making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes.

Continuing appropriations for fiscal year 1983.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1983, and for other purposes, namely:

Title V–General Provisions

(f) Such amounts as may be necessary for continuing activities which were conducted in fiscal year 1982, for which provision was made in the Energy and Water Development Act, 1982, at the current rate of operations: *Provided,* That no funds under this heading shall be used for further study or construction or in any fashion for a federally funded waterway which extends the Tennessee Tombigbee project south from the city of Demopolis, Alabama: *Provided further,* That no appropriation, fund or authority made available by this joint resolution or any other Act may be used directly or indirectly to significantly alter, modify, dismantle, or otherwise change the normal operation and maintenance required for any civil works project under Department of Defense–Civil, Department of the Army, Corps of Engineers–Civil, Operation and Maintenance, General, and the operation and maintenance activities funded in Flood Control, Mississippi River and Tributaries: *Provided further,* That of such amount, $1,000,000 shall be available only to provide a wider navigation opening at the Franklin Ferry Bridge, Jefferson County, Alabama: *Provided further,* That no appropriation or fund made available or authority granted pursuant to this paragraph shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1982 without prior approval of the Committees on Appropriations: *Provided further,* That Department of Energy, Atomic Energy Defense Activities, shall be funded at not to exceed an annual rate for new obligational authority of $5,700,000,000, of which not more than $4,372,000,000 shall be available for operating expenses and not more than $1,328,000,000 shall be available for plant and capital equipment, except that no funds shall be available for Project 82D109; *Provided further,* That no appropriation, fund or authority made available to the Department of Energy by this joint resolution or any other Act, shall be used for any action which would result in a significant reduction of the employment levels for any program or activity below the employment levels in effect on September 30, 1982:

(g) Notwithstanding section 102(c) of this joint resolution, the following amounts are provided for fiscal year 1983:

Sec. 159. Funds in this joint resolution may not be made available for payment to the International Atomic Energy Agency unless the Board of Governors of the International Atomic Energy Agency certifies to the United States Government that the State of Israel is allowed to participate fully as a member nation in the activities of that Agency, and the Secretary of State transmits such certification to the Speaker of the House of Representatives and the President of the United States Senate.

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1982

Public Law 97–88 **95 Stat. 1135**

December 4, 1981

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1982, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1982, for energy and water development, and for other purposes, namely:

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 2014.
42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official entertainment expenses (not to exceed $1,500); reimbursements to the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft; $465,700,000 to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of 31 USC 484, and shall remain available until expended: *Provided further,* That transfers between accounts may

be made only with the approval of the Committees on Appropriations of the House of Representatives and the Senate: *Provided further,* That no part of the funds appropriated in this Act be used to implement section 110 of Public Law 96–295: *Provided further,* That no funds appropriated to the Nuclear Regulatory Commission in this Act may be used to implement or enforce any portion of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980, or to require any State to adopt such requirements in order for the State to continue to exercise authority under State law for uranium mill and mill tailings licensing, or to exercise any regulatory authority for uranium mill and mill tailings licensing in any State that has acted to exercise such authority under State law; *Provided, however,* That the Commission may use such funds to continue to regulate byproduct material, as defined in section 11 e.(2) of the Atomic Energy Act of 1954, as amended, in the manner and to the extent permitted prior to October 3, 1980.

Title V–General Provisions

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 502. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.

Sec. 503. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 USC 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.

Sec. 504. None of the funds in this Act shall be used to implement, administer, or enforce any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted in accordance with the applicable law of the United States.

Sec. 505. None of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

Sec. 506. None of the funds provided in this Act to any department or agency shall be obligated in 15 USC 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

Sec. 507. None of the funds appropriated in this Act shall be used to implement a program of retention contracts for senior employees of the Tennessee Valley Authority.

Sec. 508. The Senate hereby expresses its intention not to appropriate funds for improvements on the portion of the Black Warrior–Tombigbee Waterway south of Demopolis, Alabama.

Short Title.

This Act may be cited as the "Energy and Water Development Appropriation Act, 1982."

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ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1981

Public Law 96–367 **94 Stat. 1344**

October 1, 1980

An Act

Making appropriations for energy and water development for the fiscal year ending September 30, 1981, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Energy and Water Development. Appropriation Act, 1981.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1981, for energy and water development, and for other purposes, namely:

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, and the Atomic Energy Act, as amended, namely the control of atomic energy and the issuance of licenses as authorized by section 103 (42 USC 2133) so as to make the maximum contribution to the general welfare, promote world peace, increase the standard of living and strengthen free competition in private enterprise, subject at all times to the paramount objective of making the maximum contribution to the common defense and security and to the objective of protecting the health and safety of the public, including the employment of aliens; service authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official entertainment expenses (not to exceed $3,000); reimbursement of the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft; $447,520,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of 31 USC 484, and shall remain available until expended.

Title V–General Provisions

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 502. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act.

Sec. 503. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 USC 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.

Short Title.

This Act may be cited as the "Energy and Water Development Appropriation Act, 1981."

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SUPPLEMENTAL APPROPRIATIONS AND RESCISSION ACT, 1980

Public Law 96–304 **94 Stat. 872**

July 8, 1980

An Act

Making supplemental appropriations for the fiscal year ending September 30, 1980, rescinding certain budget authority, and for other purposes.

Supplemental Appropriations and Rescission Act, 1980.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Supplemental Appropriations and Rescission Act, 1980") for the fiscal year ending September 30, 1980, that the following rescissions of budget authority are made, and for other purposes, namely:

Title I–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $31,950,000, to remain available until expended.

TITLE II–INCREASED PAY COSTS FOR THE FISCAL YEAR 1980

Nuclear Regulatory Commission

"Salaries and expenses", $4,810,000.

Title III–General Provisions
(INCLUDING TRANSFER OF FUNDS)

Sec. 301. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 302. Except where specifically increased or decreased elsewhere in this Act, the restrictions contained within appropriations, or provisions affecting appropriations or other funds, available during the fiscal year 1980, limiting the amounts which may be expended for personal services, or for purposes involving personal services, or amounts which may be transferred between appropriations or authorizations available for or involving such services, are hereby increased to the extent necessary to meet increased pay costs authorized by or pursuant to law.

Career appointees.

Sec. 303. Notwithstanding any other provision of law, the number of career appointees in any agency paid performance awards during fiscal year 1980 under 5 USC 5384, or any comparable personnel system established on or after October 13, 1978, may not exceed 25 percent of the number of Senior Executive Service or comparable personnel system positions in any such agency.

41 USC 46–48b.

Sec. 304. (a) Out of the total moneys appropriated for the operation of the departments and agencies of the Federal Government for fiscal year 1980, $220,000,000 of this total appropriated for the purchase of furniture is hereby rescinded. Excluded from this rescission are furniture items produced by Federal Prison Industries, Inc., or by sheltered workshops for the blind and other severely handicapped under the auspices of Public Law 92–28: *Provided,* That such items are fully justified by agency needs. The Director of the Office of Management and Budget is directed to allocate this rescission total among the departments and agencies of the Federal Government and report back to the House and the Senate Committees on Appropriations within 30 days following the date of the enactment of this Act as to the allocation made: *Provided further,* That no allocation shall exceed 25 percent of said amount.

(b) With respect to the provisions of the Treasury, Postal Service and General Government Appropriations Act, 1980, under the heading General Services Administration, Federal Buildings Fund, Limitations on Availability of Revenue, the aggregate amount made available for the revenues and collections deposited into the Federal Buildings Fund pursuant to section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 USC 4901(f)), for the purposes set forth in the provisions contained under such heading is reduced by $15,000,000, which reduction shall apply specifically to the limitation on rental of space under clause (4) of such provisions.

Unresolved and new audits.

Sec. 305. All unresolved audits currently pending within agencies and departments, for which appropriations are made under this Act, shall be resolved not later than September 30, 1981. Any new audits, involving

questioned costs, arising after the enactment of this Act shall be resolved within 6 months.

Delinquent debts.

Sec. 306. Each department and agency for which appropriations are made under this Act shall take immediate action (1) to improve the collection of overdue debts owed to the United States within the jurisdiction of that department or agency; (2) to bill interest on delinquent debts as required by the Federal Claims Collection Standards; and (3) to reduce amounts of such debts written off as uncollectible.

Funds for consulting services and information submittal to congressional committees.

Sec. 307. (a) Effective October 1, 1981, for application in fiscal year 1982, a department, agency, or establishment, as defined by section 2, subchapter I, Chapter 1, Title 31, United States Code, shall submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which these funds are located; and a brief description of the need for these services, including a list of those major programs that require consulting services.

Agency budget controls and progress, submittal to Congress.

(b) Effective October 1, 1981, for application in fiscal year 1982, the Inspector General of such department, agency, or establishment, or comparable official, or if the agency has no Inspector General or comparable official, the agency head or the agency head's designee, shall submit to the Congress along with the agency's budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System regarding consultant service contractual arrangements.

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ENERGY AND WATER DEVELOPMENT APPROPRIATION ACT, 1980

Public Law 96–69 **93 Stat. 449**

September 25, 1979

Making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

Energy and Water Development Appropriation Act, 1980.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1980, for energy and water development, and for other purposes, namely:

Title IV–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as amended, including the employment of aliens; services authorized by 5 USC 3100;

publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official entertainment expenses (not to exceed $12,500); reimbursement of the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft; $363,340,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of 31 USC 484, and shall remain available until expended: *Provided further,* that 731 personnel positions shall be allocated exclusively to the Office of Nuclear Reactor Regulation to carry out those responsibilities authorized by law.

Title V–General Provision

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

APPROPRIATIONS ACT, 1979

Public Law 95–482 **92 Stat. 1603**

October 18, 1978

Making continuing appropriations for the fiscal year 1979, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1979.

Sec. 101. (b) Such amounts as may be necessary, notwithstanding any other provision of this joint resolution, for the fiscal year ending September 30, 1979, for programs, projects, and activities to the extent and in the manner provided for in the Energy and Water Development Appropriation Act, 1979 (H.R. 12928) as enacted by the Congress.[3]

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[3] The NRC's appropriation (provided for in H.R. 12928) as enacted by Congress is as follows:

Nuclear Regulatory Commission

SALARIES AND EXPENSES–For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, as Amended, including the employment of aliens; services authorized by 5 U.S.C. 2109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official entertainment expenses (not to exceed $15,000); reimbursement of the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft; $322,301,000, to remain available

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SECOND SUPPLEMENTAL APPROPRIATIONS ACT, 1978

Public Law 95–355 **92 Stat. 538**

September 8, 1978

An Act

Making supplemental appropriations for the fiscal year ending September 30, 1978, and for other purposes.

Second Supplemental Appropriations Act, 1978.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this act may be cited as the "Second Supplemental Appropriations Act, 1978") for the fiscal year ending September 30, 1978, and for other purposes, namely:

Title I–Independent Agencies

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For an additional amount for "salaries and expenses", $3,600,000, to remain available until expended.

Title II–Increased Pay Costs For The Fiscal Year 1978

Nuclear Regulatory Commission

"Salaries and expenses"; $5,000,000, to remain available until expended.

Title III–General Provisions

Fiscal year limitation.

Sec. 301. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 302. Except where specifically increased or decreased elsewhere in this Act, the restrictions contained within appropriations, or provisions affecting appropriations or other funds, available during the fiscal year 1978, limiting the amounts which may be expended for personal services, or for purposes involving personal services, or amounts which may be

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until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of § 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

transferred between appropriations or authorizations available for or involving such services, are hereby increased to the extent necessary to meet increased pay costs authorized by or pursuant to law.

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PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ENERGY RESEARCH APPROPRIATION ACT, 1978

Public Law 95–96 **91 Stat. 807**

August 7, 1977

An Act

Making appropriations for public works for water and power development and energy research for the fiscal year ending September 30, 1978, and for other purposes.

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official entertainment expenses (not to exceed $10,000); reimbursement of the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft; $281,423,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* That moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended.

Title V–General Provisions

Fiscal year limitation.

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Short Title.

This Act may be cited as the "Public Works for Water and Power Development and Energy Research Appropriation Act, 1978."

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SUPPLEMENTAL APPROPRIATIONS ACT, 1977

Public Law 95–26 **91 Stat. 112**

May 4, 1977

Making supplemental appropriations for the fiscal year ending September 30, 1977, and for other purposes.

Title II–Increased Pay Costs For The Fiscal Year 1977

For additional amounts for appropriation for the fiscal year 1977, for increased pay costs authorized by or pursuant to law, as follows:

Nuclear Regulatory Commission

"Salaries and expenses", $4,350,000, to remain available until expended.

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PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ENERGY RESEARCH APPROPRIATION ACT, 1977

Public Law 94–355 **90 Stat. 889**

July 12, 1976

An Act

Making appropriations for public works for water and power development and energy research, including the Corps of Engineers–Civil, the Bureau of Reclamation, power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Nuclear Regulatory Commission, the Energy Research and Development Administration, and related independent agencies and commissions for the fiscal year ending September 30, 1977, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Public Works for Water and Power Development and Energy Research Appropriation Act, 1977.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1977, for public works for water and power development and energy research, including the Corps of Engineers–Civil, the Bureau of Reclamation, power agencies of the Department of Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Nuclear Regulatory Commission, the Energy Research and Development Administration, and related independent agencies and commissions, and for other purposes, namely:

Title IV–Independent offices

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official entertainment expenses (not to exceed $10,000); reimbursement of the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft; $244,430,000, to remain available until expended: *Provided,* That from this appropriation, transfer of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred: *Provided further,* Moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended.

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PUBLIC WORKS FOR WATER AND POWER DEVELOPMENT AND ENERGY RESEARCH APPROPRIATION ACT, 1976

Public Law 94–180 **89 Stat. 1035**

December 26, 1975

An Act

Making appropriations for public works for water and power development and energy research, including the Corps of Engineers–Civil, the Bureau of Reclamation, power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Nuclear Regulatory Commission, the Energy Research and Development Administration, and related independent agencies and commissions for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Public Works for Water and Power Development and Energy Research Appropriation Act, 1976.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, for public works for water and power development and energy research, including the Corps of Engineers–Civil, the Bureau of Reclamation, power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Nuclear Regulatory Commission, the Energy Research and

Development Administration, and related independent agencies and commissions, and for other purposes, namely:

Title IV–Independent offices

Nuclear Regulatory Commission

SALARIES AND EXPENSES

42 USC 5801 note.

For necessary expenses of the Commission in carrying out the purposes of the Energy Reorganization Act of 1974, including the employment of aliens; services authorized by 5 USC 3109; publication and dissemination of atomic information; purchase, repair, and cleaning of uniforms; official entertainment expenses (not to exceed $7,000); reimbursement of the General Services Administration for security guard services; hire of passenger motor vehicles and aircraft; $215,423,000; *Provided,* That from this appropriation, transfers of sums may be made to other agencies of the Government for the performance of the work for which this appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

For "Salaries and expenses" in accordance with the above provisions for the period July 1, 1976, through September 30, 1976, $51,425,000.

Title V–General Provisions

Fiscal year limitation.

Sec. 501. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein, except as provided by section 204 of Public Law 93–554.

40 USC 581. Space and service charges.

Sec. 502. No part of any appropriation contained in this Act shall be available for paying to the Administrator of the General Services Administration in excess of 90 percentum of the standard level user charge established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended, for space and services.

Short Title.

This Act may be cited as the "Public Works for Water and Power Development and Energy Research Appropriation Act, 1976."

SECOND SUPPLEMENTAL APPROPRIATIONS ACT, 1975

Public Law 94–32 **89 Stat. 173**

June 12, 1975

An Act

Making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes

Second Supplemental Appropriations Act, 1975.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental

appropriations (this Act may be cited as the "Second Supplemental Appropriations Act, 1975") for fiscal year ending June 30, 1975, and for the other purposes, namely:

Title I–Chapter VIII

Nuclear Regulatory Commission

SALARIES AND EXPENSES

For necessary expenses of the Nuclear Regulatory Commission as authorized by law, including services as authorized by 5 USC 3109, $44,400,000, to remain available until expended.

Title II–Increased Pay Costs

For additional amounts for appropriations for the fiscal year 1975, for increased pay costs authorized by or pursuant to law, as follows:

Energy Research and Development Administration

"Operating expenses", $5,681,000, to remain available until expended;

Nuclear Regulatory Commission

"Salaries and expenses", $1,540,000, to remain available until expended;

Title III–General Provisions

Fiscal year limitation.

Sec. 301. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 302. Except where specifically increased or decreased elsewhere in this Act, the restrictions contained within appropriations, or provisions affecting appropriations or other funds, available during the fiscal year 1975, limiting the amounts which may be expended for personal services, or for purposes involving personal services, or amounts which may be transferred between appropriations or authorizations available for or involving such services, are hereby increased to the extent necessary to meet increased pay costs authorized by or pursuant to law.

GSA, space and services.

Sec. 303. No part of any appropriation, funds, or other authority contained in this Act shall be available for paying to the Administrator of the General Services Administration in excess of 90 percentum of the standard level user charge established pursuant to section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended, for space and services.

40 USC 581.
42 USC 2000c.
Busing.

Sec. 304. No part of the funds contained in this Act may be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964,Public Law 88–352, to take any action to force the busing of students; to force on account of race, creed, or color the abolishment of any school so desegregated; or to force the transfer or assignment to any student attending any elementary or secondary school so desegregated to or from a particular school over the protest of his or her parents or parent.

42 USC 2000c.
Busing.

Sec. 305. (a) No part of the funds contained in this Act shall be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed, or color the transfer of students to or from a particular school so desegregated as a condition precedent to obtaining Federal funds otherwise available to any State, school district, or school.

School transportation funds.

(b) No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school system.

U.S. Postal Service, reimbursement.

Sec. 306. Unobligated balances of operation and maintenance appropriations available to the Department of Defense–Military, in an amount not to exceed $18,950,000 in fiscal year 1973 and $23,891,000 in fiscal year 1974, shall be available to reimburse the United States Postal Service for service rendered to the Department of Defense during those fiscal years.

TABLE: ANNUAL NRC APPROPRIATION ACTS THROUGH FISCAL YEAR 2012

Appropriation	Amount Requested ($Million)	Date of Request	Amount Allowed by House ($Million)	Amount Allowed by Senate ($Million)	Amount Appropriated ($Million)	Difference Between Request and Appropriation (Percent)	Date Enacted	Public Law
Fiscal Year 1976: Regular	$219,935	Feb. 3, 1975	$202,500	$215,423	$215,423	–2.1	Dec. 26, 1975	94–180
Fiscal Year 1977: Regular	249,430	Jan. 21, 1976	244,430	244,430	244,430	–2	July 12, 1976	94–355
	292,250	Jan. 17, 1977	277,696	285,150	281,423	–3.7	Aug. 7, 1977	95–96
	330,670	Jan. 23, 1978	321,487	328,287	322,301	–2.5	Oct. 18, 1978	95–482
Fiscal Year 1978: Supplemental	5,350	Jan. 23, 1978	3,600	3,000v	3,600	–33	Sept. 8, 1978	95–355
Fiscal Year 1979: Regular	330,670	Jan. 23, 1978	321,487	328,287	322,301	–2.5	Oct. 18, 1978	95–482
Fiscal Year 1978: Regular	373,000	Jan. 22, 1979	358,340	363,340	363,340	–2.6	Sept. 25, 1979	96–69
Fiscal Year 1979: Regular	49,200	Dec. 10, 1979	31,950	31,950	31,950	–35	July 8, 1980	96–304
Fiscal Year 1981: Regular	468,490	Jan. 28, 1980	437,220	452,520	447,520	–4.5	Oct. 1, 1980	96–367
Fiscal Year 1982: Regular	500,700	Jan. 19, 1981	477,534	465,700	465,700	–7	Dec. 4, 1981	97–88
Fiscal Year 1983: Regular	479,500	Feb. 8, 1982	462,504	462,504	462,504	–3.5	Dec. 21, 1982	97–377
Fiscal Year 1984: Regular	466,800	Jan. 31, 1983	465,800	466,800	465,800	–0.2	July 14, 1983	98–50
Fiscal Year 1985: Regular	468,200	Jan. 1984	438,200	458,200	448,200	–4.3	July 16, 1984	98–360
Fiscal Year 1986: Regular	429,000	Feb. 4, 1985	403,671	429,000	418,000	–2.6	Nov. 1, 1985	99–141
Fiscal Year 1987: Regular	405,000	Feb. 5, 1985	405,000	391,000	401,000	–1	Oct. 30, 1986	99–591
Fiscal Year 1988: Regular	428,000	Jan. 5, 1987	417,800	417,800	392,800	–8.2	Dec. 22, 1987	100–202
Fiscal Year 1989: Regular	450,000	Feb. 18, 1988	420,000	430,000	420,000	–6.7	July 19, 1988	100–371
Fiscal Year 1990; Regular	472,100	Jan. 9, 1989	442,100	442,100	442,100	–6.4	Sept. 29, 1989	101–101*
Fiscal Year 1991, Regular	471,320	Jan. 29, 1990	471,320	471,320	461,320	–2.1	Nov. 5, 1990	101–514*
Fiscal Year 1992: Regular	508,810	July 30, 1991	508,810	508,810	508,810	0	Aug. 17, 1991	102–104*
Fiscal Year 1993: Regular	545,415	June 11, 1992	535,415	535,415	535,415	–1.8	Oct. 2, 1992	102–377*
Fiscal Year 1994: Regular	542,900	June 17, 1993	542,490	535,415	535,415	–1.4	Oct. 28, 1993	103–126*
Fiscal Year 1995 Regular	540,501	May 26, 1994	540,501	540,501	540,501	0	Aug. 26, 1994	103–316*
Fiscal Year 1996; Regular	520,501	June 20, 1995	468,300	474,300	468,300	–10	Nov. 13, 1995	104–46*

Fiscal Year 1997; Regular	475,300	July 16, 1996	471,800	471,800	471,800	–0.7	Sept. 30, 1996	104–206*
Fiscal Year 1998; Regular	468,000	July 21, 1997	462,700	476,500	468,000	0	Oct. 13, 1997	105–62*
Fiscal Year 1999; Regular	488,640		462,700	466,000	465,000	–4.8	Oct. 7, 1998	105–245*
Fiscal Year 2000; Regular	465,400	May 4, 1999	455,400	465,400	465,000	–0.1	Sept. 29, 1999	106–60*
Fiscal Year 2001; Regular	481,900	June 23, 2000	481,900	481,900	481,900	0	Oct. 27, 2000	106–377
Fiscal Year 2002; Regular	516,900	June 26, 2001	516,900	506,900	516,900	0	Nov. 12, 2001	107–66
Fiscal Year 2003	578,184		578,184	578,184,000	578,184	0	Feb. 20, 2003	108–7
Fiscal Year 2004	618,800		618,800	618,800,000	618,800	0	Dec. 01, 2003	108–137
Fiscal Year 2005	662,777		662,777	662,777,000	662,777	0	Dec. 08, 2004	108–447
Fiscal Year 2006	693,376		714,376	734,376	734,376	+5.9	Nov. 09, 2005	109–103
Fiscal Year 2007 (See Footnote 1 for explanation).	768,410		808,410		816,529	+6.26	Feb. 15, 2007	110–5
Fiscal Year 2008	908,409		925,559	910,559	917,334	+.97	Dec. 26, 2007	110–161
Fiscal Year 2009	1,008,000		1,058,956	1,022,956	1,034,656	+2.6	Mar. 11, 2009	111–8
Fiscal Year 2010	1,061,000		1,061,000	1,061,000	1,056,000	–.47	Oct. 28, 2009	111–85
Fiscal Year 2010 (Rescission)					–18	——	Aug. 10, 2010	
Fiscal Year 2011	1,043,483			1,053,483	1,043,483	0	Apr. 15, 2011	112–10
Fiscal Year 2012	1,027,240		1,027,240	1,027,240	1,027,240	0	Dec. 23, 2011	112–74
Fiscal Year 2013	1,042,200							
*Office of Inspector General								
Fiscal Year 1990	2,900		2,900		2,900	0	Sept. 29, 1989	101–101
Fiscal Year 1991	3,680		3,680	3,680	3,680	0	Nov. 5, 1990	101–514
Fiscal Year 1992	3,690		3,690	3,690	3,690	0	Aug. 17, 1991	102–104
Fiscal Year 1993	4,585		4,585	4,585	4,585	0	Oct. 2, 1992	102–377
Fiscal Year 1994	4,800		4,800	4,800	4,800	0	Oct. 28, 1993	103–126
Fiscal Year 1995	5,080		5,080	5,080	5,080	0	Aug. 26, 1994	103–316
Fiscal Year 1996	5,000		5,000	5,000	5,000	0	Nov. 13, 1995	104–46
Fiscal Year 1997	5,000		5,000	5,000	5,000	0	Sept. 30, 1996	104–206
Fiscal Year 1998	4,800		4,800	4,800	4,800	0	Oct. 13, 1997	105–62
Fiscal Year 1999			4,800	4,800	4,800	—	Oct. 7, 1998	105–245
Fiscal Year 2000			6,000	5,000	5,000	—	Sept. 29, 1999	106–60
Fiscal Year 2001	5,500		5,500	5,500	5,500	0	Oct. 27, 2000	106–377
Fiscal Year 2002	6,180		6,180	5,500	6,180	0	Nov. 12, 2001	107–66
Fiscal Year 2003	6,800		6,800	6,800	6,800	0	Feb. 20, 2003	108–7

Fiscal Year 2004	7,300	7,300	7,300	7,300	0	Dec. 01, 2003	108–137
Fiscal Year 2005	7,518	7,518	7,518	7,518	0	Dec. 08, 2004	108–447
Fiscal Year 2006	8,316	8,316	8,316	8,316	0	Nov. 09, 2005	109–103
Fiscal Year 2007 (See Footnote 1 for explanation).	8,144	8,144		8,360	+2.65	Feb. 12, 2007	110–5
Fiscal Year 2008	8,144	8,144	8,744	8,744	+7.4	Dec. 26, 2007	110–161
Fiscal Year 2009	9,000	10,860	9,344	10,860	+20.6	Mar. 11, 2009	111–8
Fiscal Year 2010	10,001	10,102	10,860	10,860	+8.58	Oct. 28, 2009	111–85
Fiscal Year 2011	10,102		10,860	10,860	+7.50	Apr. 15, 2011	112–10
Fiscal Year 2012	10,860	10,860	10,860	10,860	0	Dec. 23, 2011	112–74
Fiscal Year 2013	11,020						

* This table is compiled by the staff at the U.S. Nuclear Regulatory Commission.

5. NRC Authorization Acts

5. NRC Authorization Acts

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A. NRC AUTHORIZATION ACT FOR FISCAL YEAR, 1984–1985

Public Law 98–553 **98 Stat. 2825**

October 30, 1984

An Act

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I–Authorization of Appropriations for Fiscal Years 1984 and 1985

42 USC 2017.
42 USC 5875.

Sec. 101. There are hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 and section 305 of the Energy Reorganization Act of 1974, for the fiscal years 1984 and 1985 to remain available until expended, $466,800,000 for fiscal year 1984 and $460,000,000 for fiscal year 1985.

Sec. 102. (a) The sums authorized to be appropriated in this Act for fiscal years 1984 and 1985 shall be allocated as follows:

(1) not more than $91,490,000 for fiscal year 1984 and $87,140,000 for fiscal year 1985, may be used for "Nuclear Reactor Regulation", of which an amount not be exceed $1,000,000 is authorized each such fiscal year to be used to accelerate the effort in gas–cooled thermal reactor pre–application review;

(2) not more than $70,910,000 for fiscal year 1984 and $74,770,000 for fiscal year 1985, may be used for "Inspection and Enforcement";

(3) not more than $36,280,000 for fiscal year 1984 and $35,710,000 for fiscal year 1985, may be used for "Nuclear Material Safety and Safeguards";

(4) not more than $199,740,000 for fiscal year 1984 and $193,290,000 for fiscal year 1985, may be used for "Nuclear Regulatory Research", of which an amount not to exceed $2,600,000 is authorized each such fiscal year to be used to accelerate the effort in gas–cooled thermal reactor safety research;

(5) not more than $27,520,000 for fiscal year 1984 and $27,470,000 for fiscal year 1985, may be used for "Program Technical Support";

(6) not more than $40,860,000 for fiscal year 1984 and $41,620,000 for fiscal year 1985, may be used for "Program Direction and Administration."

Grants.

(b) The Nuclear Regulatory Commission may use not more than 1 per centum of the amounts authorized to be appropriated under paragraph 102(a)(4) to exercise its authority under section 31a. of the Atomic Energy Act of 1954 (42 USC 2051(a)) to enter into grants and cooperative agreements with universities pursuant to such paragraph. Grants made by the Commission shall be made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (41 USC 501 et seq.) and other applicable law.

(c) Any amount appropriated for a fiscal year to the Nuclear Regulatory Commission pursuant to any paragraph of subsection 102(a) for purposes of the program referred to in such paragraph, may be reallocated by the Commission for use in a program referred to in any other paragraph of such subsection, or for use in any other activity within a program, except that the amount available from appropriations for such fiscal year for use in any program or specified activity may not, as a result of reallocations made under this subsection, be increased or reduced by more than $500,000 unless–

(1) a period of thirty calendar days (excluding any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) passes after the receipt, by the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate, of notice submitted by the Commission containing a full and complete statement of the reallocation proposed to be made and the facts and circumstances relied upon in support of such proposed reallocation; or

(2) each such committee, before the expiration of such period, transmits to the Commission a written notification that such committee does not object to such proposed reallocation.

Sec. 103. Moneys received by the Nuclear Regulatory Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with such programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended.

31 USC 3302.

Sec 104. From amounts appropriated to the Nuclear Regulatory Commission pursuant to this Title, the Commission may transfer to other agencies of the Federal Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission are made. Any sums so transferred may be merged with the appropriation of the agency to which such sums are transferred.

Sec. 105. Notwithstanding any other provisions of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

Report.
Prohibition.

Sec 106. (a) No funds authorized to be appropriated under this Act may be used to carry out any policy or program for the decentralization or regionalization of any Nuclear Regulatory Commission authorities regarding commercial nuclear power plant licensing until sixty legislative days after the date on which the Commission submits to the Congress a report evaluating the effect of such policy or program on nuclear reactor safety: *Provided, however,* That the prohibition contained in this subsection shall not apply to any personnel assigned to the field, or to activities in which they were engaged, on or before September 22, 1983. The report shall include–

(1) a detailed description of the authorities to be transferred, the reason for such transfer, and an assessment of the effect of such transfer on nuclear reactor safety;

(2) an analysis of all comments submitted to the Commission regarding the effect on nuclear reactor safety which would result from carrying out the policy or program proposed by the Commission; and

(3) an evaluation of the results, including the advantages and disadvantages, of the pilot program conducted under subsection (b).

(b) Notwithstanding the prohibition contained in subsection (a), the Commission is authorized to conduct a pilot program for the purpose of evaluating the concept of delegating authority to regional offices for issuance of specific types of operating reactor licensing actions and for the purpose of addressing the issues identified in paragraphs (a)(1)–(3) of this section.

Sec. 107. (a) of the amounts authorized to be appropriated under this Act for the fiscal years 1984 and 1985, such sums as may be necessary are authorized to be used by the Nuclear Regulatory Commission for–

(1) the acquisition (by purchase, lease, or otherwise) and installation of equipment to be used for the small test prototype nuclear data link program or for any other program for the collection and transmission to the Commission of data from licensed nuclear reactors during abnormal conditions at such reactors; and

(2) a full and complete analysis of–

(A) the appropriate role of the Commission during abnormal conditions at a nuclear reactor licensed by the Commission;

(B) the information which should be available to the Commission to enable the Commission to fulfill such role and to carry out other related functions;

(C) various alternative means of assuring that such information is available to the Commission in a timely manner; and

(D) any changes in existing Commission authority necessary to enhance the Commission response to abnormal conditions at a nuclear reactor licensed by the Commission:

Provided, however, That no funds shall be available under this Act for the acquisition and installation of any equipment for the collection and transmission to the Commission of data from licensed nuclear reactors during abnormal conditions at such reactors, or for the analysis of such equipment, unless such acquisition and analysis includes, as one of the alternatives considered, a fully automated electronic nuclear data link. The small test prototype referred to in paragraph (1) may be used by the Commission in carrying out the study and analysis under paragraph (2). Such analysis shall include a cost–benefit analysis of each alternative examined under subparagraph (C).

Sec. 108. of the amounts authorized to be appropriated under this Act, the Nuclear Regulatory Commission may use such sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an operating license (including a temporary operating license under section 192 of the Atomic Energy Act of 1954, as amended) for a nuclear power reactor, if it determines that there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

42 USC 2133.
42 USC 2134.

Sec 109. Notwithstanding the second sentence of section 103d. and the second sentence of section 104d. of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission is hereby authorized to transfer Facility Operating License numbered R–81 to a United States entity or corporation owned or controlled by a foreign corporation if the Commission–

(1) finds that such transfer would not be inimical to the common defense and security or to the health and safety of the public; and

(2) includes in such license, as transferred, such conditions as the Commission deems necessary to ensure that such foreign corporation cannot direct the actions of the licensee in ways that would be inimical to the common defense and security or the health and safety of the public.

B. NRC AUTHORIZATION ACT FOR FISCAL YEAR, 1982–1983

Public Law 97–415 **96 Stat. 2067**

Jan. 4, 1983

An Act

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

Nuclear Regulatory Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Authorization of Appropriations

Appropriations.

(a) There are hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 USC 2017) and section 305 of the Energy Reorganization Act of 1974 (42 USC 5875), for the fiscal years 1982 and 1983 to remain available until expended, $485,200,000 for fiscal year 1982 and $513,100,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than $80,700,000 for fiscal year 1982 and $77,000,000 for fiscal year 1983 may be used for "Nuclear Reactor Regulation", of which an amount not to exceed $1,000,000 is authorized each such fiscal year to be used to accelerate the effort in gas–cooled thermal reactor preapplication review, and an amount not to exceed $6,000,000 is authorized each such fiscal year to be used for licensing review work for a fast breeder reactor plant project. In the event of a termination of such breeder reactor project, any unused amount appropriated pursuant to this paragraph for licensing review work for such project may be used only for safety technology activities.

(2) Not more than $62,900,000 for fiscal year 1982 and $69,850,000 for fiscal year 1983 may be used for "Inspection and Enforcement.

(3) Not more than $42,000,000 for fiscal year 1982 and $47,059,600 for fiscal year 1983 may be used for "Nuclear Material Safety and Safeguards.

(4) Not more than $240,300,000 for fiscal year 1982 and $257,195,600 for fiscal year 1983 may be used for "Nuclear Regulatory Research", of which–

(A) an amount not to exceed $3,500,000 for fiscal year 1982 and $4,500,000 for fiscal year 1983 is authorized to be used to accelerate the effort in gas–cooled thermal reactor safety research;

(B) an amount not to exceed $18,000,000 is authorized each such fiscal year to be used for fast breeder reactor safety research; and

(C) an amount not to exceed $57,000,000 is authorized for such two fiscal year period to be used for the Loss–of–Fluid Test Facility research program.

In the event of a termination of the fast breeder reactor plant project, any unused amount appropriated pursuant to this paragraph for fast

breeder reactor safety research may be used generally for "Nuclear Regulatory Research".

(5) Not more than $21,900,000 for fiscal year 1982 and $20,197,800 for fiscal year 1983 may be used for "Program Technical Support".

(6) Not more than $37,400,000 for fiscal year 1982 and $41,797,000 for fiscal year 1983 may be used for "Program Direction and Administration."

Grants and cooperative agreements.

(b) The Nuclear Regulatory Commission may use not more than 1 percent of the amounts authorized to be appropriated under subsection (a)(4) to exercise its authority under section 31a. of the Atomic Energy Act of 1954 (42 USC 2051(a)) to enter into grants and cooperative agreements with universities pursuant to such section. Grants made by the Commission shall be made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (41 USC 501 et seq.) and other applicable law. In making such grants and entering into such cooperative agreements, the Commission shall endeavor to provide appropriate opportunities for universities in which the student body has historically been predominantly comprised of minority groups.

Reallocated funds.

(c) Any amount appropriated for a fiscal year to the Nuclear Regulatory Commission pursuant to any paragraph of subsection (a) for purposes of the program Office referred to in such paragraph, or any activity that is within such program Office and is specified in such paragraph, may be reallocated by the Commission for use in a program Office, except that the amount available from appropriations for such fiscal year for use in any program Office or specified activity may not, as a result of reallocations made under this subsection, be increased or reduced by more than $500,000 unless–

Notification of congressional committees.

(1) a period of 30 calendar days (excluding any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) passes after the receipt, by the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate, of notice submitted by the Commission containing a full and complete statement of the reallocation proposed to be made and the facts and circumstances relied upon in support of such proposed reallocation; or

(2) each such committee, before the expiration of such period, transmits to the Commission a written notification that such committee does not object to such proposed reallocation.

Sec. 2. Authority to Retain Certain Amounts Received

Moneys received by the Nuclear Regulatory Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with such programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended.

31 USC 3302.

Sec. 3. Authority to Transfer Certain Amounts to Other Agencies

From amounts appropriated to the Nuclear Regulatory Commission pursuant to section 1(a), the Commission may transfer to other agencies of the Federal Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations

of the Commission are made. Any sums so transferred may be merged with the appropriation of the agency to which such sums are transferred.

Sec. 4. Limitation on Spending Authority

Notwithstanding any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

Sec. 5. Authority to Issue Licenses in Absence of Emergency Preparedness Plans

of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission may use such sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an operating license (including a temporary operating license under section 192 of the Atomic Energy Act of 1954, as amended by section 11 of this Act) for a nuclear power reactor, if it determines that there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

Sec. 6. Nuclear Safety Goals

Funds authorized to be appropriated under this Act shall be used by the Nuclear Regulatory Commission to expedite the establishment of safety goals for nuclear reactor regulation. The development of such safety goals, and any accompanying methodologies for the application of such safety goals, should be expedited to the maximum extent practicable to permit establishment of a safety goal by the Commission not later than December 31, 1982.

Sec. 7. Loss–of–Fluid Test Facility

of the amounts authorized to be used for the Loss–of–Fluid Test Facility in accordance with section 1(a)(4) for fiscal years 1982 and 1983, the Commission shall provide funding through contract with the organization responsible for the Loss–of–Fluid Test operations for a detailed technical review and analysis of research results obtained from the Loss–of–Fluid Test Facility research program. The contract shall provide funding for not more than twenty man–years in each of fiscal years 1982 and 1983 to conduct the technical review and analysis.

Sec. 8. Nuclear Data Link

(a) of the amounts authorized to be appropriated under this Act for the fiscal years 1982 and 1983, not more than $200,000 is authorized to be used by the Nuclear Regulatory Commission for–

(1) the acquisition (by purchase, lease, or otherwise) and installation of equipment to be used for the "small test prototype nuclear data link" program or for any other program for the collection and transmission to the Commission of data from licensed nuclear reactors during abnormal conditions at such reactors; and

Study and analysis.

(2) the conduct of a full and complete study and analysis of–

(A) the appropriate role of the Commission during abnormal conditions at a nuclear reactor licensed by the Commission;

(B) the information which should be available to the Commission to enable the Commission to fulfill such role and to carry out other related functions;

(C) various alternative means of assuring that such information is available to the Commission in a timely manner; and

(D) any changes in existing Commission authority necessary to enhance the Commission response to abnormal conditions at a nuclear reactor licensed by the Commission.

The small test prototype referred to in paragraph (1) may be used by the Commission in carrying out the study and analysis under paragraph (2). Such analysis shall include a cost–benefit analysis of each alternative examined under subparagraph (C).

Report to Congress.

(b)(1) Upon completion of the study and analysis required under subsection (a)(2), the Commission shall submit to Congress a detailed report setting forth the results of such study and analysis.

Commission action; notification of congressional committees.

(2) The Commission may not take any action with respect to any alternative described in subsection (a)(2)(C), unless a period of 60 calendar days (excluding any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) passes after the receipt, by the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate, of notice submitted by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

Sec. 9. Interim Consolidation of Offices

(a) of the amounts authorized to be appropriated pursuant to paragraph 6 of section 1(a), such sums as may be necessary shall be available for interim consolidation of Nuclear Regulatory Commission headquarters staff offices.

(b) No amount authorized to be appropriated under this Act may be used, in connection with the interim consolidation of Nuclear Regulatory Commission offices, to relocate the offices of members of the Commission outside the District of Columbia.

Sec. 10. Three Mile Island

(a) No part of the funds authorized to be appropriated under this Act may be used to provide assistance to the General Public Utilities Corporation for purposes of the decontamination, cleanup, repair, or rehabilitation of facilities at Three Mile Island Unit 2.

42 USC 2011 note.

(b) The prohibition contained in subsection (a) shall not relate to the responsibilities of the Nuclear Regulatory Commission for monitoring or inspection of the decontamination, cleanup, repair, or rehabilitation activities at Three Mile Island and such prohibition shall not apply to – the use of funds by the Nuclear Regulatory Commission to carry out regulatory functions of the Commission under the Atomic Energy Act of 1954 with respect to the facilities at Three Mile Island.

42 USC 5877 note.

(c) The Nuclear Regulatory Commission shall include in its annual report to the Congress under section 307(c) of the Energy Reorganization Act of 1974 (42 USC 5877(c)) as a separate chapter a description of the collaborative efforts undertaken, or proposed to be undertaken, by the Commission and the Department of Energy with respect to the decontamination, cleanup, repair, or rehabilitation of facilities at Three Mile Island Unit 2.

(d) No funds authorized to be appropriated under this Act may be used by the Commission to approve any willful release of "accident–generated water", as defined by the Commission in NUREG–0683 ("Final Programmatic Environmental Impact Statement" pg.1–23), from Three Mile Island Unit 2 into the Susquehanna River or its watershed.

Sec. 11. Temporary Operating Licenses

Section 192 of the Atomic Energy Act of 1954 (42 USC 2242) is amended to read as follows:

Sec. 192. TEMPORARY OPERATING LICENSE.–

42 USC 2133.
42 USC 2134.

a. In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104 b. of this Act, in which a hearing is otherwise required pursuant to section 189a., the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 192b.; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 USC 4332(2)(C)); and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

Initial petition.

Affidavits.

Publication in Federal Register.

b. With respect to any petition filed pursuant to subsection a. of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that–

(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and

safety and the environment during the period of temporary operation; and

(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this Act.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Interior and Insular Affairs and Energy and commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to Chapter 158 of Title 28, United States Code. The requirements of section 189a. of this Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

Final order, transmittal to congressional committees.

Judicial review.

28 USC 2341 *et seq*.

Hearing.

c. Any hearing on the application for the final operating license for a facility required pursuant to section 189a. shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection b. of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 189a.; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189a. on the final operating license for a facility for which a temporary operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

Expiration date.

e. The authority to issue new temporary operating licenses under this section shall expire on December 31, 1983.

Sec. 12. Operating License Amendment Hearings

(a) Section 189a. of the Atomic Energy Act of 1954 (42 USC 2239(a)) is amended–

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no

significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

Notice of publication.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

Regulations establishing standards, criteria, and procedures.

(C) The Commission shall, during the ninety–day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

42 USC 2239 note.

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Sec. 13. Quality Assurance

42 USC 5841 note. Resident inspector program.

(a) The Nuclear Regulatory Commission is authorized and directed to implement and accelerate the resident inspector program so as to assure the assignment of at least one resident inspector by the end of fiscal year 1982 at each site at which a commercial nuclear power plant is under construction and construction is more than 15 percent complete. At each such site at which construction is not more than 15 percent complete, the Commission shall provide that such inspection personnel as the Commission deems appropriate shall be physically present at the site at such times following issuance of the construction permit as may be necessary in the judgment of the Commission.

Commercial nuclear power plant construction, study.

(b) The Commission shall conduct a study of existing and alternative programs for improving quality assurance and quality control in the construction of commercial nuclear powerplants. In conducting the study, the Commission shall obtain the comments of the public, licensees of nuclear powerplants, the Advisory Committee on Reactor Safeguards, and organizations comprised of professionals having expertise in appropriate fields. The study shall include an analysis of the following:

(1) providing a basis for quality assurance and quality control, inspection, and enforcement actions through the adoption of an approach which is more prescriptive than that currently in practice for

defining principal architectural and engineering criteria for the construction of commercial nuclear powerplants;

(2) conditioning the issuance of construction permits for commercial nuclear powerplants on a demonstration by the licensee that the licensee is capable of independently managing the effective performance of all quality assurance and quality control responsibilities for the power plant;

(3) evaluations, inspections, or audits of commercial nuclear power plant construction by organizations comprised of professionals having expertise in appropriate fields which evaluations, inspections, or audits are more effective than those under current practice;

(4) improvement of the Commission's organization, methods, and programs for quality assurance development, review, and inspection; and

(5) conditioning the issuance of construction permits for commercial nuclear power plants on the permittee entering into contracts or other arrangements with an independent inspector to audit the quality assurance program to verify quality assurance performance.

Independent inspector.

For purposes of paragraph (5), the term "independent inspector" means a person or other entity having no responsibility for the design or construction of the plant involved. The study shall also include an analysis of quality assurance and quality control programs at representative sites at which such programs are operating satisfactorily and an assessment of the reasons therefor.

(c) For purposes of–

42 USC 2011 note.

(1) determining the best means of assuring that commercial nuclear powerplants are constructed in accordance with the applicable safety requirements in effect pursuant to the Atomic Energy Act of 1954; and

(2) assessing the feasibility and benefits of the various means listed in subsection (b);

Pilot program.

the Commission shall undertake a pilot program to review and evaluate programs that include one or more of the alternative concepts identified in subsection (b) for the purposes of assessing the feasibility and benefits of their implementation. The pilot program shall include programs that use independent inspectors for auditing quality assurance responsibilities of the licensee for the construction of commercial nuclear powerplants, as described in paragraph (5) of subsection (b). The pilot program shall include at least three sites at which commercial nuclear powerplants are under construction. The Commission shall select at least one site at which quality assurance and quality control programs have operated satisfactorily, and at least two sites with remedial programs underway at which major construction, quality assurance, or quality control deficiencies (or any combination thereof) have been identified in the past. The Commission may require any changes in existing quality assurance and quality control organizations and relationships that may be necessary at the selected sites to implement the pilot program.

Study results, submittal to Congress.

(d) Not later than fifteen months after the date of the enactment of this Act, the Commission shall complete the study required under subsection (b) and submit to the United States Senate and House of representatives a report setting forth the results of the study. The report shall include a brief summary of the information received from the public and from other persons referred to in subsection (b) and a statement of the Commission's response to the significant comments received. The

report shall also set forth in analysis of the results of the pilot program required under subsection (c). The report shall be accompanied by the recommendations of the Commission, including any legislative recommendations, and a description of any administrative actions that the Commission has undertaken or intends to undertake, for improving quality assurance and quality control programs that are applicable during the construction of nuclear power plants.

Sec. 14. Limitation on Use of Special Nuclear Material

Section 57 of the Atomic Energy Act of 1954 (42 USC 2077) is amended by adding at the end thereof the following new subsection:

42 USC 2014.
42 USC 2133.
42 USC 2134.

e. Special nuclear material, as defined in section 11, produced in facilities licensed under section 103 or 104 may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

Sec. 15. Resident Inspectors

of the amounts authorized to be appropriated under section 1, the Nuclear Regulatory Commission shall use such sums as may be necessary to conduct a study of the financial hardships incurred by resident inspectors as a result of (1) regulations of the Commission requiring resident inspectors to relocate periodically from one duty station to another; and (2) the requirements of the Commission respecting the domicile of resident inspectors and respecting travel between their domicile and duty station in such manner as to avoid the appearance of a conflict of interest. Not later than 90 days after the date of the enactment of this Act, the Commission shall submit to the Congress a report setting forth the findings of the Commission as a result of such study, together with a legislative proposal (including any supporting data or information) relating to any assistance for resident inspectors determined by the Commission to be appropriate.

Report to Congress.

Sec. 16. Sabotage of Nuclear Facilities or Fuel

Section 236 of the Atomic Energy Act of 1954 (42 USC 2284) is amended to read as follows:

Sec. 236. SABOTAGE OF NUCLEAR FACILITIES OR FUEL.–

a. Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to–

(1) any production facility or utilization facility licensed under this Act;

(2) any nuclear waste storage facility licensed under this Act; or

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility;

shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

Penalties.

b. Any person who intentionally and willfully causes or attempts to cause an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

Sec. 17. Department of Energy Information

(a) Section 148a.(1) of the Atomic Energy Act of 1954 (42 USC 2168(a)(1)) is amended by inserting after "`Secretary')" the following: ", with respect to atomic energy defense programs,"

(b) Section 148 of the Atomic Energy Act of 1954 (42 USC 2168) is amended by adding at the end thereof the following new subsections:

Judicial review.

d. Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of Title 5, United States Code.

Quarterly report.

e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall–

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, or theft, diversion, or sabotage of nuclear materials, equipment, or facilities, as specified under subsection a.; and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

Sec. 18. Standards and Requirements Under Section 275

42 USC 2022.

(a) Section 275 of the Atomic Energy Act of 1954 is amended–

42 USC 7911

(1) by striking in subsection a. "one year after the date of enactment of this section" and substituting "October 1, 1982" and by adding the following at the end thereof:

"After October 1, 1982, if the Administrator has not promulgated standards in final form under this subsection, any action of the Secretary of Energy under Title I of the Uranium Mill tailings Radiation Control Act of 1978 which is required to comply with, or be taken in accordance with, the standards proposed by the Administrator under this subsection until such time as the Administrator promulgates such standards in final form.;

(2) by striking in subsection b. (1) "eighteen months after the enactment of this section, the Administrator shall, by rule, promulgate" and inserting in lieu thereof the following: October 31, 1982, the Administrator shall, by rule, propose, and within 11 months thereafter promulgate in final form,;

Promulgation authority.

(3) by adding the following at the end of subsection b.(1): "If the Administrator fails to promulgate standards in final form under this subsection by October 1, 1983, the authority of the Administrator to promulgate such standards shall terminate, and the Commission may take actions under this Act without regard to any provision of this Act requiring such actions to comply with, or be taken in accordance with, standards promulgated by the Administrator. In any such case, the Commission shall promulgate, and from time to time revise, any such standards of general application which the Commission deems necessary to carry out its responsibilities in the conduct of its licensing activities under this Act. Requirements established by the Commission under this Act with respect to byproduct material as defined in section 11e.(2) shall conform to such standards. Any requirements adopted by the Commission respecting such byproduct material before promulgation by the Commission of such standards shall b amended as the Commission deems necessary to conform to such standards in the same manner as provided in subsection f.(3).

Nothing in this subsection shall be construed to prohibit or suspend the implementation or enforcement by the Commission of any requirement of the Commission respecting byproduct material as defined in section 11e.(2) pending promulgation by the Commission of any such standard of general application.;

42 USC 2014.

(4) by adding the following new subsection at the end thereof:

Uranium mill licensing requirement regulations. Implementation and enforcement.

f. (1) Prior to January 1, 1983, the Commission shall not implement or enforce the provisions of the Uranium Mill Licensing Requirements published as final rules at 45 Federal Register 65521 to 65538 on October 3, 1980 (hereinafter referred to as the "October 3 regulations"). After December 31, 1982, the Commission is authorized to implement and enforce the provisions of such October 3 regulations (and any subsequent modifications or additions to such regulations which may be adopted by the Commission), except as otherwise provided in paragraphs (2) and (3) of this subsection.

Review, public comment, and suspension.

(2) Following the proposal by the Administrator of standards under subsection b., the Commission shall review the October 3 regulations, and, not later than 90 days after the date of such proposal, suspend implementation and enforcement of any provision of such regulations which the Commission determines after notice and opportunity for public comment to require a major action or major commitment by licensees which would be unnecessary if–

(A) the standards proposed by the Administrator are promulgated in final form without modification, and

(B) the Commission's requirements are modified to conform to such standards.

Such suspension shall terminate on the earlier of April 1, 1984 or the date on which the Commission amends the October 3 regulations to conform to final standards promulgated by the Administrator under subsection b. During the period of such suspension, the Commission shall continue to regulate byproduct material (as defined in section 11e.(2)) under this Act on a licensee–by–licensee basis as the Commission deems necessary to protect public health, safety, and the environment.

(3) Not later than 6 months after the date on which the Administrator promulgates final standards pursuant to subsection b. of this section, the Commission shall, after notice and opportunity for public comment, amend the October 3 regulations, and adopt such modifications, as the Commission deems necessary to conform to such final standards of the Administrator.

42 USC 2114.

(4) Nothing in this subsection may be construed as affecting the authority or responsibility of the Commission under section 84 to promulgate regulations to protect the public health and safety and the environment.

Remedial action.
42 USC 7918.

(b)(1) Section 108(a) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding the following new paragraph at the end thereof:

(3) Notwithstanding paragraphs (1) and (2) of this subsection, after October 31, 1982, if the Administrator has not promulgated standards under section 275 a. of the Atomic Energy Act of 1954 in final form by such date, remedial action taken by the Secretary under this Title shall comply with the standards proposed by the Administrator under such section 275 a. until such time as the Administrator promulgates the standards in final form.

(2) The second sentence of section 108(a)(2) of the Uranium Mill tailings Radiation Control Act of 1978 is repealed.

Sec. 19. Agreement States

42 USC 2014.
42 USC 2021.

(a) Section 274o. of the Atomic Energy Act of 1954 is amended by adding the following at the end thereof: "In adopting requirements pursuant to paragraph (2) of this subsection with respect to sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11e.(2), the State may adopt alternatives (including, where appropriate, site–specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.

42 USC 2021 note.
42 USC 2021

(b) Section 204(h)(3) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by inserting the following before the period at the end thereof: *Provided, however,* That, in the case of a State which has exercised any authority under State law pursuant to an agreement entered into under section 274 of the Atomic Energy Act of 1954, the State authority over such byproduct material may be terminated, and the Commission authority over such material may be exercised, only after compliance by the Commission with the same procedures as are applicable in the case of termination of agreements under section 274j. of the Atomic Energy Act of 1954.

Sec. 20. Amendment to Section 84

42 USC 2014.

Section 84 of the Atomic Energy Act of 1954 is amended by adding the following at the end thereof:

42 USC 2114.
Alternative proposals by

c. In the case of sites at which ores are processed primarily for their source material content or which are used for the disposal of byproduct material as defined in section 11e.(2), a licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this Act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275.

42 USC 2022.

Sec. 21. Edgemont

42 USC 7912.

Section 102(e) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding the following at the end thereof:

42 USC 7911.

(3) the Secretary shall designate as a processing site within the meaning of section 101(6) any real property, or improvements thereon, in Edgemont, South Dakota, that–

(A) is in the vicinity of the Tennessee Valley Authority uranium mill site at Edgemont (but not including such site), and

(B) is determined by the Secretary to be contaminated with residual radioactive materials.

42 USC 7917.

In making the designation under this paragraph, the Secretary shall consult with the Administrator, the Commission and the State of South Dakota. The provisions of this Title shall apply to the site so designated in the same manner and to the same extent as to the sites designated under subsection (a) except that, in applying such provisions to such site, any reference in this Title to the date of the enactment of this Act shall be treated as a reference to the date of the enactment of this paragraph and in determining the State share under section 107 of the costs of remedial action, there shall be credited to the State, expenditures made by the State prior to the date of the enactment of this paragraph which the Secretary determines would have been made by the State or the United States in carrying out the requirements of this Title.

Sec. 22. Additional Amendments to Sections 84 and 275

42 USC 2114.

(a) Section 84a.(1) of the Atomic Energy Act of 1954 is amended by inserting before the comma at the end thereof the following: “, taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate,”.

(b) Section 275 of the Atomic Energy Act of 1954 is amended–

(1) in subsection a., by inserting after the second sentence thereof the following new sentence: “In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.”; and

(2) by adding at the end of subsection b. (1) the following new sentence: “In establishing such standards, the Administrator shall consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate.”

42 USC 2210b note.

Sec. 23. Uranium Supply

Comprehensive industry review, submittal to Congress.

(a)(1) Not later than 12 months after the date of enactment of this section, the President shall prepare and submit to the Congress a comprehensive review of the status of the domestic uranium mining and milling industry. This review shall be made available to the appropriate committees of the United States Senate and the House of Representatives.

(2) The Comprehensive review prepared for submission under paragraph (1) shall include–

(A) projections of uranium requirements and inventories of domestic utilities;

(B) present and future projected uranium production by the domestic mining and milling industry;

(C) the present and future probable penetration of the domestic market by foreign imports;

(D) the size of domestic and foreign ore reserves;

(E) present and projected domestic uranium exploration expenditures and plans;

(F) present and projected employment and capital investment in the uranium industry;

(G) an estimate of the level of domestic uranium production necessary to ensure the viable existence of a domestic uranium industry and protection of national security interests'

(H) an estimate of the percentage of domestic uranium demand which must be met by domestic uranium production through the year 2000 in order to ensure the level of domestic production estimated to be necessary under subparagraph (G);

(I) a projection of domestic uranium production and uranium price levels which will be in effect both under current policy and in the event that foreign import restrictions were enacted by Congress in order to guarantee domestic production at the level estimated to be necessary under subparagraph (G);

(J) the anticipated effect of spent nuclear fuel reprocessing on the demand for uranium; and

(K) other information relevant to the consideration of restrictions on the importation of source material and special nuclear material from foreign sources.

(b)(1) Chapter 14 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:

42 USC 2210b. **Sec. 170B. Uranium Supply**

42 USC 2231. Report to Congress and President.

a. The Secretary of Energy shall monitor and for the years 1983 to 1992 report annually to the Congress and to the President a determination of the viability of the domestic uranium mining and milling industry and shall establish by rule, after public notice and in accordance with the requirements of section181 of this Act, within 9 months of enactment of this section, specific criteria which shall be assessed in the annual reports on the domestic uranium industry's viability. The Secretary of Energy is authorized to issue regulations providing for the collection of such information as the Secretary of Energy deems necessary to carry out the monitoring and reporting requirements of this section.

Regulations.

Proprietary information, disclosure.

b. Upon a satisfactory showing to the Secretary of Energy by any person that any information, or portion thereof obtained under this section, would, if made public, divulge proprietary information of such person, the Secretary shall not disclose such information and disclosure thereof shall be punishable under section 1905 of Title 18, United States Code.

Criteria.

c. The criteria referred to in subsection a. shall also include, but not be limited to–

(1) an assessment of whether executed contracts or options for source material or special nuclear material will result in greater than 37[1 2] percent of actual or projected domestic uranium requirements for any two–consecutive–year period being supplied by source material or special nuclear material from foreign sources;

(2) projections of uranium requirements and inventories of domestic utilities for a 10 year period;

(3) present and probable future use of the domestic market by foreign imports;

(4) whether domestic economic reserves can supply all future needs for a future 10 year period;

(5) present and projected domestic uranium exploration expenditures and plans;

(6) present and projected employment and capital investment in the uranium industry;

(7) the level of domestic uranium production capacity sufficient to meet projected domestic nuclear power needs for a 10 year period; and

(8) a projection of domestic uranium production and uranium price levels which will be in effect under various assumptions with respect to imports.

Imported material, impact on domestic industry and national security.

d. The Secretary of Energy, at any time, may determine on the basis of the monitoring and annual reports required under this section that source material or special nuclear material from foreign sources is being imported in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the United States uranium mining and milling industry. Based on that determination, the United States Trade Representative shall request that the United States International Trade Commission initiate an investigation under section 201 of the Trade Act of 1974 (19 USC 2251).

e. (1) If, during the period 1982 to 1992, the Secretary of Energy determines that executed contracts or options for source material or special nuclear material from foreign sources for use in utilization facilities within or under the jurisdiction of the United States represent greater than 37–1/2 percent of actual or projected domestic uranium requirements for any two–consecutive–year period, or if the Secretary of Energy shall request the Secretary of Commerce to initiate under section 232 of the Trade Expansion Act of 1962 (19 USC 1862) an investigation to determine the effects on the national security of imports of source material and special nuclear material. The Secretary of Energy shall cooperate fully with the Secretary of Commerce in carrying out such an investigation and shall make available to the Secretary of Commerce he findings that lead to this request an such other information that will assist the Secretary of Commerce in the conduct of the investigation.

Investigations.

(2) The Secretary of Commerce shall, in the conduct of any investigation requested by the Secretary of Energy pursuant to this section, take into account any information made available by the Secretary of Energy, including information regarding the impact on national security of projected or executed contracts or options for source material or special nuclear material from foreign sources or whether domestic production capacity is sufficient to supply projected national security requirements.

(3) No sooner than 3 years following completion of any investigation by the Secretary of Commerce under paragraph (1), if no recommendation has been made pursuant to such study for trade adjustments to assist or protect domestic uranium production, the Secretary of Energy may initiate a request for another such investigation by the Secretary of Commerce.

C. NRC AUTHORIZATION ACT FOR FISCAL YEAR 1980

Public Law 96–295 **94 Stat. 780**

June 30, 1980

An Act

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

Nuclear Regulatory Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I–Authorization of Appropriations for Fiscal Year 1980

Appropriation authorization.

Sec. 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 USC 2017) and section 305 of the Energy Reorganization Act of 1974 (42 USC 5875), for the fiscal year 1980, the sum of $426,821,000, to remain available until expended. of such total amount authorized to be appropriated:

(1) not more than $66,510,000, may be used for "Nuclear Reactor Regulation", of which an amount not to exceed $1,000,000 is authorized to accelerate the effort in gas–cooled thermal reactor preapplication review;

(2) not more than $42,440,000, may be used for "Inspection and Enforcement"; of the total amount appropriated for this purpose $4,684,000 shall be available for support for 146 additional inspectors for the Resident Inspector program;

(3) not more than $15,953,000, may be used for "Standards Development";

(4) not more than $32,380,000, may be used for "Nuclear Material Safety and Safeguards"; of the total amount appropriated for this purpose–

(A) not less than $60,000 shall be available only for the employment by the Commission of two qualified individuals to be assigned by the Commission for implementation of the United States International Atomic Energy Agency Safeguards Treaty, following ratification of such treaty by the United States Senate;

(B) not less than $180,000 and six additional positions shall be included in the Division of Safeguards for the regulatory improvements of material control and accounting safeguards and the development of improved regulatory requirements for safeguarding the transportation of spent fuel; and

(C) not less than $9,675,000 shall be available for Nuclear Waste Disposal and Management activities, including support for five additional positions in the Division of Waste Management for implementation of the Uranium Mill Tailings Radiation Control Act of 1978 (Public Law 95–604; 42 USC 7901 and following);

(5) not more than $213,005,000, may be used for "Nuclear Regulatory Research", of which–

(A) an amount not to exceed $3,700,000 shall be available to accelerate the effort in gas–cooled thermal reactor safety research;

(B) an amount not to exceed $4,400,000 shall be available for implementation of the Improved Safety Systems Research plan required by section 205(f) of the Energy Reorganization Act of 1974.

42 USC 5845.

(C) an amount not to exceed $6,700,000 shall be available for Nuclear Waste Research activities;

(6) not more than $18,125,000, may be used for "Program Technical Support"; of the total amount appropriated for this purpose, $4,238,000 shall be available to the Office of State Programs, including support for eight additional positions for training and assistance to State and local governments in radiological emergency response planning and operations and for review of State plans; and

(7) not more than $38,408,000 may be used for "Program Direction and Administration"; of the total amount appropriated for this purpose, $400,000 shall be available for support of eight additional positions in the Division of contracts, Office of Administration.

(b) No amount appropriated to the Nuclear Regulatory Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefore by paragraphs (1) through (7) of such subsection if such excess amount is greater than $500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced by more than $500,000, unless–

(1) a period of 45 calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of representatives and the Committee on Environment and Public works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(2) each such Committee has, before the expiration of such period, transmitted to the Commission a written notification that there is no objection to the proposed action.

(c) No amount authorized to appropriated by this Act may be used by the Nuclear Regulatory Commission to enter into any contract providing funds in excess of $50,000 encompassing research, study, or technical assistance on domestic safeguards matters except as directed by the Commission, by majority vote, following receipt by the Commission of a recommendation from the Executive Director for Operations supporting the need for such contract.

(d) No amount authorized to be appropriated by this Act may be used by the Nuclear Regulatory Commission to–

(1) place any new work or substantial modification to existing work with another Federal agency, or

(2) contract for research services or modify such contract in an amount greater than $500,000 unless such placement of work, contract or modification is approved by a Senior Contract Review Board, to be appointed by the Commission within sixty days of the date of enactment of this Act. Such Board shall be accountable to and

under the direction of the Commission. If the amount of such placement, contract, or modification is $1,000,000 or more, approval thereof shall be by majority vote of the Commission. Prior to affording any approval in accordance with the subsection, the reviewing body designated hereunder shall determine that the placement, contract, or modification contains a detailed description of work to be performed, and that alternative methods of obtaining performance including competitive procurement have been considered.

Sec. 102. During the fiscal year 1980, moneys received by the Nuclear Regulatory Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484). Such moneys shall remain available until expended.

Transfers of sums.

Sec. 103. During the fiscal year 1980, transfers of sums from salaries and expenses of the Nuclear Regulatory Commission may be made to other agencies of the United States Government for the performance of the work for which the appropriation is made, and in such cases of the sums to transferred may be merged with the appropriation to which transferred.

Sec. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

Sec. 105. No amount authorized to be appropriated pursuant to this Act may be used to grant any license, permit or other authorization, or permission to any person for the transportation to, or the interim, long–term, or permanent storage of, spent nuclear fuel or high–level

l radioactive waste on any territory or insular possession of the United States or the Trust Territory of the Pacific Islands unless–

(1) the President submits to the Congress a report on the transfer at least 30 days before such transfer and on a day during which–

(A) both Houses of the Congress are in session, or

(B) either or both Houses are not in session because of an adjournment of three days or less to a day certain; or

(2) the President determines that an emergency situation exists with respect to such transfer and that it is in the national interest to make such transfer and the President notifies the Speaker of the House of Representatives and the President of the Senate as soon as possible of such transfer.

The provisions of this section shall not apply to the cleanup and rehabilitation of Bikini and Eniwetok Atolls.

42 USC 2133.
42 USC 2134.

Sec. 106. of the amounts authorized to be appropriated pursuant to this Act, the Nuclear Regulatory Commission is authorized and directed to use such sums as may be necessary to develop a plan for agency response to accidents at a utilization facility licensed under section 103 or section 104(b) of the Atomic Energy Act of 1954. The plan required to be developed by this section shall be forwarded to the Congress on or before September 30, 1980.

Sec. 107. No funds appropriated pursuant to this Act may be used for the purpose of providing for the licensing or approval of any disposal of nuclear wastes in the oceans.

Regulations.

Sec. 108 (a) of the amounts authorized to be appropriated pursuant to this Act, the Nuclear Regulatory Commission is authorized and directed

to use such sums as may be necessary to develop and promulgate regulations establishing demographic requirements for the siting of utilization facilities. Such regulations shall be promulgated by the Commission after notice and opportunity for hearing in accordance with section 553 of Title 5 of the United States Code. For purposes of this section, the term "utilization facility" means a facility licensed under section 103 or 104(b) of the Atomic Energy Act of 1954.

Notice and hearing. Utilization facility. 42 USC 2133. 42 USC 2134.

(b) The regulations promulgated pursuant to this section shall provide that no construction permit may be issued for a utilization facility to which this section applies after the date of such promulgation unless the facility complies with the requirements set forth in such regulations, except that regulations promulgated under this section shall not apply to any facility for which an application for a construction permit was filed on or before October 1, 1979.

(c) The regulations promulgated pursuant to this section shall specify demographic criteria for facility siting, including maximum population density and population distribution for zones surrounding the facility without regard to any design, engineering, or other differences among such facilities.

(d) The regulations promulgated pursuant to this section shall take into account the feasibility of all actions outside the facility which may be necessary to protect public health and safety in the event of any accidental release of radioactive material from the facility which may endanger public health or safety. For purposes of this subsection, the term "accidental release" includes, but is not limited to, each potential accidental release of radioactive material which is required by the Commission to be taken into account for purposes of facility design.

Accidental release.

Information and recommendations.

(e) The Commission shall provide information and recommendations to State and local land use planning authorities having jurisdiction over the zones established under the regulations promulgated pursuant to this section and over areas beyond the zones which may be affected by a radiological emergency. The information and recommendations provided under this subsection shall be designed to assist such authorities in making State and local land use decisions which may affect emergency planning in relation to utilization facilities.

(f) Nothing in this section shall be construed to provide that the Commission shall have any authority to preempt any State requirement relating to land use or respecting the siting of any utilization facility, except that no State or local land use or facility siting requirement relating to the same aspect of facility siting as a requirement established pursuant to this section shall have any force and effort unless such State or local requirement is identical to, or more stringent than, the requirement promulgated pursuant to this section.

Sec. 109. (a) Funds authorized to be appropriated pursuant to this Act may be used by the Nuclear Regulatory Commission to conduct proceedings, and take other actions, with respect to the issuance of an operating license for a utilization facility only if the Commission determines that–

(1) there exists a State or local emergency preparedness plan which–

(A) provides for responding to accidents at the facility concerned, and

(B) as it applies to the facility concerned only, complies with the Commission's guidelines for such plans, or

(2) in the absence of a plan which satisfies the requirements of paragraph (1), there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

A determination by the Commission under paragraph (1) may be made only in consultation with the Director of the Federal Emergency Management Agency. If, in any proceeding for the issuance of an operating license for a utilization facility to which this subsection applies, the Commission determines that there exists a reasonable assurance that public health and safety is endangered by operation of the facility , the Commission shall identify the risk to public health and safety and provide the applicant with a detailed statement of the reasons for such

Utilization facility.

determination. For purposes of this section, the term "utilization facility" means a facility required to be licensed under section 103 or 104(b) of the Atomic Energy Act of 1954.

42 USC 2133.
42 USC 2134.

(b) of the amounts authorized to be appropriated under section 101(a), such sums as may be necessary shall be used by the Nuclear Regulatory Commission to–

Rules.

(1) establish by rule–

(A) standards for State radiological emergency response plans, developed in consultation with the Director of the Federal Emergency Management Agency, and other appropriate agencies, which provide for the response to a radiological emergency involving any utilization facility,

(B) a requirement that–

(i) the Commission will issue operating licenses for utilization facilities only if the Commission determines that–

(I) there exists a State or local radiological emergency response plan which provides for responding to any radiological emergency at the facility concerned and which complies with the Commission's standards for such plans under subparagraph (A), or

(II) in the absence of a plan which satisfies the requirements of subclause (I), there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned, and

(ii) any determination by the Commission under subclause (I) may be made only in consultation with the Director of the Federal Emergency Management Agency and other appropriate agencies, and

(C) a mechanism to encourage and assist States to comply as expeditiously as practicable with the standards promulgated under subparagraph (A) of this paragraph,

Review of plans.

(2) review all plans and other preparations respecting such an emergency which have been made by each State in which there is located a utilization facility or in which construction of such a facility has been commenced and by each State which may be affected (as determined by the Commission) by any such emergency,

Report to congressional committees.

(3) assess the adequacy of the plans and other preparations reviewed under paragraph (2) and the ability of the States involved to carry out emergency evacuations during an emergency referred to in paragraph (1) and submit a report of such assessment to the

appropriate committees of the Congress within 6 months of the date of the enactment of this Act.

(4) identify which, if any, of the States described in paragraph (2) do not have adequate plans and preparations for such an emergency and notify the Governor and other appropriate authorities in each such State of the respects in which such plans and preparations, if any, do not conform to the guidelines promulgated under paragraph (1), and

(5) submit a report to Congress containing (A) the results of its actions under preceding paragraphs and (B) its recommendations respecting any additional Federal statutory authority which the Commission deems necessary to provide that adequate plans and preparations for such radiological emergencies are in effect for each State described in paragraph (2).

(c) In carrying out its review and assessment under subsection (b)(2) and (3) and in submitting its report under subsection (a)(5), the Commission shall include a review and assessment, with respect to each utilization facility and each site for which a construction permit has been issued for such a facility, of the emergency response capability of State and local authorities and of the owner or operator (or proposed owner or operator) of such facility. Such review and assessment shall include a determination by the Commission of the maximum zone in the vicinity of each such facility for which evacuation of individuals is feasible at various different times corresponding to the representative warning times for various different types of accidents.

42 USC 2133.
42 USC 2134.

Sec. 110. (a) of the amounts authorized to be appropriated pursuant to section 101(a), such sums as may be necessary shall be used by the Nuclear Regulatory Commission to develop, submit to the Congress, and implement, as soon as practicable after notice and opportunity for public comment, a comprehensive plan for the systematic safety evaluation of all currently operating utilization facilities required to be licensed under section 103 or section 104(b) of the Atomic Energy Act of 1954.

(b) The plan referred to in subsection (a) shall include–

(1) the identification of each current rule and regulation compliance with which the Commission specifically determines to be of particular significance to the protection of the public health and safety;

(2) a determination by the Commission of the extent to which each operating facility complies with each rule and regulation identified under paragraph (2) of this subsection, including an indication of where such compliance was achieved by use of Division 1 regulatory guides and staff technical positions and where compliance was achieved by equivalent means;

(3) a list of the generic safety issues set forth in NUREG 0410 (including categories A, B, C, and D) for which technical solutions have been developed;

(4) a determination by the Commission of which technical solutions for generic safety issues identified in paragraph (3) of this subsection should be incorporated into the Commission's rules and regulations; and

(5) a schedule for developing a technical solution to those generic safety issues listed in NUREG 0410 which have not yet been technically resolved.

(c) Not later than 90 days from the date of enactment of this Act, the Commission shall report to the Congress on the status of efforts to carry out subsection (a).

Title II–Amendments to the Atomic Energy Act of 1954

42 USC 2133. **Sec. 201.** (a) Section 103 of the Atomic Energy Act of 1954 is amended by adding at the end thereof the following new subsection:

42 USC 2134. f. Each license issued for a utilization facility under this section or section 104b. shall require as a condition thereof that in case of any accident which could result in an unplanned release of quantities of fission products in excess of allowable limits for normal operation established by the Commission, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may, in the Commission's discretion, constitute grounds for license

42 USC 2237. revocation. In accordance with section 187 of this Act, the Commission shall promptly amend each license for a utilization facility issued under this section or section 104b. which is in effect on the date of enactment of this subsection to include the provisions required under this subsection.

Sec. 202 (a) Chapter 18 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:

42 USC 2283. Sec. 235. Protection of Nuclear Inspectors.–

a. Whoever kills any person who performs any inspections which–

(1) are related to any activity or facility licensed by the Commission, and

42 USC 2133.
42 USC 2134.

(2) are carried out to satisfy requirements under this Act or under any other Federal law governing the safety of utilization facilities required to be licensed under section 103 or 104b., or the safety of radioactive materials, shall be punished as provided under section 1111 and 1112 of Title 18, United States Code. The preceding sentence shall be applicable only if such person is killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

b. Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection a. of this section, while such person is engaged in such inspection duties or on account of the performance of such duties, shall be punished as provided under section 111 of Title 18, United States Code.

(b) The table of contents for Chapter 18 of the Atomic Energy Act of 1954 is amended by adding the following new item at the end thereof:

Sec. 235. Protection of nuclear inspectors.

42 USC 2273. **Sec. 203.** Section 223 of the Atomic Energy Act of 1954 is amended by striking out "Whoever" and substituting:

"a. Whoever"

and by adding at the end thereof the following:

b. Any individual director, officer, or employee of a firm constructing, or supplying the components of any utilization facility required to be licensed under section 103 or 104 b. of this Act who by act or omission, in connection with such construction or supply, knowingly and willfully violates or causes to be violated, any section of this Act, any rule, regulation, or order issued thereunder, or any license condition, which violation results, or if undetected could have resulted, in a significant impairment of a basic component of such a facility 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 two years, or both. If the conviction is for a violation committed after a first conviction under this subsection, punishment shall be a fine of not more than $50,000 per day of violation, or imprisonment for not more than two years, or both.

Basic component.

For the purposes of this subsection, the term `basic component' means a facility structure, system, component or part thereof necessary to assure–

(1) the integrity of the reactor coolant pressure boundary,

(2) the capability to shut–down the facility and maintain it in a safe shut–down condition, or

(3) the capability to prevent or mitigate the consequences of accidents which could result in an unplanned offsite release of quantities of fission products in excess of the limits established by the Commission.

42 USC 2133.
42 USC 2134.

The provisions of this subsection shall be prominently posted at each site where a utilization facility required to be licensed under section 103 or 104b. of this Act is under construction and on the premises of each plant where components for such a facility are fabricated.

42 USC 2284.

Sec. 204. (a) The Atomic Energy Act of 1954 is amended by adding the following new section after section 234:

Sec. 236. Sabotage of Nuclear Facilities or Fuel.–

Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to–

(1) any production facility or utilization facility licensed under this Act,

(2) any nuclear waste storage facility licensed under this Act,

(3) any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility,

shall be fined not more than $10,000 or imprisoned for not more than ten years, or both.

(b) The table of contents for such Act is amended by inserting the following new item after the item relating to section 234:

Sec. 236. Sabotage of nuclear facilities or fuel.

42USC 2021.

Sec. 205. Section 274j. of the Atomic Energy Act of 1954 is amended by inserting "(1)" after "j." and by adding the following at the end thereof:

(2) The Commission, upon its own motion or upon request of the Governor of any State, may, after notifying the Governor, temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the Commission:

(A) an emergency situation exists with respect to any material covered by such an agreement creating danger which requires immediate action to protect the health or safety of persons either within or outside the State, and

(B) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose.

A temporary suspension under this paragraph shall remain in effect only for such time as the emergency situation exists and shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger.

42 USC 2282.

Sec. 206. The first sentence of section 234a. of the Atomic Energy Act of 1954 is amended by striking all that follows "exceed" the first time it appears and inserting in lieu thereof the following: $100,000 for each such violation.

Sec. 207 (a)(1) The Atomic Energy Act of 1954 is amended by inserting the following new section immediately after section 146:

42 USC 2167. Regulations.

Sec. 147. Safeguards Information.–

a. In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of section 552 of Title 5 of the United States Code, the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed–

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection–

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by–product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

42 USC 2282.

42 USC 2273.

b. For the purposes of section 223 of this Act, any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161b. of this Act.

c. Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to sub–section (a)(4)(B) of section 552 of Title 5 of the United States Code.

d. Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

e. In addition to the reports required under subsection d. of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion or sabotage of such material or such facility, as specified under subsection a. of this section; and

(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

(2) The table of contents for such Act is amended by inserting the following new item after the item relating to section 146:

"Sec. 147. Safeguards Information."

42 USC 2231.

(b) Section 181 of the Atomic Energy Act of 1954 is amended–

(1) by striking out "or defense information" the first time it appears and substituting ", defense information, or safeguards information protected from disclosure under the authority of section 147"; and

(2) by striking out "or defense information" in each other place it appears in such section and substituting ", defense information, or such safeguards information,".

Title III–Other Provisions

42 USC 5841 note. Regulations. State.

Sec. 301. (a) The Nuclear Regulatory Commission, within 90 days of enactment of this Act, shall promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State. Such notification requirement shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public.

(b) As used in this section, the term "State" includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

42 USC 2016 note. Contract authorization.

Sec. 302. The Nuclear Regulatory Commission is authorized and directed to enter into a contract for an independent review of the Commission's management structure, processes, procedures, and operations. The review shall include an assessment of the effectiveness of all levels of agency management in carrying out the Commission's statutory responsibilities, in developing and implementing policies and programs, and in using the personnel and funding available to it. The contract shall provide for submission of a report of the findings and recommendations of the review to the Commission not later than one year from the date of enactment of this Act, and the Commission shall promptly transmit such report to the Congress.

Report.

42 USC 2016.

Sec. 303. The Nuclear Regulatory Commission shall include in its annual report to Congress under section 251 of the Atomic Energy Act of 1954 a statement of–

(1) the direct and indirect costs to the Commission for the issuance of any license or permit and for the inspection of any facility; and

(2) the fees paid to the Commission for the issuance of any license or permit and for the inspection of any facility.

National Contingency Plan, publication.

Sec. 304. On or before September 30, 1980, the President shall prepare and publish a National Contingency Plan to provide for expeditious, efficient, and coordinated action by appropriate Federal agencies to protect the public health and safety in the case of accidents at any utilization facility licensed under section 103 or 104b. of the Atomic Energy Act of 1954.

42 USC 2133. 42 USC 2134. 42 USC 5842 note.

Sec. 305. (a) As expeditiously as practicable, the Nuclear Regulatory Commission shall establish a mechanism for instantaneous and uninterrupted verbal communication between each utilization facility licensed to operate under section 103 or 104b. of the Atomic Energy Act of 1954 on the date of enactment of this Act, or thereafter, and

(1) Commission headquarters, and

(2) the appropriate Commission regional Office.

Study, transmittal to Congress.

(b) Within ninety days after the date of the enactment of this Act, the Commission shall prepare and transmit to the Congress a study of alternate plans for instantaneous and otherwise timely transmission to the Commission of data indicating the status of principal system parameters at utilization facilities licensed to operate under section 103 or section 104 b. of the Atomic Energy Act of 1954. For each alternative, the study shall present procedures for transmitting and analyzing such data and a

Commission statement regarding the advantages, disadvantages and desirability.

Investigation and study.

Sec. 306. (a) The Nuclear Regulatory Commission is authorized and directed to undertake a comprehensive investigation and study of the impediments to expeditious and reliable communication among Commission headquarters, the Commission regional Office, Commission representatives at the facility site, senior management officials and operator personnel of the licensee, and the Governor of Pennsylvania and other State officials, in the thirty day period immediately following the accident of March 28, 1979, at unit two of the Three Mile Island Nuclear Station in Pennsylvania. Such investigation and study shall include, but not be limited to, a determination of the need for improved communications procedures and the need for advanced communications technology.

Plan, development. Report to Congress.

(b) The Commission shall report to the Congress by September 30, 1980, on the findings of the investigation and study required by sub–section (a), including recommendations on administrative or legislative measures necessary to facilitate expeditious and reliable communications in case of an accident which could result in an unplanned release of quantities of fission products in excess of the allowable limits for normal operation established by the Commission at a utilization facility licensed under sect ion 103 or 104 b. of the Atomic Energy Act of 1954.

42 USC 2133. 42 USC 2134.

The Commission shall implement, as soon as practicable, each such recommendation not requiring legislative enactment, and shall incorporate the recommendation in the plan for agency response promulgated pursuant to section 304 of this Act.

42 USC 2137 note. 42 USC 2137.

Sec. 307. (a) The Commission is authorized and directed to prepare a plan for improving the technical capability of licensee personnel to safely operate utilization facilities licensed under section 103 or 104 b. of the Atomic Energy Act of 1954. In proposing such plan, the Commission shall consider the feasibility of requiring standard mandatory training programs for nuclear facility operators, including classroom study, apprenticeships at the facility, and emergency simulator training. Such plan shall include specific criteria for more intensive training and retraining of operator personnel licensed under section 107 of the Atomic Energy Act of 1954, and for the licensing of such personnel, to assure–

(1) conformity with all conditions and requirements of the operating license;

(2) early identification of accidents, events, or event sequences which may significantly increase the likelihood of an accident; and

(3) effective response to any such event or sequence. Such plan shall include provision for Commission review and approval of the qualifications of personnel conducting any required training and retraining program. The plan shall also include requirements for the renewal of operator licenses including, to the extent practicable, requirements that the operator–

(A) has been actively and extensively engaged in the duties listed in such license,

(B) has discharged such duties safely to the satisfaction of the Commission,

(C) is capable of continuing such duties, and

(D) has participated in a requalification training program.

Plan, transmittal to Congress.

Such plan shall include criteria for suspending or revoking operator licenses. In addition, the Commission shall also consider the feasibility of

requiring such licensed operator to pass a requalification test every six months including–

(i) written questions, and

(ii) emergency simulator exams.

The Commission shall transmit to the Congress the plan required by this subsection within six months after the date of the enactment o this Act, and shall implement as expeditiously as practicable each element thereof not requiring legislative enactment.

42 USC 2137.

(b) The Nuclear Regulatory Commission is authorized and directed to undertake a study of the feasibility and value of licensing, under section 107 of the Atomic Energy Act of 1954, plant managers of utilization facilities and senior licensee officers responsible for operation of such facilities.

Report to Congress Study.

The Commission shall report to the Congress within six months of the date of enactment of this Act on the findings and recommendations of the study required by this subsection, and shall expeditiously implement each such recommendation not requiring legislative enactment.

42 USC 2051 note.

Sec. 308. (a) In the conduct of the study required by section 5(d) of the Nuclear Regulatory Commission Authorization Act for Fiscal Year 1979 (Public Law 95–601), the Nuclear Regulatory Commission and the Environmental Protection Agency, in consultation with the Secretary of Health and Human Services, shall evaluate the feasibility of epidemiological research on the health effects of low–level ionizing radiation exposure to licensee, contractor, and subcontractor employees as a result of–

(1) the accident of March 28, 1979, at unit two of the Three Mile Island Nuclear Station in Pennsylvania;

(2) efforts to stabilize such facility or reduce or prevent radioactive unplanned offsite releases in excess of allowable limits for normal operation established by the Commission; or

(3) efforts to decontaminate, decommission, or repair such facility.

The report required by such section 5(d) shall include the results of the evaluation required under this subsection.

42 USC 2051 note.

(b) Section 5(d) of the Nuclear Regulatory Commission Authorization Act for Fiscal Year 1979 (Public Law 95–601), is amended by striking “September 30, 1979” and inserting in lieu thereof “September 30, 1980”.

D. NRC AUTHORIZATION ACT FOR FISCAL YEAR 1979

Public Law 95–601 **92 Stat. 2947**

November 6, 1978

An Act

To authorize appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and for other purposes.

Nuclear Regulatory Commission. Appropriation authorization, 1978.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954, as amended (42 USC 2017), and section 305 of the Energy Reorganization Act of 1974, as amended (42 USC 5875), for the fiscal year 1979, to remain available until expended $333,007,000. of such total amount authorized to be appropriated:

(1) Not more than $47,162,000 may be used for "Nuclear Reactor Regulation"; of the total amount appropriated for this purpose, $2,080,000 shall be available for Advanced Reactors;

(2) Not more than $38,760,000 may be used for "Inspection and Enforcement";

(3) Not more than $14,945,000 may be used for "Standards Development"; of the total amount appropriated for this purpose, $650,000 shall be available for Low–Level Radiation activities, including those described in section 5 of this Act;

(4) Not more than $27,240,000 may be used for "Nuclear Material Safety and Safeguards"; of the total amount appropriated for this purpose, $8,127,000 shall be available for Nuclear Waste Disposal and Management activities;

42 USC 5845.

(5) Not more than $163,470,000 may be used for "Nuclear Regulatory Research"; of the total amount appropriated for this purpose, $1,500,000 shall be available for the implementation of the Improved Safety Systems Research plan required by section 205(f) of the Energy Reorganization Act of 1974, as amended, $4,448,000 shall be available for Nuclear Waste research activities, and $18,333,000 shall be available for Advanced Reactor Research, including an authorization of $3,900,000 to accelerate the effort in gas–cooled thermal reactor safety research.

(6) Not more than $13,480,000 may be used for "Program Technical Support";

(7) Not more than $27,950,000 may be used for "Program Direction and Administration"; of the total amount appropriated for this purpose, $225,000 shall be available for equal employment opportunity activities, including support of four positions in the Office of Equal Employment Opportunity.

Safeguard research contracts, limitation.

(b)(1) Not more than $14,285,000 of the aggregate amount authorized to be appropriated under paragraphs (1) through (7) of subsection (a) may be used for contracts encompassing research, studies, and technical assistance on domestic safeguards matters.

(2) of the aggregate amount authorized to be appropriated under paragraphs (1) through (7) of subsection (a), $1,000,000 shall be available for studies and analysis of alternative fuel cycles (including studies and analysis relating to licensing and safety, safeguards, and environmental aspects).

(c)(1) No amount appropriated pursuant to subsection (a) for purposes of subparagraphs (1) through (7) of such subsection, may be used for any function of the Commission in excess of the amount expressly authorized to be appropriated for functions referred to in such paragraphs, if such excess amount is in excess of $500,000, nor may the amount available from any appropriation for any function referred to in subparagraphs be reduced by more than $500,000 unless

(i) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(ii) each such committee before the expiration of such period has transmitted to the Commission, written notice stating in substance that such committee has no objection to the proposed action.

(2) of the amounts authorized to be appropriated for the purposes set forth in paragraphs (1) through (7) of subsection (a) of this section, the amounts available for Advanced Reactors, Low–Level Radiation, Nuclear Waste Disposal and Management, Improved Safety Systems, Research, and Nuclear Waste Research, or that specified in sub–section (b)(2) of this section for Alternative Fuel Cycle activities shall not be reprogrammed, unless–

(i) a period of ninety calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce of the House of representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(ii) each such committee before the expiration of such period has transmitted to the Commission, written notice stating in substance that such committee has no objection to the proposed action.

Safeguard research contracts, limitation.

(d) No amount authorized to be appropriated by this Act may be used by the Commission to enter into any contract, providing funds in excess of $20,000 encompassing research, study, or technical assistance on domestic safeguards matters except as directed by the Commission, by majority vote, following receipt by the Commission of a recommendation

from the Executive Director for Operations supporting the need for such contract.

Sec. 2. Moneys received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended.

Funds, transfers.

Sec. 3. Transfers of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

42 USC 5849.

Sec. 4. (a) Subsection (b) of section 209 of the Energy Reorganization Act of 1974, as amended, is amended by adding at the end thereof the following sentence: "Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission."

Equal employment opportunity, report.

(b) Section 209 of the Energy Reorganization Act of 1974, as amended, is amended by adding a new subsection (c) to read as follows and redesignating existing subsection (c) accordingly:

(c) The Executive Director shall report to the Commission at semi–annual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts."

42 USC 2051 note. Radiation, health effects studies, consultation.

Sec. 5. (a) The Commission and the Environmental Protection Agency in consultation with the Secretary of Health, Education, and Welfare, are authorized and directed to conduct preliminary planning and design studies for epidemiological research on the health effects of low–level ionizing radiation. In the conduct of such studies, the Commission and the Environmental Protection Agency shall consult with appropriate scientific organizations and Federal and State agencies.

Memorandum, submittal to Congress.

(b) Within thirty days after the date of enactment of this section, the Commission and the Environmental Protection Agency shall submit to the Congress a memorandum of understanding to delineate their responsibilities in the conduct of the planning studies authorized by subsection (a) of this section.

Reports to Congress, consultations.

(c) On or before April 1, 1979, the Commission and the Environmental Protection Agency shall submit a report to the Congress containing an assessment of the capabilities and research needs of such agencies in the area of health effects of low–level ionizing radiation.

(d) On or before September 30, 1979, the Commission and the Environmental Protection Agency, in consultation with the Secretary of Health, Education, and Welfare, shall submit a report to the Congress which includes a study of options for Federal epidemiological research on the health effects of low–level ionizing radiations, with evaluations of the feasibility of such options. Such report shall be consistent with the findings of the assessment required by subsection (c) of this section.

(e) In carrying out the activities specified in subsections (c) and (d) such agencies shall:

Cooperation.

(i) cooperate with appropriate scientific organizations and agencies involved in related research, and

Copies.

(ii) furnish copies of the reports required by those subsections to the organizations and agencies referred to in subsection (e)(i).

Annual status report.

Sec. 6. Section 209 of the Energy Reorganization Act of 1974 is amended by adding the following new subsection at the end thereof:

(d) The Executive Director shall prepare and forward to the Commission an annual report (for the fiscal year 1978 and each succeeding fiscal year) on the status of the Commission's programs concerning domestic safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission. The Commission shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding year as a separate chapter of the Commission's annual report (required under section 307(c) of the Energy Reorganization Act of 1974) following the fiscal year to which such report applies.

Report to Congress.

42 USC 5841 note. Review.

Sec. 7. The Commission is authorized and directed to undertake a comprehensive review of the existing process for selection and training of members of the Atomic Safety and Licensing Boards, including, but not limited to, the selection criteria, including qualifications, the selection procedures, and the training programs for Board members. The Commission shall report to the Congress on the findings of such review by January 1, 1979, and shall revise such selection and training process as appropriate, based on such findings.

Report to Congress.

42 USC 2210a. Disclosure rules.

Sec. 8 (a) Chapter 14 of the Atomic Energy Act of 1954 is amended by adding the following new section at the end thereof:

Sec. 170A. Conflicts of Interest Relating to Contracts and Other Arrangements.–

a. The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this Act or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to–

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract for more than $10,000.

b. The Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection a. and any other information otherwise available to the Commission that–

(1) it is unlikely that a conflict of interest would exist, or

(2) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes

appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

Publication.

c. The Commission shall publish rules for the implementation of this section, in accordance with section 553 of Title 5, United States Code (without regard to subsection (a)(2) thereof) as soon as practicable after the date of the enactment of this section, but in no event later than 120 days after such date.

(b) The table of contents for such Chapter 14 is amended by adding the following new item at the end thereof:

Sec. 170A. Conflicts of interest relating to contracts and other arrangements.

42 USC 2153 note. Monitoring and assistance, reports to Congress.

Sec. 9. The Commission shall monitor and assist, as requested, the International Fuel Cycle Evaluation and the studies and evaluations of the various nuclear fuel cycle systems by the Department of Energy in progress as of the date of enactment, and report to the Congress semiannually through calendar year 1980 and annually through calendar year 1982 on the status of domestic and international evaluations of nuclear fuel cycle systems. This report shall include, but not be limited to, a summary of the information developed by and available to the Commission on the health, safety and safeguards implications of the leading fuel cycle technologies.

Sec. 10. Title II of the Energy Reorganization Act of 1974, as amended, is amended by adding at the end thereof a new section to read as follows:

Employee Protection

42 USC 5851.

Sec. 210. (a) No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, 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)–

42 USC 2011 note.

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this act or the Atomic Energy Act of 1954, as amended;

(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 manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

Complaint, filing and notification.

(b)(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty 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 and the Commission.

Investigation and notification.

(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 thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant(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 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 public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

Order.

Notice and hearing Settlement.

Relief.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, 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' and expert witness 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.

Review.

(c)(1) Any person 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 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. (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.

5 USC 701 *et seq.*

Jurisdiction.

(d) Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may 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, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e)(1) Any person on whose, behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

Litigative costs.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of Title 28 of the United States Code.

(g) Subsection (a) shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirements of this Act or of the Atomic Energy Act of 1954, as amended.

42 USC 2011 note.
42 USC 2205a.
Report to Congress.

Sec. 11. The Commission shall report to the Congress on January 1, 1979, and annually thereafter on the use of contractors, consultants, and the National Laboratories by the Commission. Such report shall include, for each contract issued, in progress or completed during fiscal year 1978, information on the bidding procedure, nature of the work, amount and duration of the contract, progress of work, relation to previous contracts, and the relation between the amount of the contract and the amount actually spent.

42 USC 5842 note.
Authority extension, study.
Cooperation.

Sec. 12. (a) The Commission, in cooperation with the Department of Energy, is authorized and directed to conduct a study of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority.

(b) Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission in the conduct of the study. Such cooperation shall include providing access to existing facilities and sites and providing any information needed to conduct the study which the agency may have or be reasonably able to acquire.

Report to Congress.

(c) On or before March 1, 1979, the Commission shall submit a report to the Congress containing the results of the study, the Report shall include a complete listing and inventory of all radioactive waste storage and disposal activities now being conducted or planned by Federal agencies.

Sec. 13. Notwithstanding any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

42 USC 2021a.
Waste storage or disposal facility planning, notification.

Sec. 14. (a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high–level radioactive wastes, non–high–level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed sites whenever the Commission has knowledge of such proposal.

State participation report.

(b) The Commission is authorized and directed to prepare a report on means for improving the opportunities for State participation in the process for siting, licensing, and developing nuclear waste storage or disposal facilities. Such report shall include detailed consideration of a program to provide grants through the Commission to any State, and the advisability of such a program, for the purpose of conducting an independent State review of any proposal to develop a nuclear waste storage or disposal facility identified in subsection (a) within such State.

State participation, report. Submittal with legislative recommendations to Congress.

On or before March 1, 1979, the Commission shall submit the report to the Congress including recommendations for improving the opportunities for State participation together with any necessary legislative proposals.

E. NRC AUTHORIZATION ACT FOR FISCAL YEAR 1978

Public Law 95–209 **91 Stat. 1481.**

December 13, 1977

An Act

To authorize appropriations for Nuclear Regulatory Commission for the fiscal year 1978, and for other purposes.

Nuclear Regulatory Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Appropriation authorization, 1978.

Sec. 1. Authorization

(a) There is authorized to be appropriated to the Nuclear Regulatory Commission (hereafter in this act referred to as the "Commission") to carry out its functions and authorities under the Atomic Energy Act of 1954 (42 USC 2017) and the Energy Reorganization Act of 1974 (42 USC 5875) for the fiscal year 1978 to remain available until expended $297,740,000 to be allocated as follows:

(1) For "Nuclear Reactor Regulation", not more than $41,480,000;

(2) For "Standards Development", not more than $12,130,000;

(3) For "Inspection and Enforcement", not more than $33,050,000;

(4) For "Nuclear Materials Safety and Safeguards", not more than $22,090,000;

(5) For "Nuclear Regulatory Research", $148,900,000;

(6) For "Program Technical Support", 10,180,000; of which an amount not to exceed $600,000 is authorized for a fellowship program pursuant to section 5 of this Act.

(7) For "Program Direction and Administration", not more than $29,910,000.

Reallocation.

(b) of the total amount authorized under section 1(a), the Commissioners may, by majority vote, reallocate among program activities specified in subsection (a) or pursuant to the authority granted in subsection (d) an amount not exceeding $10,000,000 except that the amount transferred from any of the major program activities specified in subsection (a) shall not exceed 15 per centum of the amount so specified. Prior to any reallocation of an amount in accordance with the provisions of this subsection, where such amount is in excess of $500,000, the Commission shall inform the appropriate congressional committees. Such reallocation may be made notwithstanding the limitations of subsection (a).

Safeguard research contract statement publication.

(c) No amount authorized to be appropriated for contracts for research, studies, and technical assistance on domestic safeguard matters under subsection (a) including any amount reallocated under subsection (b) may be used for such contracts and no amount authorized to be appropriated under this subsection may be used by the Office of Nuclear Regulatory Research for such contracts until a statement supporting the need for such research, study, or technical assistance has been prepared and published by the Commission.

(d) No amount authorized to be appropriated for contracts for regulatory research related to advanced reactor safety under this Act may be used for such contracts except as directed by the Commission, following consideration by the Commission of any recommendation that may be made by the ACRS regarding the proposed research.

(e) In the event that the license application is withdrawn or funding for the continuation of the Clinch River Breeder Reactor project is not authorized or appropriated, the total authorization in subsection (a) shall be reduced by $2,700,000.

(f) In the event that further construction of the facility at Barnwell, South Carolina, for the purpose of providing plutonium to be used as fuel is canceled or deferred, the total authorization in subsection (a) shall be reduced by $2,100,000.

Sec. 2. Commission Personnel

Quarterly report to Congress. 42 USC 5841.

Section 201 of Title II of the Energy Reorganization Act of 1974 is amended by adding the following new subsection at the end thereof:

(h) The Commission shall prepare and submit to the Congress a quarterly report which documents, for grades GS–11 or above:

(1) the number of minority and women candidates hired, by grade level;

(2) the number of minority and women employees promoted, by grade level;

(3) the procedures followed by the Commission in preparing job descriptions, informing potential applicants, and selecting from candidates the persons to be employed in positions at grade GS–11 or above; and

(4) other steps taken to meet provisions of the Equal Employment Act.

42 USC 2000e.

The first quarterly report shall be submitted to the Congress not later than January 31, 1978, and subsequent reports shall be submitted prior to the end of one calendar month after the end of each calendar quarter thereafter.

Sec. 3. Unresolved Safety Issues

Title II of the Energy Reorganization Act of 1974, is amended by adding the following new section at the end thereof:

UNRESOLVED SAFETY ISSUES PLAN

42 USC 5850.

Sec. 210. The Commission shall develop a plan providing for the specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978 and progress reports shall be included in the annual report of the Commission thereafter.

Submittal to Congress. Progress

Sec. 4. Improved Safety Systems Research

42 USC 5845.

(a) Section 205 of the Energy Reorganization Act of 1974 is amended by adding the following new subsection at the end thereof:

Long–term plan development.

(f) The Commission shall develop a long–term plan for projects for the development of new or improved safety systems for nuclear power plants.

Sec. 5. Reactor Safety Research Study

42 USC 2039. Annual report to Congress.

Section 29 of the Atomic Energy Act of 1954 is amended by adding the following at the end thereof: In addition to its other duties under this section, the committee, making use of all available sources, shall undertake a study of reactor safety research and prepare and submit annually to the Congress a report containing the results of such study. The first such report shall be submitted to the Congress not later than December 31, 1977.

Sec. 6. ACRS Fellowship Program

42 USC 2040. Establishment.

To assist the Advisory Committee on Reactor Safeguards in carrying out its function, the committee shall establish a fellowship program under which persons having appropriate engineering or scientific expertise are assigned particular tasks relating to the functions of the committee. Such fellowship shall be for 2–year periods and the recipients of such fellowships shall be selected pursuant to such criteria as may be established by the committee.

Sec. 7. Organizational Conflicts of Interest

42 USC 2201 note. Guidelines.

The Commission shall by December 31, 1977, promulgate guidelines to be applied by the Commission in determining whether an organization proposing to enter into a contractual arrangement with the Commission has a conflict of interest which might impair the contractor's judgment or otherwise give the contractor an unfair competitive advantage.

Sec. 8. Cooperative Research Funding

Salaries and expenses.

Moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.

Sec. 9. Transfer of Funds

Transfers of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which transferred.

Sec. 10. Appropriations

Notwithstanding any other provision of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriations Acts.

F. NRC AUTHORIZATION ACT FOR FISCAL YEAR 1977

Public Law 94–291 **90 Stat. 523**

May 22, 1976

An Act

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Nuclear Regulatory Commission. 42 USC 2017. 42 USC 5875. Appropriation authorization.

Sec. 101. There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended; for salaries and expenses, $274,300,000 to remain available until expended.

Moneys for research programs, use.

Sec. 102. Moneys received by the Commission for the cooperative nuclear safety research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.

Transfer of sums.

Sec. 103. Transfers of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

Amendments to Prior Year Act

Sec. 104. (a) Title I of Public Law 94–79 is amended by adding section 102 to read as follows: Moneys received by the Commission for the cooperative nuclear research program may be retained and used for salaries and expenses associated with that program, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriation Acts.

(b) Section 101 of Public Law 94–79 is amended by adding the phase "and shall remain available until expended" after the words "September 30, 1976."

G. NRC AUTHORIZATION ACT FOR FISCAL YEAR 1976

Public Law 94–79 **89 Stat. 413**

August 9, 1975

An Act

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I

42 USC 2017. Appropriation authorization. Nuclear Regulatory Commission.

Sec. 101. There is authorized to be appropriated to the Nuclear Regulatory Commission to carry out the provisions of section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974: $222,935,000 for fiscal year 1976 and $52,750,000 for the period from July 1, 1976 through September 30, 1976 and shall remain available until expended.[1]

42 USC 5875.

Sec. 102. Moneys received by the Commission for the cooperative nuclear research program may be retained and used for salaries and expenses associated with that program, notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484), and shall remain available until expended. Funds may be obligated for purposes stated in this section only to the extent provided in appropriations Acts.[2]

Title II

42 USC 5841.

Sec. 201. Section 201(a) of the Energy Reorganization Act of 1974 is amended

(1) by inserting "(l)" immediately after section 201(a); and

42 USC 5801 note. Commission chairman, functions.

(2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in the Energy Reorganization Act of 1974), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

(3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

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[1] Amended by P.L. 94–291, § 104(b), 90 Stat. 523 (1976).
[2] Amended by P.L. 94–291, § 104(a), 90 Stat. 523 (1976).

(4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

42 USC 5841 note. Plutonium shipments, restrictions.

The Nuclear Regulatory Commission shall not license any shipments by air transport of plutonium in any form, whether exports, imports or domestic shipments: *Provided, however,* That any plutonium in any form contained in a medical device designed for individual human application is not subject to this restriction. This restriction shall be in force until the Nuclear Regulatory Commission has certified to the Joint Committee on Atomic Energy of the Congress that a safe container has been developed and tested which will not rupture under crash and blast–testing equivalent to the crash and explosion of a high–flying aircraft.

42 USC 5841. Term of Office.

Sec. 202. Subsection 201(c) of the Energy Reorganization Act of 1974 is amended by deleting the period at the end of the subsection and adding the following text: and except that 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.

Sec. 203. Section 201(c) is amended to include the following: For the purpose of determining the expiration date of the terms of Office of the five members first appointed to the Nuclear Regulatory Commission, each such term shall be deemed to have begun July 1, 1975.[3]

[3] Amended by P.L. 94–291, § 104(a), 90 Stat.523 (1976).

H. NRC FISCAL YEAR 1975 SUPPLEMENTAL AUTHORIZATION ACT

Public Law 94–18 **89 Stat. 80**

April 25, 1975

An Act

To authorize supplemental appropriations to the Nuclear Regulatory Commission for fiscal year 1975.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

42 USC 2017.
42 USC 5875.
Nuclear Regulatory Commission Appropriation Authorization.

That there is authorized to be appropriated to the Nuclear Regulatory Commission to carry out the provisions of section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, $50,200,000 for fiscal year 1975.

I. AEC FISCAL YEAR 1975 SUPPLEMENTAL AUTHORIZATION ACT

Public Law 93–576 **88 Stat. 1878**

December 21, 1974

An Act

To amend Public Law 93–276 to increase the authorization for appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes.

Atomic Energy Commission. Appropriation increase.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 101(a) of Public Law 93–276 is hereby amended by striking therefrom the figure "$2,551,533,000" and substituting the figure "$2,580,733,000".

Sec. 2. Section 101(b) of Public Law 93–276 is hereby amended by striking from subsection (11) capital equipment the figure "$208,850,000" and substituting the figure "$224,900,000".

Safeguards program.

Sec. 3. From the increase of the sums authorized to be appropriated by this Act $23,000,000 shall be allotted to, and made available only for the Safeguards Program, with regard to the safeguarding of special nuclear materials from diversion from its intended uses, and for research and development of safeguards techniques and related activities involved in handling nuclear material.

J. AEC AUTHORIZATION ACT FOR FISCAL YEAR 1975

Public Law 93–276 **77 Stat. 88**

May 10, 1974

An Act

To authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Appropriation authorization. Atomic Energy 42 USC 2017.

Sec. 101. There is hereby authorized to be appropriated to the Atomic Energy Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954, as amended:

(a) For "Operating expenses", $2,580,733,000[1] not to exceed $132,200,000 in operating costs for the high energy physics program category.

(b) For "Plant and capital equipment", including construction, acquisition, or modification of facilities, including land acquisition; and acquisition and fabrication of capital equipment not related to construction, a sum of dollars equal to the total of the following:

(1) NUCLEAR MATERIALS.–

Project 75–1a, additional facilities, high–level waste handling and storage, Savannah River, South Carolina, $30,000,000.

Project 75–1–b, replacement ventilation air filter, H chemical separations area, Savannah River, South Carolina, $6,000,000.

Project 75–1–c, new waste calcining facility, Idaho Chemical Processing Plant, National Reactor Testing Station, Idaho, $20,000,000.

Project 75–1–d, waste management effluent control, Richland, Washington, $3,500,000.

Project 75–1–e, retooling of component preparation laboratories, multiple sites, $4,500,000.

Project 75–1–f, atmospheric pollution control facilities, stoker fired boilers, Savannah River, South Carolina, $7,500,000.

(2) NUCLEAR MATERIALS.–

Project 75–2–a, additional cooling tower capacity, gaseous diffusion plant, Portsmouth, Ohio, $2,200,000.

(3) WEAPONS.–

Project 75–3–a, weapons production, development, and test installations, $10,000,000.

Project 75–3–b, high energy laser facility, Los Alamos Scientific Laboratory, New Mexico, $22,600,000.

Project 75–3–c, TRIDENT production facilities, various locations, $22,200,000.

Project 75–3–d, consolidation of final assembly plants, Pantex, Amarillo, Texas, $4,500,000.

Project 75–3–e, addition to building 350 for safeguards analytical laboratory, Argonne National Laboratory, Illinois, $3,500,000.

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[1] Amended by P.L. 93–576, § 1, 88 Stat. 1878 (1974), increased this figure from the previously authorized $2,551,533,000.

(4) WEAPONS.–

Project 75–4–a, technical support relocation, Los Alamos Scientific Laboratory, New Mexico, $2,800,000.

(5) CIVILIAN REACTOR RESEARCH AND DEVELOPMENT.–

Project 75–5–a, transient test facility, Santa Susana, California, $4,000,000.

Project 75–5–b, advanced test reactor control system upgrading, National Reactor Testing Station, Idaho, $2,400,000.

Project 75–5–c, test reactor area water recycle and pollution control facilities, National Reactor Testing Station, Idaho, $1,000,000.

Project 75–5–d, modifications to reactors, $4,000,000.

Project 75–5–e, high temperature gas reactor fuel re–processing facility, National Reactor Testing Station, Idaho, $10,100,000.

Project 75–5–f, high temperature gas reactor fuel refabrication pilot plant, Oak Ridge National Laboratory, Tennessee, $3,000,000.

Project 75–5–g, molten salt breeder reactor (preliminary planning preparatory to possible future demonstration project), $1,500,000.

(6) PHYSICAL RESEARCH.–

Project 75–6–a, accelerator and reactor improvements and modifications, $3,000,000.

Project 75–6–b, heavy ion research facilities, various locations, $19,200,000.

Project 75–6–c, positron–electron joint project, Lawrence Berkeley Laboratory and Stanford Linear Accelerator Center, $900,000.

(7) BIOMEDICAL AND ENVIRONMENTAL RESEARCH AND SAFETY.–

Project 75–7–a, upgrading of laboratory facilities, Oak Ridge National Laboratory, Tennessee, $2,100,000.

Project 75–7–b, environmental research laboratory, Savannah River, South Carolina, $2,000,000.

Project 75–7–c, intermediate–level waste management facilities, Oak Ridge National Laboratory, Tennessee, $9,500,000.

Project 75–7–d, modifications and additions to biomedical and environmental research facilities, $2,850,000.

(8) BIOMEDICAL AND ENVIRONMENTAL RESEARCH AND SAFETY.–

Project 75–8–a, environmental sciences laboratory, Oak Ridge National Laboratory, Tennessee, $8,800,000.

(9) GENERAL PLANT PROJECTS.–$55,650,000.

(10) CONSTRUCTION PLANNING AND DESIGN.–$2,000,000.

(11) CAPITAL EQUIPMENT.–Acquisition and fabrication of capital equipment not related to construction, $224,900,000.[2]

(12) REACTOR SAFETY RESEARCH.–

Project 75–12–a, reactor safety facilities modifications, $1,000,000.

(13) APPLIED ENERGY TECHNOLOGY.–

Project 75–13–a, hydrothermal pilot plant, $1,000,000.

Sec. 102. Limitations.–(a) The Commission is authorized to start any project set forth in subsection 101(b)(1), (3), (5), (6), (7), (12), and (13)

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[2] Amended by P.L. 93–576, § 2, 88 Stat. 1878 (1978) (1974), increased this figure from the previously authorized $208,850,000.

only if the currently estimated cost of that project does not exceed by more than 25 per centum the estimated cost set forth for that project.

(b) The Commission is authorized to start any project set forth in subsection 101(b) (2), (4), (8), and (10) only if the currently estimated cost of that project does not exceed by more than 10 per centum the estimated cost set forth for that project.

(c) The Commission is authorized to start any project under subsection 101(b)(9) only if it is in accordance with the following:

(1) The maximum currently estimated cost of any project shall be $500,000 and the maximum currently estimated cost of any building included in such project shall be $100,000: *Provided,* That the building cost limitation may be exceeded if the Commission determines that it is necessary in the interest of efficiency and economy.

(2) The total cost of all projects undertaken under subsection 101(b)(9) shall not exceed the estimated cost set forth in that subsection by more than 10 per centum.

42 USC 2017.

(d) The total cost of any project undertaken under subsection 101(b) (1), (3), (5), (6), (7), (12), and (13) shall not exceed the estimated cost set forth for that project by more than 25 per centum, unless and until additional appropriations are authorized under section 261 of the Atomic Energy Act of 1954, as amended, provided that this subsection will not apply to any project with an estimated cost less than $5,000,000.

42 USC 2017.

(e) The total cost of any project undertaken under subsection 101(b) (2), (4), (8), (9), and (10) shall not exceed the estimated cost set forth for that project by more than 10 per centum, unless and until additional appropriations are authorized under section 261 of the Atomic Energy Act of 1954, as amended, provided that this subsection will not apply to any project with an estimated cost less than $5,000,000.

Construction design services.

Sec. 103. The Commission is authorized to perform construction design services for any Commission construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Commission, and (2) the Commission determines that the project is of such urgency that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

Sec. 104. Any moneys received by the Commission (except sums received from the disposal of property under the Atomic Energy Community Act of 1955, as amended (42 USC 2301)), may be retained by the Commission and credited to its "Operating expenses" appropriation notwithstanding the provisions of section 3617 of the Revised Statutes (31 USC 484).

Transfer of sums.

Sec. 105. Transfers of sums from the "Operating expenses" appropriation may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

Transfer of amounts.

Sec. 106. When so specified in an appropriation Act, transfers of amounts between "Operating expenses" and "Plant and capital equipment" may be made as provided in such appropriation Act.

Sec. 107. AMENDMENT OF PRIOR YEAR ACTS.–

(a) Section 101 of Public Law 89–428, as amended, if further amended by striking from subsection (b)(3) project 67–3–a, fast flux test facility, the figure "$87,500,000", and substituting therefor the figure "$420,000,000".

(b) Section 101 of Public Law 91–273, as amended, is further amended by striking from subsection (b)(1), project 71–1–f, process equipment modifications, gaseous diffusion plants, the figure "$172,100,000" and substituting therefor the figure "$295,100,000".

(c) Section 106 of Public Law 91–273, as amended, is further amended by striking from subsection (a) the figure "$2,000,000" and substituting therefor the figure "3,000,000", and by adding thereto the following new subsection (c):

(c) The Commission is hereby authorized to agree, by modification to the definitive cooperative arrangement reflecting such changes therein as it deems appropriate for such purpose, to the following:

31 USC 665.

(1) to execute and deliver to the other parties to the AEC definitive contract, the special undertaking of indemnification specified in said contract, which undertakings shall be subject to availability of appropriations to the Atomic Energy Commission (or any other Federal agency to which the Commission's pertinent functions might be transferred at some future time) and to the provisions of section 3679 of the Revised Statutes, as amended; and

(2) to acquire ownership and custody of the property constituting the Liquid Metal Fast Breeder Reactor power plant or parts thereof, and to use, decommission, and dispose of said property, as provided for in the AEC definitive contract.

(d) Section 101 of Public Law 92–314, as amended, is amended by striking from subsection (b)(4), project 73–4–b, land acquisition, Rocky Flats, Colorado, the figure "$8,000,000" and substituting therefor the figure "$11,400,000".

(e) Section 101 of Public Law 93–60 is amended by

(1) striking from subsection (b)(1), project 74–1–a, additional facilities, high level waste storage, Savannah River, South Carolina, the figure "$14,000,000" and substituting therefor the figure "$17,500,000",

(2) striking from subsection (b)(1), project 74–1–g, cascade uprating program, gaseous diffusion plants, the words "(partial AE and limited component procurement only)" and further striking the figure "$6,000,000" and substituting therefore the figure "$183,100,000", and

(3) striking from subsection (b)(2), project 74–2–d, national security and resources study center, the words "(AE only), site undesignated" and substituting therefor the words "Los Alamos Scientific Laboratory, New Mexico" and further striking the figure "$350,000" and substituting therefor the figure "$4,600,000".

Sec. 108. RESCISSION.–

(a) Public Law 91–44, as amended, is further amended by rescinding therefrom authorization for a project, except for funds heretofore obligated, as follows:

Project 70–1–b, bedrock waste storage (AE and site selection drilling only), Savannah River, South Carolina, $4,300,000.

(b) Public Law 92–84, as amended, is further amended by rescinding therefrom authorization for a project, except for funds heretofore obligated, as follows:

Project 72–3–b, national radioactive waste repository, site undetermined, $3,500,000.

(c) Public Law 92–314, as amended, is further amended by rescinding therefrom authorization for a project, except for funds heretofore obligated, as follows:

Project 73–6–c, accelerator improvements, Cambridge Electron Accelerator, Massachusetts, $75,000.

Title II

42 USC 2187.

Sec. 201. Section 157b.(3) of the Atomic Energy Act of 1954, as amended, is amended by striking out "upon the recommendation of" and inserting in lieu thereof "after consultation with".

K. AEC AUTHORIZATION ACT FOR FISCAL YEAR 1974

Public Law 93–158 **87 Stat. 627**

November 26, 1973

An Act

To amend Public Law 93–60 to increase the authorization for appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 101(a) of Public Law 93–60 is hereby amended by striking therefrom the figure "$1,740,750,000" and substituting the figure "$1,751,450,000."

Sec. 2. Section 101(b) of Public Law 93–60 is hereby amended by adding to subsection (b)(1) the following words: Project 74–1–i, additional waste concentration and salt cake storage facilities, Richland, Washington, $30,000,000.

6. Chief Financial Officers Legislation

6. Chief Financial Officers Legislation

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A. CHIEF FINANCIAL OFFICERS ACT OF 1990, AS AMENDED

Public Law 101–576 **104 Stat. 2838**

Nov. 15, 1990

An Act

To amend Title 31, United States Code, to improve the general and financial management of the Federal Government.

Chief Financial Officers Act of 1990.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I–General Provisions

31 USC 501 note.

Sec. 101. Short Title

This Act may be cited as the "Chief Financial Officers Act of 1990."

31 USC 501 note.

Sec. 102. Findings and Purposes

(a) FINDINGS. — The Congress finds the following:

(1) General management functions of the Office of Management and Budget need to be significantly enhanced to improve the efficiency and effectiveness of the Federal Government.

(2) Financial management functions of the Office of Management and Budget need to be significantly enhanced to provide overall direction and leadership in the development of a modern Federal financial management structure and associated systems.

(3) Billions of dollars are lost each year through fraud, waste, abuse, and mismanagement among the hundreds of programs in the Federal Government.

(4) These losses could be significantly decreased by improved management, including improved central coordination of internal controls and financial accounting.

(5) The Federal Government is in great need of fundamental reform in financial management requirements and practices as financial management systems are obsolete and inefficient, and do not provide complete, consistent, reliable, and timely information.

(6) Current financial reporting practices of the Federal Government do not accurately disclose the current and probable future cost of operating and investment decisions, including the future need for cash or other resources, do not permit adequate comparison of actual costs among executive agencies, and do not provide the timely information required for efficient management of programs.

(b) PURPOSES. — The purposes of this Act are the following:

(1) Bring more effective general and financial management practices to the Federal Government through statutory provisions which would establish in the Office of Management and Budget a Deputy Director for Management, establish an Office of Federal Financial Management headed by a Controller, and designate a Chief Financial Officer in each executive department and in each major executive agency in the Federal Government.

(2) Provide for improvement, in each agency of the Federal Government, of systems of accounting, financial management, and internal controls to assure the issuance of reliable financial information and to deter fraud, waste, and abuse of Government resources.

(3) Provide for the production of complete, reliable, timely, and consistent financial information for use by the executive branch of the Government and the Congress in the financing, management, and evaluation of Federal programs.

Title II–Establishment of Chief Financial Officers

Sec. 201. Deputy Director for Management

Section 502 of Title 31, United States Code, as amended by this Act, is amended–

(1) by redesignating subsections (c), (d), and (e), as amended by this section, as subsections (d), (e), and (f); and

(2) by inserting after subsection (b) the following:

(c) The Office has a Deputy Director for Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director for Management shall be the chief official responsible for financial management in the United States Government.

Sec. 202. Functions of Deputy Director for Management

(a) CLERICAL AMENDMENTS.–Sections 503 and 504 of Title 31, United States Code, are redesignated in order as sections 505 and 506, respectively.

(b) FUNCTIONS OF DEPUTY DIRECTOR FOR MANAGEMENT.–Subchapter I of Chapter 5 of Title 31, United States Code, is amended by inserting after section 502 the following:

§503. Functions of Deputy Director for Management

(a) CLERICAL AMENDMENTS. — Sections 503 and 504 of title 31, United States Code, are redesignated in order as sections 505 and 506, respectively.

(b) FUNCTIONS OF DEPUTY DIRECTOR FOR MANAGEMENT. — Subchapter I of chapter 5 of title 31, United States Code, is amended by inserting after section 502 the following:

"§ 503. Functions of Deputy Director for Management

"(a) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish governmentwide financial management policies for executive agencies and shall perform the following financial management functions:

"(1) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to financial management.

"(2) Provide overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements, and by monitoring the establishment and operation of Federal Government financial management systems.

"(3) Review agency budget requests for financial management systems and operations, and advise the Director on the resources required to develop and effectively operate and maintain Federal Government financial management systems and to correct major deficiencies in such systems.

"(4) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they are in accordance with financial management plans of the Office of Management and Budget.

"(5) Monitor the financial execution of the budget in relation to actual expenditures, including timely performance reports.

"(6) Oversee, periodically review, and make recommendations to heads of agencies on the administrative structure of agencies with respect to their financial management activities.

"(7) Develop and maintain qualification standards for agency Chief Financial Officers and for agency Deputy Chief Financial Officers appointed under sections 901 and 903, respectively.

"(8) Provide advice to agency heads with respect to the selection of agency Chief Financial Officers and Deputy Chief Financial Officers.

"(9) Provide advice to agencies regarding the qualifications, recruitment, performance, and retention of other financial management personnel.

"(10) Assess the overall adequacy of the professional qualifications and capabilities of financial management staffs throughout the Government and make recommendations on ways to correct problems which impair the capacity of those staffs.

"(11) Settle differences that arise among agencies regarding the implementation of financial management policies.

"(12) Chair the Chief Financial Officers Council established by section 302 of the Chief Financial Officers Act of 1990.

"(13) Communicate with the financial Officers of State and local governments, and foster the exchange with those Officers of information concerning financial management standards, techniques, and processes.

"(14) Issue such other policies and directives as may be necessary to carry out this section, and perform any other function prescribed by the Director.

"(b) Subject to the direction and approval of the Director, the Deputy Director for Management shall establish general management policies for executive agencies and perform the following general management functions:

"(1) Coordinate and supervise the general management functions of the Office of Management and Budget.

"(2) Perform all functions of the Director, including all functions delegated by the President to the Director, relating to —

"(A) managerial systems, including the systematic measurement of performance;

"(B) procurement policy;

"(C) grant, cooperative agreement, and assistance management;

"(D) information and statistical policy;

"(E) property management;

"(F) human resources management;

"(G) regulatory affairs; and

"(H) other management functions, including organizational studies, long–range planning, program evaluation, productivity improvement, and experimentation and demonstration programs.

"(3) Provide complete, reliable, and timely information to the President, the Congress, and the public regarding the management activities of the executive branch.

"(4) Facilitate actions by the Congress and the executive branch to improve the management of Federal Government operations and to remove impediments to effective administration.

"(5) Provide leadership in management innovation, through —

"(A) experimentation, testing, and demonstration programs; and

"(B) the adoption of modern management concepts and technologies.

"(6) Work with State and local governments to improve and strengthen intergovernmental relations, and provide assistance to such governments with respect to intergovernmental programs and cooperative arrangements.

"(7) Review and, where appropriate, recommend to the Director changes to the budget and legislative proposals of agencies to ensure that they respond to program evaluations by, and are in accordance with general management plans of, the Office of Management and Budget.

"(8) Provide advice to agencies on the qualification, recruitment, performance, and retention of managerial personnel.

"(9) perform any other functions prescribed by the Director.".[1]

Sec. 203. Office of Federal Financial Management

(a) ESTABLISHMENT.–Subchapter I of Chapter 5 of Title 31, United States Code, as amended by this Act, is amended by inserting after section 503 (as added by section 202 of this Act) the following:

31 USC 504

§504. Office of Federal Financial Management

(a) There is established in the Office of Management and Budget an Office to be known as the "Office of Federal Financial Management." The Office of Federal Financial Management, under the direction and control of the Deputy Director for Management of the Office of Management and Budget, shall carry out the financial management functions listed in section 503(a) of this Title.

(b) There shall be at the head of the Office of Federal Financial Management a Controller, who shall be appointed by the President, by and with the advice and consent of the Senate. The Controller shall be appointed from among individuals who possess–

(1) demonstrated ability and practical experience in accounting, financial management, and financial systems; and

(2) extensive practical experience in financial management in large governmental or business entities.

(c) The Controller of the Office of Federal Financial Management shall be the deputy and principal advisor to the Deputy Director for Management in the performance by the Deputy Director for Management of functions described in section 503(a).

(b) STATEMENT OF APPROPRIATIONS IN BUDGET.–Section 1105(a) of Title 31, United States Code, is amended by adding at the end the following:

(28) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.

(c) CLERICAL AMENDMENT.–The table of contents at the beginning of Chapter 5 of Title 31, United States Code, is amended by striking the items relating to sections 503 and 504 and inserting the following:

503. Functions of Deputy Director for Management.
504. Office of Federal Financial Management.
505. Office of Information and Regulatory Affairs.
506. Office of Federal Procurement Policy.

Sec. 204. Duties and Functions of the Department of the Treasury

31 USC 501 note.

Nothing in this Act shall be construed to interfere with the exercise of the functions, duties, and responsibilities of the Department of the Treasury, as in effect immediately before the enactment of this Act.

Sec. 205. Agency Chief Financial Officers

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[1] Amended by P.L. 103–272, § 4(f)(1)(B), 108 Stat. 1361 (1994); P.L. 106–58, Title VI, § 638(g), 113 Stat. 476 (1999); P.L. 107–347, Title I, § 102(b), 116 Stat. 2910 (2002).

(a) IN GENERAL.–Subtitle I of Title 31, United States Code, is amended by adding at the end the following new chapter:

Chapter 9–Agency Chief Financial Officers

§901. Establishment of agency Chief Financial Officers

31 USC 901

(a) There shall be within each agency described in subsection (b) an agency Chief Financial Officer. Each agency Chief Financial Officer shall—

(1) for those agencies described in subsection (b)(1)—

(A) be appointed by the President, by and with the advice and consent of the Senate; or

(B) be designated by the President, in consultation with the head of the agency, from among officials of the agency who are required by law to be so appointed;

(2) for those agencies described in subsection (b)(2)—

(A) be appointed by the head of the agency;

(B) be in the competitive service or the senior executive service; and

(C) be career appointees; and

(3) be appointed or designated, as applicable, from among individuals who possess demonstrated ability in general management of, and knowledge of and extensive practical experience in financial management practices in large governmental or business entities.

(b) (1) The agencies referred to in subsection (a)(1) are the following:

(A) The Department of Agriculture.

(B) The Department of Commerce.

(C) The Department of Defense.

(D) The Department of Education.

(E) The Department of Energy.

(F) The Department of Health and Human Services.

(G) The Department of Homeland Security.

(H) The Department of Housing and Urban Development.

(I) The Department of the Interior.

(J) The Department of Justice.

(K) The Department of Labor.

(L) The Department of State.

(M) The Department of Transportation.

(N) The Department of the Treasury.

(O) The Department of Veterans Affairs.

(P) The Environmental Protection Agency.

(Q) The National Aeronautics and Space Administration.

(2) The agencies referred to in subsection (a)(2) are the following:

(A) The Agency for International Development.

(B) The General Services Administration.

(C) The National Science Foundation.

(D) The Nuclear Regulatory Commission.

(E) The Office of Personnel Management.

(F) The Small Business Administration.

(G) The Social Security Administration.

(c) (1) There shall be within the Executive Office of the President a Chief Financial Officer, who shall be designated or appointed by the President from among individuals meeting the standards described in subsection (a)(3). The position of Chief Financial Officer established under this paragraph may be so established in any Office (including the Office of Administration) of the Executive Office of the President.

(2) The Chief Financial Officer designated or appointed under this subsection shall, to the extent that the President determines appropriate

and in the interest of the United States, have the same authority and perform the same functions as apply in the case of a Chief Financial Officer of an agency described in subsection (b).

(3) The President shall submit to Congress notification with respect to any provision of section 902 [31 USCS § 902] that the President determines shall not apply to a Chief Financial Officer designated or appointed under this subsection.

(4) The President may designate an employee of the Executive Office of the President (other than the Chief Financial Officer), who shall be deemed "the head of the agency" for purposes of carrying out section 902 [31 USCS § 902], with respect to the Executive Office of the President.[2]

§902. Authority and functions of agency Chief Financial Officers

(a) IN GENERAL. — Subtitle I of title 31, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 9 — AGENCY CHIEF FINANCIAL OFFICERS

"Sec.

"901. Establishment of agency Chief Financial Officers.

"902. Authority and functions of agency Chief Financial Officers.

"903. Establishment of agency Deputy Chief Financial Officers.

"§ 901. Establishment of agency Chief Financial Officers

"(a) There shall be within each agency described in subsection (b) an agency Chief Financial Officer. Each agency Chief Financial Officer shall —

"(1) for those agencies described in subsection (b)(1) —

"(A) be appointed by the President, by and with the advice and consent of the Senate; or

"(B) be designated by the President, in consultation with the head of the agency, from among officials of the agency who are required by law to be so appointed;

"(2) for those agencies described in subsection (b)(2) —

"(A) be appointed by the head of the agency;

"(B) be in the competitive service or the senior executive service; and

"(C) be career appointees; and

"(3) be appointed or designated, as applicable, from among individuals who possess demonstrated ability in general management of, and knowledge of and extensive practical experience in financial management practices in large governmental or business entities.

"(b)(1) The agencies referred to in subsection (a)(1) are the following:

"(A) The Department of Agriculture.

"(B) The Department of Commerce.

"(C) The Department of Defense.

"(D) The Department of Education.

"(E) The Department of Energy.

"(F) The Department of Health and Human Services.

"(G) The Department of Housing and Urban Development.

"(H) The Department of the Interior.

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[2] Amended by P.L. 103–296, § 108(j)(1), 108 Stat. 1488 (1994); P.L. 106–58, Title VI, § 638(a), 113 Stat. 475 (1999); Oct. 16, 2004, P.L. 108–330, § 3(a), (d)(2), 118 Stat. 1276, 1277.

"(I) The Department of Justice.
"(J) The Department of Labor.
"(K) The Department of State.
"(L) The Department of Transportation.
"(M) The Department of the Treasury.
"(N) The Department of Veterans Affairs.
"(O) The Environmental Protection Agency.
"(P) The National Aeronautics and Space Administration.
"(2) The agencies referred to in subsection (a)(2) are the following:
"(A) The Agency for International Development.
"(B) The Federal Emergency Management Agency.
"(C) The General Services Administration.
"(D) The National Science Foundation.
"(E) The Nuclear Regulatory Commission.
"(F) The Office of Personnel Management.
"(G) The Small Business Administration.

"§ 902. Authority and functions of agency Chief Financial Officers

"(a) An agency Chief Financial Officer shall —
"(1) report directly to the head of the agency regarding financial management matters;
"(2) oversee all financial management activities relating to the programs and operations of the agency;
"(3) develop and maintain an integrated agency accounting and financial management system, including financial reporting and internal controls, which —
"(A) complies with applicable accounting principles, standards, and requirements, and internal control standards;
"(B) complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;
"(C) complies with any other requirements applicable to such systems; and
"(D) provides for —
"(i) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of agency management;
"(ii) the development and reporting of cost information;
"(iii) the integration of accounting and budgeting information; and
"(iv) the systematic measurement of performance;
"(4) make recommendations to the head of the agency regarding the selection of the Deputy Chief Financial Officer of the agency;
"(5) direct, manage, and provide policy guidance and oversight of agency financial management personnel, activities, and operations, including —
(A) the preparation and annual revision of an agency plan to —
"(i) implement the 5–year financial management plan prepared by the Director of the Office of Management and Budget under section 3512(a)(3) of this title; and
"(ii) comply with the requirements established under sections 3515 and subsections (e) and (f) of section 3521 of this title;
"(B) the development of agency financial management budgets;
"(C) the recruitment, selection, and training of personnel to carry out agency financial management functions;
"(D) the approval and management of agency financial management systems design or enhancement projects;

"(E) the implementation of agency asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control;

"(6) prepare and transmit, by not later than 60 days after the submission of the audit report required by section 3521(f) of this title, an annual report to the agency head and the Director of the Office of Management and Budget, which shall include —

"(A) a description and analysis of the status of financial management of the agency;

"(B) the annual financial statements prepared under section 3515 of this title;

"(C) the audit report transmitted to the head of the agency under section 3521(f) of this title;

"(D) a summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97–255); and

"(E) other information the head of the agency considers appropriate to fully inform the President and the Congress concerning the financial management of the agency;

"(7) monitor the financial execution of the budget of the agency in relation to actual expenditures, and prepare and submit to the head of the agency timely performance reports; and

"(8) review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.

"(b)(1) In addition to the authority otherwise provided by this section, each agency Chief Financial Officer —

"(A) subject to paragraph (2), shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which are the property of the agency or which are available to the agency, and which relate to programs and operations with respect to which that agency Chief Financial Officer has responsibilities under this section;

"(B) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this section from any Federal, State, or local governmental entity; and

"(C) to the extent and in such amounts as may be provided in advance by appropriations Acts, may —

"(i) enter into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services; and

"(ii) make such payments as may be necessary to carry out the provisions of this section.

"(2) Except as provided in paragraph (1)(B), this subsection does not provide to an agency Chief Financial Officer any access greater than permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of any Office of Inspector General established under the Inspector General Act of 1978 (5 U.S.C. App.).

§903. Establishment of agency Deputy Chief Financial Officers

(a) There shall be within each agency described in section 901(b) an agency Deputy Chief Financial Officer, who shall report directly to the

agency Chief Financial Officer on financial management matters. The position of agency Deputy Chief Financial Officer shall be a career reserved position in the Senior Executive Service.

(b) Consistent with qualification standards developed by, and in consultation with, the agency Chief Financial Officer and the Director of the Office of Management and Budget, the head of each agency shall appoint as Deputy Chief Financial Officer an individual with demonstrated ability and experience in accounting, budget execution, financial and management analysis, and systems development, and not less than 6 years practical experience in financial management at large governmental entities.

(b) CLERICAL AMENDMENT.–The table of chapters at the beginning of subtitle I of Title 31, United States Code, is amended by adding at the end the following:

"9. Agency Chief Financial Officers.....901."

31 USC 901 note.

(c) CHIEF FINANCIAL OFFICERS OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(1) DESIGNATION.–The Secretary of Veterans Affairs and the Secretary of Housing and Urban Development may each designate as the agency Chief Financial Officer of that department for purposes of section 901 of Title 31, United States Code, as amended by this section, the Officer designated, respectively, under section 4(c) of the Department of Veterans Affairs Act (38 USC 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42 USC 3533(e)), as in effect before the effective date of this Act.

(2) CONFORMING AMENDMENT.–Section 4(c) of the Department of Veterans Affairs Act (38 USC 201 note) and section 4(e) of the Department of Housing and Urban Development Act (42 USC 3533(e)), as added by section 121 of Public Law 101–235, are repealed.

Sec. 206. Transfer of Functions and Personnel of Agency Chief Financial Officers

31 USC 901 note.

(a) AGENCY REVIEWS OF FINANCIAL MANAGEMENT ACTIVITIES.–Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall require each agency listed in subsection (b) of section 901 of Title 31, United States Code, as amended by this Act, to conduct a review of its financial management activities for the purpose of consolidating its accounting, budgeting, and other financial management activities under the agency Chief Financial Officer appointed under subsection (a) of that section for the agency.

(b) REORGANIZATION PROPOSAL.–Not later than 120 days after the issuance of requirements under subsection (a) and subject to all laws vesting functions in particular Officers and employees of the United States, the head of each agency shall submit to the Director of the Office of Management and Budget a proposal for reorganizing the agency for the purposes of this Act. Such proposal shall include–

(1) a description of all functions, powers, duties, personnel, property, or records which the agency Chief Financial Officer is proposed to have authority over, including those relating to functions that are not related to financial management activities; and

(2) a detailed outline of the administrative structure of the Office of the agency Chief Financial Officer, including a description of the responsibility and authority of financial management personnel and

resources in agencies or other subdivisions as appropriate to that agency.

(c) REVIEW AND APPROVAL OF PROPOSAL.–Not later than 60 days after receiving a proposal from the head of an agency under subsection (b), the Director of the Office of Management and Budget shall approve or disapprove the proposal and notify the head of the agency of that approval or disapproval. The Director shall approve each proposal which establishes an agency Chief Financial Officer in conformance with section 901 of Title 31, United States Code, as added by this Act, and which establishes a financial management structure reasonably tailored to the functions of the agency. Upon approving or disapproving a proposal of an agency under this section, the Director shall transmit to the head of the agency a written notice of that approval or disapproval.

(d) IMPLEMENTATION OF PROPOSAL.–Upon receiving written notice of approval of a proposal under this section from the Director of the Office of Management and Budget, the head of an agency shall implement that proposal.

Sec. 207. Compensation

(a) COMPENSATION, LEVEL II. — Section 5313 of title 5, United States Code, is amended by adding at the end the following:

"Deputy Director for Management, Office of Management and Budget.".

(b) COMPENSATION, LEVEL III. — Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Controller, Office of Federal Financial Management, Office of Management and Budget.".

(c) COMPENSATION, LEVEL IV. — Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Chief Financial Officer, Department of Agriculture.

"Chief Financial Officer, Department of Commerce.

"Chief Financial Officer, Department of Defense.

"Chief Financial Officer, Department of Education.

"Chief Financial Officer, Department of Energy.

"Chief Financial Officer, Department of Health and Human Services.

"Chief Financial Officer, Department of Housing and Urban Development.

"Chief Financial Officer, Department of the Interior.

"Chief Financial Officer, Department of Justice.

"Chief Financial Officer, Department of Labor.

"Chief Financial Officer, Department of State.

"Chief Financial Officer, Department of Transportation.

"Chief Financial Officer, Department of the Treasury.

"Chief Financial Officer, Department of Veterans Affairs.

"Chief Financial Officer, Environmental Protection Agency.

"Chief Financial Officer, National Aeronautics and Space Administration.".

Title III–Enhancement of Federal Financial Management Activities

Sec. 301. Financial Management Status Report; 5–Year Plan of Director of Office of Management and Budget

(a) IN GENERAL.–Section 3512 of Title 31, United States Code, is amended by striking the heading thereof, redesignating subsections (a) through (f) in order as subsections (b) through (g), and by inserting before such subsection (b), as so redesignated, the following:

§3512. Executive agency accounting and other financial management reports and plans

(a)(1) The Director of the Office of Management and Budget shall prepare and submit to the appropriate committees of the Congress a financial management status report and a government–wide 5–year financial management plan.

(2) A financial management status report under this subsection shall include–

(A) a description and analysis of the status of financial management in the executive branch;

(B) a summary of the most recently completed financial statements–

(i) of Federal agencies under section 3515 of this Title; and

(ii) of Government corporations;

(C) a summary of the most recently completed financial statement audits and reports

(i) of Federal agencies under section 3521 (e) and (f) of this Title; and

(ii) of Government corporations;

(D) a summary of reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97–255); and

(E) any other information the Director considers appropriate to fully inform the Congress regarding the financial management of the Federal Government.

(3)(A) A government–wide 5–year financial management plan under this subsection shall describe the activities the Director, the Deputy Director for Management, the Controller of the Office of Federal Financial Management, and agency Chief Financial Officers shall conduct over the next 5 fiscal years to improve the financial management of the Federal Government.

(B) Each government–wide 5–year financial management plan prepared under this subsection shall–

(i) describe the existing financial management structure and any changes needed to establish an integrated financial management system;

(ii) be consistent with applicable accounting principles, standards, and requirements;

(iii) provide a strategy for developing and integrating individual agency accounting, financial information, and other financial management systems to ensure adequacy, consistency, and timeliness of financial information;

(iv) identify and make proposals to eliminate duplicative and unnecessary systems, including encouraging agencies to share systems which have sufficient capacity to perform the functions needed;

(v) identify projects to bring existing systems into compliance with the applicable standards and requirements;

(vi) contain milestones for equipment acquisitions and other actions necessary to implement the 5–year plan consistent with the requirements of this section;

(vii) identify financial management personnel needs and actions to ensure those needs are met;

(viii) include a plan for ensuring the annual audit of financial statements of executive agencies pursuant to section 3521(h) of this Title; and

(ix) estimate the costs of implementing the government–wide 5–year plan.

(4)(A) Not later than 15 months after the date of the enactment of this subsection, the Director of the Office of Management and Budget shall submit the first financial management status report and government–wide 5–year financial management plan under this subsection to the appropriate committees of the Congress.

(B)(i) Not later than January 31 of each year thereafter, the Director of the Office of Management and Budget shall submit to the appropriate committees of the Congress a financial management status report and a revised government–wide 5–year financial management plan to cover the succeeding 5 fiscal years, including a report on the accomplishments of the executive branch in implementing the plan during the preceding fiscal year

(ii) The Director shall include with each revised government–wide 5–year financial management plan a description of any substantive changes in the financial statement audit plan required by paragraph (3)(B)(viii), progress made by executive agencies implementing the audit plan, and any improvements in Federal Government financial management related to preparation and audit of financial statements of executive agencies.

(5) Not later than 30 days after receiving each annual report under section 902(a)(6) of this Title, the Director shall transmit to the Chairman of the Committee on Government Operations of the House of Representatives and the Chairman of the Committee on Governmental Affairs of the Senate a final copy of that report and any comments on the report by the Director.

(b) CLERICAL AMENDMENT.–The table of contents at the beginning of Chapter 35 of Title 31, United States Code, is amended by striking the item relating to section 3512 and inserting the following:

3512. Executive agency accounting and other financial management reports and plans.

31 USC 901 note.

Sec. 302. Chief Financial Officers Council

(a) ESTABLISHMENT.–There is established a Chief Financial Officers Council, consisting of–

(1) the Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the council;

(2) the Controller of the Office of Federal Financial Management of the Office of Management and Budget;

(3) the Fiscal Assistant Secretary of Treasury; and

(4) each of the agency Chief Financial Officers appointed under section 901 of Title 31, United States Code, as amended by this Act.

(b) FUNCTIONS.–The Chief Financial Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as consolidation and modernization of financial systems, improved quality of financial information, financial data and information standards, internal controls, legislation affecting financial operations and organizations, and any other financial management matter.

Sec. 303. Financial Statements of Agencies

(a) PREPARATION OF FINANCIAL STATEMENTS.–

(1) IN GENERAL–Subchapter II of Chapter 35 of Title 31, United States Code, is amended by adding at the end the following:

§3515. Financial Statements of Agencies

(a) [(1)] Except as provided in subsection (e), not later than March 1 of 2003 and each year thereafter, the head of each covered executive agency shall prepare and submit to the Congress and the Director of the Office of Management and Budget an audited financial statement for the preceding fiscal year, covering all accounts and associated activities of each Office, bureau, and activity of the agency.

(b) Each audited financial statement of a covered executive agency under this section shall reflect—

(1) the overall financial position of the offices, bureaus, and activities covered by the statement, including assets and liabilities thereof; and

(2) results of operations of those offices, bureaus, and activities.

(c) The Director of the Office of Management and Budget shall identify components of covered executive agencies that shall be required to have audited financial statements meeting the requirements of subsection (b).

(d) The Director of the Office of Management and Budget shall prescribe the form and content of the financial statements of covered executive agencies under this section, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(e) (1) The Director of the Office of Management and Budget may exempt a covered executive agency, except an agency described in section 901(b) [31 USCS § 901(b)], from the requirements of this section with respect to a fiscal year if—

(A) the total amount of budget authority available to the agency for the fiscal year does not exceed $ 25,000,000; and

(B) the Director determines that requiring an annual audited financial statement for the agency with respect to the fiscal year is not warranted due to the absence of risks associated with the agency's

operations, the agency's demonstrated performance, or other factors that the Director considers relevant.

(2) The Director shall annually notify the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate of each agency the Director has exempted under this subsection and the reasons for each exemption.

(f) The term "covered executive agency"—

(1) means an executive agency that is not required by another provision of Federal law to prepare and submit to the Congress and the Director of the Office of Management and Budget an audited financial statement for each fiscal year, covering all accounts and associated activities of each Office, bureau, and activity of the agency; and

(2) does not include a corporation, agency, or instrumentality subject to chapter 91 of this title [31 USCS §§ 9101 et seq.].[3]

§3516. Reports Consolidation

(a)(1) With the concurrence of the Director of the Office of Management and Budget, the head of an executive agency may adjust the frequency and due dates of, and consolidate into an annual report to the President, the Director of the Office of Management and Budget, and Congress any statutorily required reports described in paragraph (2). Such a consolidated report shall be submitted to the President, the Director of the Office of Management and Budget, and to appropriate committees and subcommittees of Congress not later than 150 days after the end of the agency's fiscal year.

(2) The following reports may be consolidated into the report referred to in paragraph (1):

(A) Any report by an agency to Congress, the Office of Management and Budget, or the President under section 1116 of this Chapter.

(B) The following agency–specific reports:

(i) The biennial financial management improvement plan by the Secretary of Defense under section 2222 of Title 10.

(ii) The annual report of the Attorney General under section 522 of Title 28.

(C) Any other statutorily required report pertaining to an agency's financial or performance management if the head of the agency–

(i) determines that inclusion of that report will enhance the usefulness of the reported information to decision makers; and

(ii) consults in advance of inclusion of that report with the committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and any other committee of Congress having jurisdiction with respect to the report proposed for inclusion.

(b) A report under subsection (a) that incorporates the agency's program performance report under section 1116 shall be referred to as a performance and accountability report.

(c) A report under subsection (a) that does not incorporate the agency's program performance report under section 1116 shall contain a summary of the most significant portions of the agency's program performance report, including the agency's success in achieving key performance goals for the applicable year.

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[3] Added and Amended by P.L. 101–576, Title III, § 303(a)(1), 104 Stat. 2849 (1990); P.L. 103–356, Title IV, § 405(a), 108 Stat. 3415 (1994); P.L. 106–531, § 4(a), 114 Stat. 2539 (2000); P.L. 107–289, § 2(a), 116 Stat. 2049 (2002).

(d) A report under subsection (a) shall include a statement prepared by the agency's inspector general that summarizes what the inspector general considers to be the most serious management and performance challenges facing the agency and briefly assesses the agency's progress in addressing those challenges. The inspector general shall provide such statement to the agency head at least 30 days before the due date of the report under subsection (a). The agency head may comment on the inspector general's statement, but may not modify the statement.

(e) A report under subsection (a) shall include a transmittal letter from the agency head containing, in addition to any other content, an assessment by the agency head of the completeness and reliability of the performance and financial data used in the report. The assessment shall describe any material inadequacies in the completeness and reliability of the data, and the actions the agency can take and is taking to resolve such inadequacies.

(f) The Secretary of Homeland Security—

(1) shall for each fiscal year submit a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security;

(2) shall include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting; and

(3) shall design and implement Department–wide management controls that—

(A) reflect the most recent homeland security strategy developed pursuant to section 874(b)(2) of the Homeland Security Act of; and

(B) permit assessment, by the Congress and by managers within the Department, of the Department's performance in executing such strategy.[4]

Sec. 304. Financial Audits of Agencies

IN GENERAL—Section 3521 of title 31, United States Code, is amended by adding at the end the following new subsections:[5]

(a) Each account of an agency shall be audited administratively before being submitted to the Comptroller General. The head of each agency shall prescribe regulations for conducting the audit and designate a place at which the audit is to be conducted. However, a disbursing official of an executive agency may not administratively audit vouchers for which the official is responsible. With the consent of the Comptroller General, the head of the agency may waive any part of an audit.

(b) The head of an agency may prescribe a statistical sampling procedure to audit vouchers of the agency when the head of the agency decides economies will result from using the procedure. The Comptroller General—

(1) may prescribe the maximum amount of a voucher that may be audited under this subsection; and

(2) in reviewing the accounting system of the agency, shall evaluate the adequacy and effectiveness of the procedure.

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[4] Added by P.L. 106–531, § 3(a), 114 Stat. 2537 (2000). Amended by P.L. 108–330, § 4(a), 118 Stat. 1277 (2004).

[5] Subsections (a), (b), (c), and (d) were established by P.L. 97–258, Subchapter III, 96 Stat. 961 (1982). Amended by P.L. 101–576, Title III, § 304(a), 104 Stat. 2852 (1990), which added subsections (e), (f), (g), and (h). The following statutes further Amended this section: P.L. 103–356, Title IV, § 405(b), 108 Stat. 3416 (1994); P.L. 104–208, Div. A, Title I, § 101(f) [Title VIII, § 805(a)], 110 Stat. 3009–392 (1996); P.L. 106–531, § 4(b), 114-Stat. 2539 (2000).

(c) A disbursing or certifying official acting in good faith under subsection (b) of this section is not liable for a payment or certification of a voucher not audited specifically because of the procedure prescribed under subsection (b) if the official and the head of the agency carry out diligently collection action the Comptroller General prescribes.
(d) Subsections (b) and (c) of this section do not—

(1) affect the liability, or authorize the relief, of a payee, beneficiary, or recipient of an illegal, improper, or incorrect payment; or

(2) relieve a disbursing or certifying official, the head of an agency, or the Comptroller General of responsibility in carrying out collection action against a payee, beneficiary, or recipient.

(e) Each financial statement prepared under section 3515 by an agency shall be audited in accordance with applicable generally accepted government auditing standards—

(1) in the case of an agency having an Inspector General appointed under the Inspector General Act of 1978 (5 U.S.C.App.), by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

(2) in any other case, by an independent external auditor, as determined by the head of the agency.

(f) For each audited financial statement required under subsection (a) of section 3515 of this title, the person who audits the statement for purpose of subsection (e) of this section shall submit a report on the audit to the head of the agency and the Controller of the Office of Federal Financial Management. A report under this subsection shall be prepared in accordance with generally accepted government auditing standards.

(g) The Comptroller General of the United States—

(1) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

(2) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the agency which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General considers appropriate; and

(3) may audit a financial statement prepared under section 3515 of this title at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this subsection shall be in lieu of the audit otherwise required by subsection (e) of this section. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

(h) Each financial statement prepared by an executive agency for a fiscal year after fiscal year 1991 shall be audited in accordance with this section and the plan required by section 3512(a)(3)(B)(viii) of this title.

(i) (1) If the Government Accountability Office audits any financial statement or related schedule which is prepared under section 3515 [31 USCS § 3515] by an executive agency (or component thereof) for a fiscal year beginning on or after October 1, 2009, such executive agency (or component) shall reimburse the Government Accountability Office for the cost of such audit, if the Government Accountability Office audited the statement or schedule of such executive agency (or component) for fiscal year 2007.

(2) Any executive agency (or component thereof) that prepares a financial statement under section 3515 [31 USCS § 3515] for a fiscal year beginning on or after October 1, 2009, and that requests, with the concurrence of the Inspector General of such agency, the Government

Accountability Office to conduct the audit of such statement or any related schedule required by section 3521 [31 USCS § 3521] may reimburse the Government Accountability Office for the cost of such audit.

(3) For the audits conducted under paragraphs (1) and (2), the Government Accountability Office shall consult prior to the initiation of the audit with the relevant executive agency (or component) and the Inspector General of such agency on the scope, terms, and cost of such audit.

(4) Any reimbursement under paragraph (1) or (2) shall be deposited to a special account in the Treasury and shall be available to the Government Accountability Office for such purposes and in such amounts as are specified in annual appropriations Acts.[6]

Sec. 305. Financial Audits of Government Corporations

Section 9105 of Title 31, United States Code, is amended to read as follows:

§9105. Audits

(a) (1) The financial statements of Government corporations shall be audited by the Inspector General of the corporation appointed under the Inspector General Act of 1978 (5 U.S.C. App.), or under other Federal law, or by an independent external auditor, as determined by the Inspector General or, if there is no Inspector General, by the head of the corporation.

(2) Audits under this section shall be conducted in accordance with applicable generally accepted government auditing standards.

(3) Upon completion of the audit required by this subsection, the person who audits the statement shall submit a report on the audit to the head of the Government corporation, to the Chairman of the Committee on Government Operations of the House of Representatives, and to the Chairman of the Committee on Governmental Affairs of the Senate.

(4) The Comptroller General of the United States—

(A) may review any audit of a financial statement conducted under this subsection by an Inspector General or an external auditor;

(B) shall report to the Congress, the Director of the Office of Management and Budget, and the head of the Government corporation which prepared the statement, regarding the results of the review and make any recommendation the Comptroller General of the United States considers appropriate; and

(C) may audit a financial statement of a Government corporation at the discretion of the Comptroller General or at the request of a committee of the Congress.

An audit the Comptroller General performs under this paragraph shall be in lieu of the audit otherwise required by paragraph (1) of this subsection. Prior to performing such audit, the Comptroller General shall consult with the Inspector General of the agency which prepared the statement.

(5) A Government corporation shall reimburse the Comptroller General of the United States for the full cost of any audit conducted by the Comptroller General under this subsection, as determined by the Comptroller General. All reimbursements received under this paragraph

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[6] Added by P.L. 97–258, § 1, 96 Stat. 961 (1982). Amended by P.L. 101–576, Title III, § 304(a), 104 Stat. 2852 (1990); P.L. 103–356, Title IV, § 405(b), 108 Stat. 3416 (1994); P.L. 104–208, Div. A, Title I, § 101(f) [Title VIII, § 805(a)], 110 Stat. 3009–392 (1996); P.L. 106–531, § 4(b), 114 Stat. 2539 (2000); P.L. 110–323, § 6(a), 122 Stat. 3547 (2008).

by the Comptroller General of the United States shall be deposited in the Treasury as miscellaneous receipts.

(b) Upon request of the Comptroller General of the United States, a Government corporation shall provide to the Comptroller General of the United States all books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by the Government corporation and its auditor that the Comptroller General of the United States considers necessary to the performance of any audit or review under this section.

(c) Activities of the Comptroller General of the United States under this section are in lieu of any audit of the financial transactions of a Government corporation that the Comptroller General is required to make under any other law.[7]

Sec. 306. Management Reports of Government Corporations

(a) IN GENERAL.–Section 9106 of Title 31, United States Code, is amended to read as follows:

§9106. Management reports

(a) (1) A Government corporation shall submit an annual management report to the Congress not later than 180 days after the end of the Government corporation's fiscal year.

(2) A management report under this subsection shall include—

(A) a statement of financial position;

(B) a statement of operations;

(C) a statement of cash flows;

(D) a reconciliation to the budget report of the Government corporation, if applicable;

(E) a statement on internal accounting and administrative control systems by the head of the management of the corporation, consistent with the requirements for agency statements on internal accounting and administrative control systems under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97–255);

(F) the report resulting from an audit of the financial statements of the corporation conducted under section 9105 of this title; and

(G) any other comments and information necessary to inform the Congress about the operations and financial condition of the corporation.

(b) A Government corporation shall provide the President, the Director of the Office of Management and Budget, and the Comptroller General of the United States a copy of the management report when it is submitted to Congress.[8]

31 USC 3511 note.

Sec. 307. Adoption of Capital Accounting Standards

No capital accounting standard or principle, including any human capital standard or principle, shall be adopted for use in an executive department or agency until such standard has been reported to the Congress and a period of 45 days of continuous session of the Congress has expired.

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[7] Added by P.L. 97–258, § 1, 96 Stat. 1043 (1982). Amended by P.L. 100–86, Title IV, § 403, 101 Stat. 609 (1987); P.L. 100–233, Title VII, Subtitle A, § 703, 101 Stat. 1706 (1988); P.L. 100–399, Title VI, § 602, 102 Stat. 1006 (1988); P.L. 101–73, Title V, Subtitle B, § 511(b)(2), 103 Stat. 406 (1989); P.L. 101–576, Title III, § 305, 104 Stat. 2853 (1990); P.L. 103–82, Title II, § 202(e)(2), 107 Stat. 888 (1993).

[8] Added by P.L. 97–258, § 1, 96 Stat. 1044 (1982). Amended by P.L. 101–576, Title III, § 306(a), 104 Stat. 2854 (1990).

B. REPORTS CONSOLIDATION ACT OF 2000

Public Law 106–531 **114 Stat. 2537**

November 22, 2000

An Act

To amend Chapter 35 of Title 31, United States Code, to authorize the consolidation of certain financial and performance management reports required of Federal agencies, and for other purposes.

31 USC 3501 note.

Sec. 1. Short Title

This Act may be cited as the "Reports Consolidation Act of 2000."

31 USC 3516 note.

Sec. 2. Findings and Purposes

(a) FINDINGS.–Congress finds that–

(1) existing law imposes numerous financial and performance management reporting requirements on agencies;

(2) these separate requirements can cause duplication of effort on the part of agencies and result in uncoordinated reports containing information in a form that is not completely useful to Congress; and

(3) pilot projects conducted by agencies under the direction of the Office of Management and Budget demonstrate that single consolidated reports providing an analysis of verifiable financial and performance management information produce more useful reports with greater efficiency.

(b) PURPOSES.–The purposes of this Act are–

(1) to authorize and encourage the consolidation of financial and performance management reports;

(2) to provide financial and performance management information in a more meaningful and useful format for Congress, the President, and the public;

(3) to improve the quality of agency financial and performance management information; and

(4) to enhance coordination and efficiency on the part of agencies in reporting financial and performance management information.

Sec. 3. Consolidated Reports

(a) IN GENERAL.–Chapter 35 of Title 31, United States Code, is amended by adding at the end of the following:

"section 3516. Reports Consolidation

Deadline.

"(a)(1) With the concurrence of the Director of the Office of Management and Budget, the head of an executive agency may adjust the frequency and due dates of, and consolidate into an annual report to the President, the Director of the Office of Management and Budget, and Congress any statutorily required reports described in paragraph (2). Such a consolidated report shall be submitted to the President, the Director of the Office of Management and Budget, and to appropriate committees and subcommittees of Congress not later than 150 days after the end of the agency's fiscal year.

"(2) The following reports may be consolidated into the report referred to in paragraph (1):

(A) Any report by an agency to Congress, the Office of Management and Budget, or the President under section 1116, this Chapter, and Chapters 9, 33, 37, 75, and 91.

(B) The following agency–specific reports:

"(i) The biennial financial management improvement plan by the Secretary of Defense under section 2222 of Title 10.

"(ii) The annual report of the Attorney General under section 522 of Title 28.

(C) Any other statutorily required report pertaining to an agency's financial or performance management if the head of the agency–

"(i) determines that inclusion of that report will enhance the usefulness of the reported information to decision makers; and

"(ii) consults in advance of inclusion of that report with the committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, and any other committee of Congress having jurisdiction with respect to the report proposed for inclusion.

"(b) A report under subsection (a) that incorporates the agency's program performance report under section 1116 shall be referred to as a performance and accountability report.

"(c) A report under subsection (a) that does not incorporate the agency's program performance report under section 1116 shall contain a summary of the most significant portions of the agency's program performance report, including the agency's success in achieving key performance goals for the applicable year.

"(d) A report under subsection (a) shall include a statement prepared by the agency's inspector general that summarizes what the inspector general considers to be the most serious management and performance challenges facing the agency and briefly assesses the agency's progress in addressing those challenges. The inspector general shall provide such statement to the agency head at least 30 days before the due date of the report under subsection (a). The agency head may comment on the inspector general's statement, but may not modify the statement.

Deadline.

"(e) A report under subsection (a) shall include a transmittal letter from the agency head containing, in addition to any other content, an assessment by the agency head of the completeness and reliability of the performance and financial data used in the report. The assessment shall describe any material inadequacies in the completeness and reliability of the data, and the actions the agency can take and is taking to resolve such inadequacies.".."

(f) The Secretary of Homeland Security—

(1) shall for each fiscal year submit a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security;

(2) shall include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting; and

(3) shall design and implement Department–wide management controls that—

(A) reflect the most recent homeland security strategy developed pursuant to section 874(b)(2) of the Homeland Security Act of 2002; and

(B) permit assessment, by the Congress and by managers within the Department, of the Department's performance in executing such strategy.[1]

Deadline. 31 USC 3516 note.

(b) SPECIAL RULE FOR FISCAL YEARS 2000 AND 2001.–Notwithstanding paragraph (1) of section 3516(a) of Title 31, United States Code (as added by subsection (a) of this section), the head of an executive agency may submit a consolidated report under such paragraph not later than 180 days after the end of that agency's fiscal year, with respect to fiscal years 2000 and 2001.

(c) TECHNICAL AND CONFORMING AMENDMENT.–The table of sections for Chapter 35 of Title 31, United States Code, is amended by inserting after the item relating to section 3515 the following:

"3516. Reports consolidation.".

Sec. 4. Amendments Relating to Audited Financial Statement

(a) FINANCIAL STATEMENTS.–Section 3515 of Title 31, United States Code, is amended–

(1) in subsection (a); by inserting "Congress and the" before "Director"; and

(2) by striking subsections (e) through (h).

(b) ELIMINATION OF REPORT.–Section 3521(f) of Title 31, United States code is amended–

(1) in paragraph (1)–

(A) by striking "subsections (a) and (f)" and inserting "subsection (a)"; and

(B) by striking "(1)"; and

(2) by striking paragraph (2).

Sec. 5. Amendments Relating to Program Performance Reports

(a) REPORT DUE DATE.–

(1) IN GENERAL.–Section 1116(a) of Title 31, United States Code, is amended by striking "No later than March 31, 2000, and no later than March 31 of each year thereafter," and inserting "Not later than 150 days after the end of an agency's fiscal year,".

31 USC 1116 note.

(2) SPECIAL RULE FOR FISCAL YEARS 2000 AND 2001.–Notwithstanding subsection (a) of section 1116 of Title 31, United States Code (as amended by paragraph (1) of this subsection), an agency head may submit a report under such subsection not later than 180 days after the end of that agency's fiscal year, with respect to fiscal years 2000 and 2001.

(b) INCLUSION OF INFORMATION IN FINANCIAL STATEMENT.–Section 1116(e) of Title 31, United States Code, is amended to read as follows:

"(e)(1) Except as provided in paragraph (2), each program performance report shall contain an assessment by the agency head of the completeness and reliability of the performance data included in the report. The assessment shall describe any material inadequacies in the completeness and reliability of the performance data, and the actions the agency can take and is taking to resolve such inadequacies.

"(2) If a program performance report is incorporated into a report submitted under section 3516, the requirements of section 3516(e) shall apply in lieu of paragraph (1).".

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[1] Subsection (f) added P.L. 108–330, § 4(a), 118 Stat. 1277 (2004).

C. GOVERNMENT PERFORMANCE AND RESULTS ACT OF 1993

Public Law 103–410 **107 Stat. 285**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

31 USC 1101 note.

Sec. 1. Short Title

This Act may be cited as the "Government Performance and Results Act of 1993".

31 USC 1115 note.

Sec. 2. Findings and Purposes

(a) FINDINGS.—The Congress finds that—

(1) waste and inefficiency in Federal programs undermine the confidence of the American people in the Government and reduces the Federal Government's ability to address adequately vital public needs;

(2) Federal managers are seriously disadvantaged in their efforts to improve program efficiency and effectiveness, because of insufficient articulation of program goals and inadequate information on program performance; and

(3) congressional policymaking, spending decisions and program oversight are seriously handicapped by insufficient attention to program performance and results.

(b) PURPOSES.—The purposes of this Act are to—

(1) improve the confidence of the American people in the capability of the Federal Government, by systematically holding Federal agencies accountable for achieving program results;

(2) initiate program performance reform with a series of pilot projects in setting program goals, measuring program performance against those goals, and reporting publicly on their progress;

(3) improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction;

(4) help Federal managers improve service delivery, by requiring that they plan for meeting program objectives and by providing them with information about program results and service quality;

(5) improve congressional decisionmaking by providing more objective information on achieving statutory objectives, and on the relative effectiveness and efficiency of Federal programs and spending; and

(6) improve internal management of the Federal Government.

Sec. 3. Strategic Planning

Chapter 3 of title 5, United States Code, is amended by adding after section 305 the following new section:

"§ 306. Strategic plans

"(a) No later than September 30, 1997, the head of each agency shall submit to the Director of the Office of Management and Budget and to the Congress a strategic plan for program activities. Such plan shall contain—

"(1) a comprehensive mission statement covering the major functions and operations of the agency;

"(2) general goals and objectives, including outcome–related goals and objectives, for the major functions and operations of the agency;

"(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

"(4) a description of how the performance goals included in the plan required by section 1115(a) of title 31 shall be related to the general goals and objectives in the strategic plan;

"(5) an identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

"(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

"(b) The strategic plan shall cover a period of not less than five years forward from the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

"(c) The performance plan required by section 1115 of title 31 shall be consistent with the agency's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

"(d) When developing a strategic plan, the agency shall consult with the Congress, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan.

"(e) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.

"(f) For purposes of this section the term 'agency' means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the General Accounting Office, the Panama Canal Commission, the United States Postal Service, and the Postal Rate Commission.".

Sec. 4. Annual Performance Plans and Reports

(a) BUDGET CONTENTS AND SUBMISSION TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(29) beginning with fiscal year 1999, a Federal Government performance plan for the overall budget as provided for under section 1115.".

(b) PERFORMANCE PLANS AND REPORTS.—Chapter 11 of title 31, United States Code, is amended by adding after section 1114 the following new sections:

"§ 1115. Performance plans

"(a) In carrying out the provisions of section 1105(a)(29), the Director of the Office of Management and Budget shall require each agency to prepare an annual performance plan covering each program activity set forth in the budget of such agency. Such plan shall—

"(1) establish performance goals to define the level of performance to be achieved by a program activity;

"(2) express such goals in an objective, quantifiable, and measurable form unless authorized to be in an alternative form under subsection (b);

"(3) briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;

"(4) establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;

"(5) provide a basis for comparing actual program results with the established performance goals; and

"(6) describe the means to be used to verify and validate measured values.

"(b) If an agency, in consultation with the Director of the Office of Management and Budget, determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Director of the Office of Management and Budget may authorize an alternative form. Such alternative form shall—

"(1) include separate descriptive statements of—

"(A)(i) a minimally effective program, and

"(ii) a successful program, or

"(B) such alternative as authorized by the Director of the Office of Management and Budget,

with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of the description; or

"(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

"(c) For the purpose of complying with this section, an agency may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation for the agency.

"(d) An agency may submit with its annual performance plan an appendix covering any portion of the plan that—

"(1) is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

"(2) is properly classified pursuant to such Executive order.

"(e) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of performance plans under this section shall be performed only by Federal employees.

"(f) For purposes of this section and sections 1116 through 1119, and sections 9703 and 9704 the term—

"(1) 'agency' has the same meaning as such term is defined under section 306(f) of title 5;

"(2) 'outcome measure' means an assessment of the results of a program activity compared to its intended purpose;

"(3) 'output measure' means the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner;

"(4) 'performance goal' means a target level of performance expressed as a tangible, measurable objective, against which actual

achievement can be compared, including a goal expressed as a quantitative standard, value, or rate;

"(5) 'performance indicator' means a particular value or characteristic used to measure output or outcome;

"(6) 'program activity' means a specific activity or project as listed in the program and financing schedules of the annual budget of the United States Government; and

"(7) 'program evaluation' means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Federal programs achieve intended objectives.

"§ 1116. Program performance reports

"(a) No later than March 31, 2000, and no later than March 31 of each year thereafter, the head of each agency shall prepare and submit to the President and the Congress, a report on program performance for the previous fiscal year.

"(b)(1) Each program performance report shall set forth the performance indicators established in the agency performance plan under section 1115, along with the actual program performance achieved compared with the performance goals expressed in the plan for that fiscal year.

"(2) If performance goals are specified in an alternative form under section 1115(b), the results of such program shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.

"(c) The report for fiscal year 2000 shall include actual results for the preceding fiscal year, the report for fiscal year 2001 shall include actual results for the two preceding fiscal years, and the report for fiscal year 2002 and all subsequent reports shall include actual results for the three preceding fiscal years.

"(d) Each report shall—

"(1) review the success of achieving the performance goals of the fiscal year;

"(2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals in the fiscal year covered by the report;

"(3) explain and describe, where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 1115(b)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used)—

"(A) why the goal was not met;

"(B) those plans and schedules for achieving the established performance goal; and

"(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

"(4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 of this title; and

"(5) include the summary findings of those program evaluations completed during the fiscal year covered by the report.

"(e) An agency head may include all program performance information required annually under this section in an annual financial statement required under section 3515 if any such statement is submitted to the Congress no later than March 31 of the applicable fiscal year.

"(f) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of program

performance reports under this section shall be performed only by Federal employees.

"§ 1117. Exemption

"The Director of the Office of Management and Budget may exempt from the requirements of sections 1115 and 1116 of this title and section 306 of title 5, any agency with annual outlays of $20,000,000 or less.".

Sec. 5. Managerial Accountability and Flexibility

(a) MANAGERIAL ACCOUNTABILITY AND FLEXIBILITY.—Chapter 97 of title 31, United States Code, is amended by adding after section 9702, the following new section:

"§ 9703. Managerial accountability and flexibility

"(a) Beginning with fiscal year 1999, the performance plans required under section 1115 may include proposals to waive administrative procedural requirements and controls, including specification of personnel staffing levels, limitations on compensation or remuneration, and prohibitions or restrictions on funding transfers among budget object classification 20 and subclassifications 11, 12, 31, and 32 of each annual budget submitted under section 1105, in return for specific individual or organization accountability to achieve a performance goal. In preparing and submitting the performance plan under section 1105(a)(29), the Director of the Office of Management and Budget shall review and may approve any proposed waivers. A waiver shall take effect at the beginning of the fiscal year for which the waiver is approved.

"(b) Any such proposal under subsection (a) shall describe the anticipated effects on performance resulting from greater managerial or organizational flexibility, discretion, and authority, and shall quantify the expected improvements in performance resulting from any waiver. The expected improvements shall be compared to current actual performance, and to the projected level of performance that would be achieved independent of any waiver.

"(c) Any proposal waiving limitations on compensation or remuneration shall precisely express the monetary change in compensation or remuneration amounts, such as bonuses or awards, that shall result from meeting, exceeding, or failing to meet performance goals.

"(d) Any proposed waiver of procedural requirements or controls imposed by an agency (other than the proposing agency or the Office of Management and Budget) may not be included in a performance plan unless it is endorsed by the agency that established the requirement, and the endorsement included in the proposing agency's performance plan.

"(e) A waiver shall be in effect for one or two years as specified by the Director of the Office of Management and Budget in approving the waiver. A waiver may be renewed for a subsequent year. After a waiver has been in effect for three consecutive years, the performance plan prepared under section 1115 may propose that a waiver, other than a waiver of limitations on compensation or remuneration, be made permanent.

"(f) For purposes of this section, the definitions under section 1115(f) shall apply.".

Sec. 6. Pilot Projects

(a) PERFORMANCE PLANS AND REPORTS.—Chapter 11 of title 31, United States Code, is amended by inserting after section 1117 (as added by section 4 of this Act) the following new section:

"§ 1118. Pilot projects for performance goals

"(a) The Director of the Office of Management and Budget, after consultation with the head of each agency, shall designate not less than ten agencies as pilot projects in performance measurement for fiscal years 1994, 1995, and 1996. The selected agencies shall reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

"(b) Pilot projects in the designated agencies shall undertake the preparation of performance plans under section 1115, and program performance reports under section 1116, other than section 1116(c), for one or more of the major functions and operations of the agency. A strategic plan shall be used when preparing agency performance plans during one or more years of the pilot period.

"(c) No later than May 1, 1997, the Director of the Office of Management and Budget shall submit a report to the President and to the Congress which shall—

"(1) assess the benefits, costs, and usefulness of the plans and reports prepared by the pilot agencies in meeting the purposes of the Government Performance and Results Act of 1993;

"(2) identify any significant difficulties experienced by the pilot agencies in preparing plans and reports; and

"(3) set forth any recommended changes in the requirements of the provisions of Government Performance and Results Act of 1993, section 306 of title 5, sections 1105, 1115, 1116, 1117, 1119 and 9703 of this title, and this section.".

(b) MANAGERIAL ACCOUNTABILITY AND FLEXIBILITY.—Chapter 97 of title 31, United States Code, is amended by inserting after section 9703 (as added by section 5 of this Act) the following new section:

"§ 9704. Pilot projects for managerial accountability and flexibility

"(a) The Director of the Office of Management and Budget shall designate not less than five agencies as pilot projects in managerial accountability and flexibility for fiscal years 1995 and 1996. Such agencies shall be selected from those designated as pilot projects under section 1118 and shall reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

"(b) Pilot projects in the designated agencies shall include proposed waivers in accordance with section 9703 for one or more of the major functions and operations of the agency.

"(c) The Director of the Office of Management and Budget shall include in the report to the President and to the Congress required under section 1118(c)—

"(1) an assessment of the benefits, costs, and usefulness of increasing managerial and organizational flexibility, discretion, and authority in exchange for improved performance through a waiver; and

"(2) an identification of any significant difficulties experienced by the pilot agencies in preparing proposed waivers.

"(d) For purposes of this section the definitions under section 1115(f) shall apply.".

(c) PERFORMANCE BUDGETING.—Chapter 11 of title 31, United States Code, is amended by inserting after section 1118 (as added by section 6 of this Act) the following new section:

"§ 1119. Pilot projects for performance budgeting

"(a) The Director of the Office of Management and Budget, after consultation with the head of each agency shall designate not less than five agencies as pilot projects in performance budgeting for fiscal years 1998 and 1999. At least three of the agencies shall be selected from those designated as pilot projects under section 1118, and shall also reflect a representative range of Government functions and capabilities in measuring and reporting program performance.

"(b) Pilot projects in the designated agencies shall cover the preparation of performance budgets. Such budgets shall present, for one or more of the major functions and operations of the agency, the varying levels of performance, including outcome–related performance, that would result from different budgeted amounts.

"(c) The Director of the Office of Management and Budget shall include, as an alternative budget presentation in the budget submitted under section 1105 for fiscal year 1999, the performance budgets of the designated agencies for this fiscal year.

"(d) No later than March 31, 2001, the Director of the Office of Management and Budget shall transmit a report to the President and to the Congress on the performance budgeting pilot projects which shall—

"(1) assess the feasibility and advisability of including a performance budget as part of the annual budget submitted under section 1105;

"(2) describe any difficulties encountered by the pilot agencies in preparing a performance budget;

"(3) recommend whether legislation requiring performance budgets should be proposed and the general provisions of any legislation; and

"(4) set forth any recommended changes in the other requirements of the Government Performance and Results Act of 1993, section 306 of title 5, sections 1105, 1115, 1116, 1117, and 9703 of this title, and this section.

"(e) After receipt of the report required under subsection (d), the Congress may specify that a performance budget be submitted as part of the annual budget submitted under section 1105.".

Sec. 7. United States Postal Service

Part III of title 39, United States Code, is amended by adding at the end thereof the following new chapter:

"Chapter 28—Strategic Planning and Performance Management

"Sec.

"2801. Definitions.
"2802. Strategic plans.
"2803. Performance plans.

"2804. Program performance reports.
"2805. Inherently Governmental functions.

"§ 2801. Definitions

"For purposes of this chapter the term—

"(1) 'outcome measure' refers to an assessment of the results of a program activity compared to its intended purpose;

"(2) 'output measure' refers to the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner;

"(3) 'performance goal' means a target level of performance expressed as a tangible, measurable objective, against which actual achievement shall be compared, including a goal expressed as a quantitative standard, value, or rate;

"(4) 'performance indicator' refers to a particular value or characteristic used to measure output or outcome;

"(5) 'program activity' means a specific activity related to the mission of the Postal Service; and

"(6) 'program evaluation' means an assessment, through objective measurement and systematic analysis, of the manner and extent to which Postal Service programs achieve intended objectives.

"§ 2802. Strategic plans

"(a) No later than September 30, 1997, the Postal Service shall submit to the President and the Congress a strategic plan for its program activities. Such plan shall contain—

"(1) a comprehensive mission statement covering the major functions and operations of the Postal Service;

"(2) general goals and objectives, including outcome–related goals and objectives, for the major functions and operations of the Postal Service;

"(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

"(4) a description of how the performance goals included in the plan required under section 2803 shall be related to the general goals and objectives in the strategic plan;

"(5) an identification of those key factors external to the Postal Service and beyond its control that could significantly affect the achievement of the general goals and objectives; and

"(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

"(b) The strategic plan shall cover a period of not less than five years forward from the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

"(c) The performance plan required under section 2803 shall be consistent with the Postal Service's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

"(d) When developing a strategic plan, the Postal Service shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan.

"§ 2803. Performance plans

"(a) The Postal Service shall prepare an annual performance plan covering each program activity set forth in the Postal Service budget, which shall be included in the comprehensive statement presented under section 2401(g) of this title. Such plan shall—

"(1) establish performance goals to define the level of performance to be achieved by a program activity;

"(2) express such goals in an objective, quantifiable, and measurable form unless an alternative form is used under subsection (b);

"(3) briefly describe the operational processes, skills and technology, and the human, capital, information, or other resources required to meet the performance goals;

"(4) establish performance indicators to be used in measuring or assessing the relevant outputs, service levels, and outcomes of each program activity;

"(5) provide a basis for comparing actual program results with the established performance goals; and

"(6) describe the means to be used to verify and validate measured values.

"(b) If the Postal Service determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Postal Service may use an alternative form. Such alternative form shall—

"(1) include separate descriptive statements of—

"(A) a minimally effective program, and

"(B) a successful program,

with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of either description; or

"(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

"(c) In preparing a comprehensive and informative plan under this section, the Postal Service may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program activity constituting a major function or operation.

"(d) The Postal Service may prepare a non–public annex to its plan covering program activities or parts of program activities relating to—

"(1) the avoidance of interference with criminal prosecution; or

"(2) matters otherwise exempt from public disclosure under section 410(c) of this title.

"§ 2804. Program performance reports

"(a) The Postal Service shall prepare a report on program performance for each fiscal year, which shall be included in the annual comprehensive statement presented under section 2401(g) of this title.

"(b)(1) The program performance report shall set forth the performance indicators established in the Postal Service performance plan, along with the actual program performance achieved compared with the performance goals expressed in the plan for that fiscal year.

"(2) If performance goals are specified by descriptive statements of a minimally effective program activity and a successful program activity, the results of such program shall be described in relationship to those categories, including whether the performance failed to meet the criteria of either category.

"(c) The report for fiscal year 2000 shall include actual results for the preceding fiscal year, the report for fiscal year 2001 shall include actual results for the two preceding fiscal years, and the report for fiscal year 2002 and all subsequent reports shall include actual results for the three preceding fiscal years.

"(d) Each report shall—

"(1) review the success of achieving the performance goals of the fiscal year;

"(2) evaluate the performance plan for the current fiscal year relative to the performance achieved towards the performance goals in the fiscal year covered by the report;

"(3) explain and describe, where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 2803(b)(2))—

"(A) why the goal was not met;

"(B) those plans and schedules for achieving the established performance goal; and

"(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended; and

"(4) include the summary findings of those program evaluations completed during the fiscal year covered by the report.

"§ 2805. Inherently Governmental functions

"The functions and activities of this chapter shall be considered to be inherently Governmental functions. The drafting of strategic plans, performance plans, and program performance reports under this section shall be performed only by employees of the Postal Service.".

Sec. 8. Congressional Oversight and Legislation

(a) IN GENERAL.—Nothing in this Act shall be construed as limiting the ability of Congress to establish, amend, suspend, or annul a performance goal. Any such action shall have the effect of superseding that goal in the plan submitted under section 1105(a)(29) of title 31, United States Code.

(b) GAO REPORT.—No later than June 1, 1997, the Comptroller General of the United States shall report to Congress on the implementation of this Act, including the prospects for compliance by Federal agencies beyond those participating as pilot projects under sections 1118 and 9704 of title 31, United States Code.

Sec. 9. Training

The Office of Personnel Management shall, in consultation with the Director of the Office of Management and Budget and the Comptroller General of the United States, develop a strategic planning and performance measurement training component for its management training program and otherwise provide managers with an orientation on the development and use of strategic planning and program performance measurement.

Sec. 10. Application of Act

No provision or amendment made by this Act may be construed as—

(1) creating any right, privilege, benefit, or entitlement for any person who is not an Officer or employee of the United States acting in such capacity, and no person who is not an Officer or employee of the United States acting in such capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this Act; or

(2) superseding any statutory requirement, including any requirement under section 553 of title 5, United States Code.

Sec. 11. Technical and Conforming Amendments

(a) AMENDMENT TO TITLE 5, UNITED STATES CODE.—The table of sections for chapter 3 of title 5, United States Code, is amended by adding after the item relating to section 305 the following:

"Sec. "306. Strategic plans.".

(b) AMENDMENTS TO TITLE 31, UNITED STATES CODE.—

(1) AMENDMENT TO CHAPTER 11.—The table of sections for chapter 11 of title 31, United States Code, is amended by adding after the item relating to section 1114 the following:

"1115. Performance plans.
"1116. Program performance reports.
"1117. Exemptions.
"1118. Pilot projects for performance goals.
"1119. Pilot projects for performance budgeting.".

(2) AMENDMENT TO CHAPTER 97.—The table of sections for chapter 97 of title 31, United States Code, is amended by adding after the item relating to section 9702 the following:

"9703. Managerial accountability and flexibility.
"9704. Pilot projects for managerial accountability and flexibility.".

(c) AMENDMENT TO TITLE 39, UNITED STATES CODE.—The table of chapters for part III of title 39, United States Code, is amended by adding at the end thereof the following new item:

"28. Strategic planning and performance management ..... 2801".

D. GPRA MODERNIZATION ACT OF 2010

Public Law 111–352 **124 Stat. 3866**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

31 USC 1101 note.

Sec. 1. Short Title; Table of Contents

(a) SHORT TITLE.—This Act may be cited as the "GPRA Modernization Act of 2010".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Strategic planning amendments.
Sec. 3. Performance planning amendments.
Sec. 4. Performance reporting amendments.
Sec. 5. Federal Government and agency priority goals.
Sec. 6. Quarterly priority progress reviews and use of performance information.
Sec. 7. Transparency of Federal Government programs, priority goals, and results.
Sec. 8. Agency Chief Operating Officers.
Sec. 9. Agency Performance Improvement Officers and the Performance Improvement Council.
Sec. 10. Format of performance plans and reports.
Sec. 11. Reducing duplicative and outdated agency reporting.
Sec. 12. Performance management skills and competencies.
Sec. 13. Technical and conforming amendments.
Sec. 14. Implementation of this Act.
Sec. 15. Congressional oversight and legislation.

Sec. 2. Strategic Planning Amendments

Chapter 3 of title 5, United States Code, is amended by striking section 306 and inserting the following:

"§ 306. Agency strategic plans

Deadline. Public information. Web posting. Notification.

"(a) Not later than the first Monday in February of any year following the year in which the term of the President commences under section 101 of title 3, the head of each agency shall make available on the public website of the agency a strategic plan and notify the President and Congress of its availability. Such plan shall contain—

"(1) a comprehensive mission statement covering the major functions and operations of the agency;

"(2) general goals and objectives, including outcome–oriented goals, for the major functions and operations of the agency;

"(3) a description of how any goals and objectives contribute to the Federal Government priority goals required by section 1120(a) of title 31;

"(4) a description of how the goals and objectives are to be achieved, including—

"(A) a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives; and

"(B) a description of how the agency is working with other agencies to achieve its goals and objectives as well as relevant Federal Government priority goals;

"(5) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations required under subsection (d);

"(6) a description of how the performance goals provided in the plan required by section 1115(a) of title 31, including the agency priority goals required by section 1120(b) of title 31, if applicable, contribute to the general goals and objectives in the strategic plan;

"(7) an identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

"(8) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations to be conducted.

"(b) The strategic plan shall cover a period of not less than 4 years following the fiscal year in which the plan is submitted. As needed, the head of the agency may make adjustments to the strategic plan to reflect significant changes in the environment in which the agency is operating, with appropriate notification of Congress.

"(c) The performance plan required by section 1115(b) of title 31 shall be consistent with the agency's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

Consultation.

"(d) When developing or making adjustments to a strategic plan, the agency shall consult periodically with the Congress, including majority and minority views from the appropriate authorizing, appropriations, and oversight committees, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan. The agency shall consult with the appropriate committees of Congress at least once every 2 years.

"(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.

Definition.

"(f) For purposes of this section the term 'agency' means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the Government Accountability Office, the United States Postal Service, and the Postal Regulatory Commission.".

Sec. 3. Performance Planning Amendments

Chapter 11 of title 31, United States Code, is amended by striking section 1115 and inserting the following:

"§ 1115. Federal Government and agency performance plans

Coordination.

"(a) FEDERAL GOVERNMENT PERFORMANCE PLANS.—In carrying out the provisions of section 1105(a)(28), the Director of the Office of Management and Budget shall coordinate with agencies to develop the Federal Government performance plan. In addition to the submission of such plan with each budget of the United States Government, the Director of the Office of Management and Budget shall ensure that all information required by this subsection is concurrently made available on the website provided under section 1122 and updated periodically, but no less than annually. The Federal Government performance plan shall—

Web posting.

"(1) establish Federal Government performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year for each of the Federal Government priority goals required under section 1120(a) of this title;

"(2) identify the agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities contributing to each Federal Government performance goal during the current fiscal year;

"(3) for each Federal Government performance goal, identify a lead Government official who shall be responsible for coordinating the efforts to achieve the goal;

"(4) establish common Federal Government performance indicators with quarterly targets to be used in measuring or assessing—

"(A) overall progress toward each Federal Government performance goal; and

"(B) the individual contribution of each agency, organization, program activity, regulation, tax expenditure, policy, and other activity identified under paragraph (2);

"(5) establish clearly defined quarterly milestones; and

"(6) identify major management challenges that are Governmentwide or crosscutting in nature and describe plans to address such challenges, including relevant performance goals, performance indicators, and milestones.

Deadline. Public information. Web posting. Notification.

"(b) AGENCY PERFORMANCE PLANS.—Not later than the first Monday in February of each year, the head of each agency shall make available on a public website of the agency, and notify the President and the Congress of its availability, a performance plan covering each program activity set forth in the budget of such agency. Such plan shall—

"(1) establish performance goals to define the level of performance to be achieved during the year in which the plan is submitted and the next fiscal year;

"(2) express such goals in an objective, quantifiable, and measurable form unless authorized to be in an alternative form under subsection (c);

"(3) describe how the performance goals contribute to—

"(A) the general goals and objectives established in the agency's strategic plan required by section 306(a)(2) of title 5; and

"(B) any of the Federal Government performance goals established in the Federal Government performance plan required by subsection (a)(1);

"(4) identify among the performance goals those which are designated as agency priority goals as required by section 1120(b) of this title, if applicable;

"(5) provide a description of how the performance goals are to be achieved, including—

"(A) the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals;

"(B) clearly defined milestones;

"(C) an identification of the organizations, program activities, regulations, policies, and other activities that contribute to each performance goal, both within and external to the agency;

"(D) a description of how the agency is working with other

agencies to achieve its performance goals as well as relevant Federal Government performance goals; and

"(E) an identification of the agency officials responsible for the achievement of each performance goal, who shall be known as goal leaders;

"(6) establish a balanced set of performance indicators to be used in measuring or assessing progress toward each performance goal, including, as appropriate, customer service, efficiency, output, and outcome indicators;

"(7) provide a basis for comparing actual program results with the established performance goals;

"(8) a description of how the agency will ensure the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—

"(A) the means to be used to verify and validate measured values;

"(B) the sources for the data;

"(C) the level of accuracy required for the intended use of the data;

"(D) any limitations to the data at the required level of accuracy; and

"(E) how the agency will compensate for such limitations if needed to reach the required level of accuracy;

"(9) describe major management challenges the agency faces and identify—

"(A) planned actions to address such challenges;

"(B) performance goals, performance indicators, and milestones to measure progress toward resolving such challenges; and

"(C) the agency official responsible for resolving such challenges; and

"(10) identify low–priority program activities based on an analysis of their contribution to the mission and goals of the agency and include an evidence–based justification for designating a program activity as low priority.

"(c) ALTERNATIVE FORM.—If an agency, in consultation with the Director of the Office of Management and Budget, determines that it is not feasible to express the performance goals for a particular program activity in an objective, quantifiable, and measurable form, the Director of the Office of Management and Budget may authorize an alternative form. Such alternative form shall—

"(1) include separate descriptive statements of—

"(A)(i) a minimally effective program; and

"(ii) a successful program; or

"(B) such alternative as authorized by the Director of the Office of Management and Budget, with sufficient precision and in such terms that would allow for an accurate, independent determination of whether the program activity's performance meets the criteria of the description; or

"(2) state why it is infeasible or impractical to express a performance goal in any form for the program activity.

"(d) TREATMENT OF PROGRAM ACTIVITIES.—For the purpose of complying with this section, an agency may aggregate, disaggregate, or consolidate program activities, except that any aggregation or consolidation may not omit or minimize the significance of any program

activity constituting a major function or operation for the agency.

"(e) APPENDIX.—An agency may submit with an annual performance plan an appendix covering any portion of the plan that—

"(1) is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

"(2) is properly classified pursuant to such Executive order.

"(f) INHERENTLY GOVERNMENTAL FUNCTIONS.—The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of performance plans under this section shall be performed only by Federal employees.

"(g) CHIEF HUMAN CAPITAL OFFICERS.—With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (b)(5)(A).

"(h) DEFINITIONS.—For purposes of this section and sections 1116 through 1125, and sections 9703 and 9704, the term—

"(1) 'agency' has the same meaning as such term is defined under section 306(f) of title 5;

"(2) 'crosscutting' means across organizational (such as agency) boundaries;

"(3) 'customer service measure' means an assessment of service delivery to a customer, client, citizen, or other recipient, which can include an assessment of quality, timeliness, and satisfaction among other factors;

"(4) 'efficiency measure' means a ratio of a program activity's inputs (such as costs or hours worked by employees) to its outputs (amount of products or services delivered) or outcomes (the desired results of a program);

"(5) 'major management challenge' means programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse, and mismanagement (such as issues identified by the Government Accountability Office as high risk or issues identified by an Inspector General) where a failure to perform well could seriously affect the ability of an agency or the Government to achieve its mission or goals;

"(6) 'milestone' means a scheduled event signifying the completion of a major deliverable or a set of related deliverables or a phase of work;

"(7) 'outcome measure' means an assessment of the results of a program activity compared to its intended purpose;

"(8) 'output measure' means the tabulation, calculation, or recording of activity or effort that can be expressed in a quantitative or qualitative manner;

"(9) 'performance goal' means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate;

"(10) 'performance indicator' means a particular value or characteristic used to measure output or outcome;

"(11) 'program activity' means a specific activity or project as listed in the program and financing schedules of the annual budget of the United States Government; and

"(12) 'program evaluation' means an assessment, through objective measurement and systematic analysis, of the manner and

extent to which Federal programs achieve intended objectives.”.

Sec. 4. Performance Reporting Amendments

Chapter 11 of title 31, United States Code, is amended by striking section 1116 and inserting the following:

“§ 1116. Agency performance reporting

Public information. Web posting. Deadline.

“(a) The head of each agency shall make available on a public website of the agency and to the Office of Management and Budget an update on agency performance.

“(b)(1) Each update shall compare actual performance achieved with the performance goals established in the agency performance plan under section 1115(b) and shall occur no less than 150 days after the end of each fiscal year, with more frequent updates of actual performance on indicators that provide data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden.

“(2) If performance goals are specified in an alternative form under section 1115(c), the results shall be described in relation to such specifications, including whether the performance failed to meet the criteria of a minimally effective or successful program.

“(c) Each update shall—

“(1) review the success of achieving the performance goals and include actual results for the 5 preceding fiscal years;

“(2) evaluate the performance plan for the current fiscal year relative to the performance achieved toward the performance goals during the period covered by the update;

“(3) explain and describe where a performance goal has not been met (including when a program activity's performance is determined not to have met the criteria of a successful program activity under section 1115(c)(1)(A)(ii) or a corresponding level of achievement if another alternative form is used)—

“(A) why the goal was not met;

“(B) those plans and schedules for achieving the established performance goal; and

“(C) if the performance goal is impractical or infeasible, why that is the case and what action is recommended;

“(4) describe the use and assess the effectiveness in achieving performance goals of any waiver under section 9703 of this title;

“(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management;

“(6) describe how the agency ensures the accuracy and reliability of the data used to measure progress towards its performance goals, including an identification of—

“(A) the means used to verify and validate measured values;

“(B) the sources for the data;

“(C) the level of accuracy required for the intended use of the data;

“(D) any limitations to the data at the required level of accuracy; and

“(E) how the agency has compensated for such limitations if needed to reach the required level of accuracy; and

“(7) include the summary findings of those program evaluations completed during the period covered by the update.

Classified information.

"(d) If an agency performance update includes any program activity or information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is properly classified pursuant to such Executive Order, the head of the agency shall make such information available in the classified appendix provided under section 1115(e).

"(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of agency performance updates under this section shall be performed only by Federal employees.

Deadline.
Determination.

"(f) Each fiscal year, the Office of Management and Budget shall determine whether the agency programs or activities meet performance goals and objectives outlined in the agency performance plans and submit a report on unmet goals to—

"(1) the head of the agency;

"(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

"(3) the Committee on Oversight and Governmental Reform of the House of Representatives; and

"(4) the Government Accountability Office.

"(g) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 1 fiscal year, the head of the agency shall submit a performance improvement plan to the Office of Management and Budget to increase program effectiveness for each unmet goal with measurable milestones. The agency shall designate a senior official who shall oversee the performance improvement strategies for each unmet goal.

Designation.

"(h)(1) If the Office of Management and Budget determines that agency programs or activities have unmet performance goals for 2 consecutive fiscal years, the head of the agency shall—

Submission.

"(A) submit to Congress a description of the actions the Administration will take to improve performance, including proposed statutory changes or planned executive actions; and

"(B) describe any additional funding the agency will obligate to achieve the goal, if such an action is determined appropriate in consultation with the Director of the Office of Management and Budget, for an amount determined appropriate by the Director.

"(2) In providing additional funding described under paragraph (1)(B), the head of the agency shall use any reprogramming or transfer authority available to the agency. If after exercising such authority additional funding is necessary to achieve the level determined appropriate by the Director of the Office of Management and Budget, the head of the agency shall submit a request to Congress for additional reprogramming or transfer authority.

Request.

Recommenda–tions.
Deadline.

"(i) If an agency's programs or activities have not met performance goals as determined by the Office of Management and Budget for 3 consecutive fiscal years, the Director of the Office of Management and Budget shall submit recommendations to Congress on actions to improve performance not later than 60 days after that determination, including—

"(1) reauthorization proposals for each program or activity that has not met performance goals;

"(2) proposed statutory changes necessary for the program activities to achieve the proposed level of performance on each performance goal; and

"(3) planned executive actions or identification of the program for

termination or reduction in the President's budget.”.

Sec. 5. Federal Government and Agency Priority Goals
Chapter 11 of title 31, United States Code, is amended by adding after section 1119 the following:

“§ 1120. Federal Government and agency priority goals

“(a) FEDERAL GOVERNMENT PRIORITY GOALS.—

“(1) The Director of the Office of Management and Budget shall coordinate with agencies to develop priority goals to improve the performance and management of the Federal Government. Such Federal Government priority goals shall include—

“(A) outcome–oriented goals covering a limited number of crosscutting policy areas; and

“(B) goals for management improvements needed across the Federal Government, including—

“(i) financial management;

“(ii) human capital management;

“(iii) information technology management;

“(iv) procurement and acquisition management; and

“(v) real property management;

Deadline. Public information.

“(2) The Federal Government priority goals shall be long–term in nature. At a minimum, the Federal Government priority goals shall be updated or revised every 4 years and made publicly available concurrently with the submission of the budget of the United States Government made in the first full fiscal year following any year in which the term of the President commences under section 101 of title 3. As needed, the Director of the Office of Management and Budget may make adjustments to the Federal Government priority goals to reflect significant changes in the environment in which the Federal Government is operating, with appropriate notification of Congress.

Consultation.

“(3) When developing or making adjustments to Federal Government priority goals, the Director of the Office of Management and Budget shall consult periodically with the Congress, including obtaining majority and minority views from—

“(A) the Committees on Appropriations of the Senate and the House of Representatives;

“(B) the Committees on the Budget of the Senate and the House of Representatives;

“(C) the Committee on Homeland Security and Governmental Affairs of the Senate;

“(D) the Committee on Oversight and Government Reform of the House of Representatives;

“(E) the Committee on Finance of the Senate;

“(F) the Committee on Ways and Means of the House of Representatives; and

“(G) any other committees as determined appropriate;

Consultation. Deadline.

“(4) The Director of the Office of Management and Budget shall consult with the appropriate committees of Congress at least once every 2 years.

Web posting.

“(5) The Director of the Office of Management and Budget shall make information about the Federal Government priority goals available on the website described under section 1122 of this title.

“(6) The Federal Government performance plan required under section 1115(a) of this title shall be consistent with the Federal

Government priority goals.

"(b) AGENCY PRIORITY GOALS.—

Deadline.

"(1) Every 2 years, the head of each agency listed in section 901(b) of this title, or as otherwise determined by the Director of the Office of Management and Budget, shall identify agency priority goals from among the performance goals of the agency. The Director of the Office of Management and Budget shall determine the total number of agency priority goals across the Government, and the number to be developed by each agency. The agency priority goals shall—

Determination.

"(A) reflect the highest priorities of the agency, as determined by the head of the agency and informed by the Federal Government priority goals provided under subsection (a) and the consultations with Congress and other interested parties required by section 306(d) of title 5;

Time period.

"(B) have ambitious targets that can be achieved within a 2–year period;

"(C) have a clearly identified agency official, known as a goal leader, who is responsible for the achievement of each agency priority goal;

"(D) have interim quarterly targets for performance indicators if more frequent updates of actual performance provides data of significant value to the Government, Congress, or program partners at a reasonable level of administrative burden; and

"(E) have clearly defined quarterly milestones.

Classified information.

"(2) If an agency priority goal includes any program activity or information that is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is properly classified pursuant to such Executive order, the head of the agency shall make such information available in the classified appendix provided under section 1115(e).

"(c) The functions and activities of this section shall be considered to be inherently governmental functions. The development of Federal Government and agency priority goals shall be performed only by Federal employees.".

Sec. 6. Quarterly Priority Progress Reviews and Use of Performance Information

Chapter 11 of title 31, United States Code, is amended by adding after section 1120 (as added by section 5 of this Act) the following:

"§ 1121. Quarterly priority progress reviews and use of performance information

"(a) USE OF PERFORMANCE INFORMATION TO ACHIEVE FEDERAL GOVERNMENT PRIORITY GOALS.—Not less than quarterly, the Director of the Office of Management and Budget, with the support of the Performance Improvement Council, shall—

"(1) for each Federal Government priority goal required by section 1120(a) of this title, review with the appropriate lead Government official the progress achieved during the most recent quarter, overall trend data, and the likelihood of meeting the planned level of performance;

"(2) include in such reviews officials from the agencies, organizations, and program activities that contribute to the accomplishment of each Federal Government priority goal;

Assessment.

"(3) assess whether agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities are contributing as planned to each Federal Government priority goal;

"(4) categorize the Federal Government priority goals by risk of not achieving the planned level of performance; and

"(5) for the Federal Government priority goals at greatest risk of not meeting the planned level of performance, identify prospects and strategies for performance improvement, including any needed changes to agencies, organizations, program activities, regulations, tax expenditures, policies or other activities.

"(b) AGENCY USE OF PERFORMANCE INFORMATION TO ACHIEVE AGENCY PRIORITY GOALS.—Not less than quarterly, at each agency required to develop agency priority goals required by section 1120(b) of this title, the head of the agency and Chief Operating Officer, with the support of the agency Performance Improvement Officer, shall—

"(1) for each agency priority goal, review with the appropriate goal leader the progress achieved during the most recent quarter, overall trend data, and the likelihood of meeting the planned level of performance;

"(2) coordinate with relevant personnel within and outside the agency who contribute to the accomplishment of each agency priority goal;

Assessment.

"(3) assess whether relevant organizations, program activities, regulations, policies, and other activities are contributing as planned to the agency priority goals;

"(4) categorize agency priority goals by risk of not achieving the planned level of performance; and

"(5) for agency priority goals at greatest risk of not meeting the planned level of performance, identify prospects and strategies for performance improvement, including any needed changes to agency program activities, regulations, policies, or other activities.".

Sec. 7. Transparency of Federal Government Programs, Priority Goals, and Results

Chapter 11 of title 31, United States Code, is amended by adding after section 1121 (as added by section 6 of this Act) the following:

"§ 1122. Transparency of programs, priority goals, and results

"(a) TRANSPARENCY OF AGENCY PROGRAMS.—

Deadline.

"(1) IN GENERAL.—Not later than October 1, 2012, the Office of Management and Budget shall—

"(A) ensure the effective operation of a single website;

"(B) at a minimum, update the website on a quarterly basis; and

"(C) include on the website information about each program identified by the agencies.

"(2) INFORMATION.—Information for each program described under paragraph (1) shall include—

"(A) an identification of how the agency defines the term 'program', consistent with guidance provided by the Director of the Office of Management and Budget, including the program activities that are aggregated, disaggregated, or consolidated to be considered a program by the agency;

"(B) a description of the purposes of the program and the

contribution of the program to the mission and goals of the agency; and

"(C) an identification of funding for the current fiscal year and previous 2 fiscal years.

"(b) TRANSPARENCY OF AGENCY PRIORITY GOALS AND RESULTS.—The head of each agency required to develop agency priority goals shall make information about each agency priority goal available to the Office of Management and Budget for publication on the website, with the exception of any information covered by section 1120(b)(2) of this title. In addition to an identification of each agency priority goal, the website shall also consolidate information about each agency priority goal, including—

"(1) a description of how the agency incorporated any views and suggestions obtained through congressional consultations about the agency priority goal;

"(2) an identification of key factors external to the agency and beyond its control that could significantly affect the achievement of the agency priority goal;

"(3) a description of how each agency priority goal will be achieved, including—

"(A) the strategies and resources required to meet the priority goal;

"(B) clearly defined milestones;

"(C) the organizations, program activities, regulations, policies, and other activities that contribute to each goal, both within and external to the agency;

"(D) how the agency is working with other agencies to achieve the goal; and

"(E) an identification of the agency official responsible for achieving the priority goal;

"(4) the performance indicators to be used in measuring or assessing progress;

"(5) a description of how the agency ensures the accuracy and reliability of the data used to measure progress towards the priority goal, including an identification of—

"(A) the means used to verify and validate measured values;

"(B) the sources for the data;

"(C) the level of accuracy required for the intended use of the data;

"(D) any limitations to the data at the required level of accuracy; and

"(E) how the agency has compensated for such limitations if needed to reach the required level of accuracy;

"(6) the results achieved during the most recent quarter and overall trend data compared to the planned level of performance;

"(7) an assessment of whether relevant organizations, program activities, regulations, policies, and other activities are contributing as planned;

"(8) an identification of the agency priority goals at risk of not achieving the planned level of performance; and

"(9) any prospects or strategies for performance improvement.

Web posting.

"(c) TRANSPARENCY OF FEDERAL GOVERNMENT PRIORITY GOALS AND RESULTS.—The Director of the Office of Management and Budget shall also make available on the website—

"(1) a brief description of each of the Federal Government priority

goals required by section 1120(a) of this title;

"(2) a description of how the Federal Government priority goals incorporate views and suggestions obtained through congressional consultations;

"(3) the Federal Government performance goals and performance indicators associated with each Federal Government priority goal as required by section 1115(a) of this title;

"(4) an identification of the lead Government official for each Federal Government performance goal;

"(5) the results achieved during the most recent quarter and overall trend data compared to the planned level of performance;

"(6) an identification of the agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities that contribute to each Federal Government priority goal;

Assessment.

"(7) an assessment of whether relevant agencies, organizations, program activities, regulations, tax expenditures, policies, and other activities are contributing as planned;

"(8) an identification of the Federal Government priority goals at risk of not achieving the planned level of performance; and

"(9) any prospects or strategies for performance improvement.

Public information.

"(d) INFORMATION ON WEBSITE.—The information made available on the website under this section shall be readily accessible and easily found on the Internet by the public and members and committees of Congress. Such information shall also be presented in a searchable, machine–readable format. The Director of the Office of Management and Budget shall issue guidance to ensure that such information is provided in a way that presents a coherent picture of all Federal programs, and the performance of the Federal Government as well as individual agencies.".

Guidance.

Sec. 8. Agency Chief Operating Officers

Chapter 11 of title 31, United States Code, is amended by adding after section 1122 (as added by section 7 of this Act) the following:

"§ 1123. Chief Operating Officers

"(a) ESTABLISHMENT.—At each agency, the deputy head of agency, or equivalent, shall be the Chief Operating Officer of the agency.

"(b) FUNCTION.—Each Chief Operating Officer shall be responsible for improving the management and performance of the agency, and shall—

"(1) provide overall organization management to improve agency performance and achieve the mission and goals of the agency through the use of strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved;

"(2) advise and assist the head of agency in carrying out the requirements of sections 1115 through 1122 of this title and section 306 of title 5;

"(3) oversee agency–specific efforts to improve management functions within the agency and across Government; and

"(4) coordinate and collaborate with relevant personnel within and external to the agency who have a significant role in contributing to and achieving the mission and goals of the agency, such as the Chief Financial Officer, Chief Human Capital Officer, Chief Acquisition Officer/Senior Procurement Executive, Chief Information Officer, and other line of business chiefs at the agency.".

Sec. 9. Agency Performance Improvement Officers and the Performance Improvement Council

Chapter 11 of title 31, United States Code, is amended by adding after section 1123 (as added by section 8 of this Act) the following:

"§ 1124. Performance Improvement Officers and the Performance Improvement Council

"(a) PERFORMANCE IMPROVEMENT OFFICERS.—

"(1) ESTABLISHMENT.—At each agency, the head of the agency, in consultation with the agency Chief Operating Officer, shall designate a senior executive of the agency as the agency Performance Improvement Officer.

"(2) FUNCTION.—Each Performance Improvement Officer shall report directly to the Chief Operating Officer. Subject to the direction of the Chief Operating Officer, each Performance Improvement Officer shall—

"(A) advise and assist the head of the agency and the Chief Operating Officer to ensure that the mission and goals of the agency are achieved through strategic and performance planning, measurement, analysis, regular assessment of progress, and use of performance information to improve the results achieved;

"(B) advise the head of the agency and the Chief Operating Officer on the selection of agency goals, including opportunities to collaborate with other agencies on common goals;

"(C) assist the head of the agency and the Chief Operating Officer in overseeing the implementation of the agency strategic planning, performance planning, and reporting requirements provided under sections 1115 through 1122 of this title and sections 306 of title 5, including the contributions of the agency to the Federal Government priority goals;

"(D) support the head of agency and the Chief Operating Officer in the conduct of regular reviews of agency performance, including at least quarterly reviews of progress achieved toward agency priority goals, if applicable;

"(E) assist the head of the agency and the Chief Operating Officer in the development and use within the agency of performance measures in personnel performance appraisals, and, as appropriate, other agency personnel and planning processes and assessments; and

Public information. Web posting.

"(F) ensure that agency progress toward the achievement of all goals is communicated to leaders, managers, and employees in the agency and Congress, and made available on a public website of the agency.

"(b) PERFORMANCE IMPROVEMENT COUNCIL.—

"(1) ESTABLISHMENT.—There is established a Performance Improvement Council, consisting of—

"(A) the Deputy Director for Management of the Office of Management and Budget, who shall act as chairperson of the Council;

"(B) the Performance Improvement Officer from each agency defined in section 901(b) of this title;

"(C) other Performance Improvement Officers as determined appropriate by the chairperson; and

"(D) other individuals as determined appropriate by the chairperson.

"(2) FUNCTION.—The Performance Improvement Council shall—

"(A) be convened by the chairperson or the designee of the chairperson, who shall preside at the meetings of the Performance Improvement Council, determine its agenda, direct its work, and establish and direct subgroups of the Performance Improvement Council, as appropriate, to deal with particular subject matters;

"(B) assist the Director of the Office of Management and Budget to improve the performance of the Federal Government and achieve the Federal Government priority goals;

"(C) assist the Director of the Office of Management and Budget in implementing the planning, reporting, and use of performance information requirements related to the Federal Government priority goals provided under sections 1115, 1120, 1121, and 1122 of this title;

"(D) work to resolve specific Governmentwide or crosscutting performance issues, as necessary;

"(E) facilitate the exchange among agencies of practices that have led to performance improvements within specific programs, agencies, or across agencies;

"(F) coordinate with other interagency management councils;

"(G) seek advice and information as appropriate from nonmember agencies, particularly smaller agencies;

"(H) consider the performance improvement experiences of corporations, nonprofit organizations, foreign, State, and local governments, Government employees, public sector unions, and customers of Government services;

"(I) receive such assistance, information and advice from agencies as the Council may request, which agencies shall provide to the extent permitted by law; and

"(J) develop and submit to the Director of the Office of Management and Budget, or when appropriate to the President through the Director of the Office of Management and Budget, at times and in such formats as the chairperson may specify, recommendations to streamline and improve performance management policies and requirements.

"(3) SUPPORT.—

"(A) IN GENERAL.—The Administrator of General Services shall provide administrative and other support for the Council to implement this section.

"(B) PERSONNEL.—The heads of agencies with Performance Improvement Officers serving on the Council shall, as appropriate and to the extent permitted by law, provide at the request of the chairperson of the Performance Improvement Council up to 2 personnel authorizations to serve at the direction of the chairperson.".

31 USC 1115 note.

Sec. 10. Format of Performance Plans and Reports

(a) SEARCHABLE, MACHINE–READABLE PLANS AND REPORTS.—For fiscal year 2012 and each fiscal year thereafter, each agency required to produce strategic plans, performance plans, and performance updates in accordance with the amendments made by this Act shall—

(1) not incur expenses for the printing of strategic plans, performance plans, and performance reports for release external to the agency, except when providing such documents to the Congress;

(2) produce such plans and reports in searchable, machine–readable formats; and

Web posting.

(3) make such plans and reports available on the website described under section 1122 of title 31, United States Code.

(b) WEB–BASED PERFORMANCE PLANNING AND REPORTING.—

Guidance.

(1) IN GENERAL.—Not later than June 1, 2012, the Director of the Office of Management and Budget shall issue guidance to agencies to provide concise and timely performance information for publication on the website described under section 1122 of title 31, United States Code, including, at a minimum, all requirements of sections 1115 and 1116 of title 31, United States Code, except for section 1115(e).

(2) HIGH–PRIORITY GOALS.—For agencies required to develop agency priority goals under section 1120(b) of title 31, United States Code, the performance information required under this section shall be merged with the existing information required under section 1122 of title 31, United States Code.

(3) CONSIDERATIONS.—In developing guidance under this subsection, the Director of the Office of Management and Budget shall take into consideration the experiences of agencies in making consolidated performance planning and reporting information available on the website as required under section 1122 of title 31, United States Code.

Sec. 11. Reducing Duplicative and Outdated Agency Reporting

(a) BUDGET CONTENTS.—Section 1105(a) of title 31, United States Code, is amended—

(1) by redesignating second paragraph (33) as paragraph (35); and

(2) by adding at the end the following:

"(37) the list of plans and reports, as provided for under section 1125, that agencies identified for elimination or consolidation because the plans and reports are determined outdated or duplicative of other required plans and reports.".

(b) ELIMINATION OF UNNECESSARY AGENCY REPORTING.—Chapter 11 of title 31, United States Code, is further amended by adding after section 1124 (as added by section 9 of this Act) the following:

"§ 1125. Elimination of Unnecessary Agency Reporting

"(a) AGENCY IDENTIFICATION OF UNNECESSARY REPORTS.—Annually, based on guidance provided by the Director of the Office of Management and Budget, the Chief Operating Officer at each agency shall—

"(1) compile a list that identifies all plans and reports the agency produces for Congress, in accordance with statutory requirements or as directed in congressional reports;

"(2) analyze the list compiled under paragraph (1), identify which plans and reports are outdated or duplicative of other required plans and reports, and refine the list to include only the plans and reports identified to be outdated or duplicative;

"(3) consult with the congressional committees that receive the plans and reports identified under paragraph (2) to determine whether

those plans and reports are no longer useful to the committees and could be eliminated or consolidated with other plans and reports; and

"(4) provide a total count of plans and reports compiled under paragraph (1) and the list of outdated and duplicative reports identified under paragraph (2) to the Director of the Office of Management and Budget.

"(b) PLANS AND REPORTS.—

"(1) FIRST YEAR.—During the first year of implementation of this section, the list of plans and reports identified by each agency as outdated or duplicative shall be not less than 10 percent of all plans and reports identified under subsection (a)(1).

Determination.

"(2) SUBSEQUENT YEARS.—In each year following the first year described under paragraph (1), the Director of the Office of Management and Budget shall determine the minimum percent of plans and reports to be identified as outdated or duplicative on each list of plans and reports.

"(c) REQUEST FOR ELIMINATION OF UNNECESSARY REPORTS.—In addition to including the list of plans and reports determined to be outdated or duplicative by each agency in the budget of the United States Government, as provided by section 1105(a)(37), the Director of the Office of Management and Budget may concurrently submit to Congress legislation to eliminate or consolidate such plans and reports.".

Deadlines.
5 USC 5105 note.

Sec. 12. Performance Management Skills and Competencies

(a) PERFORMANCE MANAGEMENT SKILLS AND COMPETENCIES.—Not later than 1 year after the date of enactment of this Act, the Director of the Office of Personnel Management, in consultation with the Performance Improvement Council, shall identify the key skills and competencies needed by Federal Government personnel for developing goals, evaluating programs, and analyzing and using performance information for the purpose of improving Government efficiency and effectiveness.

(b) POSITION CLASSIFICATIONS.—Not later than 2 years after the date of enactment of this Act, based on the identifications under subsection (a), the Director of the Office of Personnel Management shall incorporate, as appropriate, such key skills and competencies into relevant position classifications.

(c) INCORPORATION INTO EXISTING AGENCY TRAINING.—Not later than 2 years after the enactment of this Act, the Director of the Office of Personnel Management shall work with each agency, as defined under section 306(f) of title 5, United States Code, to incorporate the key skills identified under subsection (a) into training for relevant employees at each agency.

Sec. 13. Technical and Conforming Amendments

(a) The table of contents for chapter 3 of title 5, United States Code, is amended by striking the item relating to section 306 and inserting the following:

"306. Agency Strategic Plans."

(b) The table of contents for chapter 11 of title 31, United States Code, is amended by striking the items relating to section 1115 and 1116 and inserting the following:

"1115. Federal Government and agency performance plans.
"1116. Agency performance reporting.".

(c) The table of contents for chapter 11 of title 31, United States Code, is amended by adding at the end the following:

"1120. Federal Government and agency priority goals.
"1121. Quarterly priority progress reviews and use of performance information.
"1122. Transparency of programs, priority goals, and results.
"1123. Chief Operating Officers.
"1124. Performance Improvement Officers and the Performance Improvement Council.
"1125. Elimination of unnecessary agency reporting.".

31 USC 115 note.

Sec. 14. Implementation of this Act

(a) INTERIM PLANNING AND REPORTING.—

Coordination.

(1) IN GENERAL.—The Director of the Office of Management and Budget shall coordinate with agencies to develop interim Federal Government priority goals and submit interim Federal Government performance plans consistent with the requirements of this Act beginning with the submission of the fiscal year 2013 Budget of the United States Government.

Deadline.

(2) REQUIREMENTS.—Each agency shall—

(A) not later than February 6, 2012, make adjustments to its strategic plan to make the plan consistent with the requirements of this Act;

Plan.

(B) prepare and submit performance plans consistent with the requirements of this Act, including the identification of agency priority goals, beginning with the performance plan for fiscal year 2013; and

(C) make performance reporting updates consistent with the requirements of this Act beginning in fiscal year 2012.

(3) QUARTERLY REVIEWS.—The quarterly priority progress reviews required under this Act shall begin—

(A) with the first full quarter beginning on or after the date of enactment of this Act for agencies based on the agency priority goals contained in the Analytical Perspectives volume of the Fiscal Year 2011 Budget of the United States Government; and

(B) with the quarter ending June 30, 2012 for the interim Federal Government priority goals.

(b) GUIDANCE.—The Director of the Office of Management and Budget shall prepare guidance for agencies in carrying out the interim planning and reporting activities required under subsection (a), in addition to other guidance as required for implementation of this Act.

31 USC 115 note.

Sec. 15. Congressional Oversight and Legislation

(a) IN GENERAL.—Nothing in this Act shall be construed as limiting the ability of Congress to establish, amend, suspend, or annul a goal of the Federal Government or an agency.

(b) GAO REVIEWS.—

(1) INTERIM PLANNING AND REPORTING EVALUATION.—Not later than June 30, 2013, the Comptroller General shall submit a report to Congress that includes—

(A) an evaluation of the implementation of the interim planning and reporting activities conducted under section 14 of this Act; and

(B) any recommendations for improving implementation of this Act as determined appropriate.

(2) IMPLEMENTATION EVALUATIONS.—

(A) IN GENERAL.—The Comptroller General shall evaluate the implementation of this Act subsequent to the interim planning and reporting activities evaluated in the report submitted to Congress under paragraph (1).

(B) AGENCY IMPLEMENTATION.—

(i) EVALUATIONS.—The Comptroller General shall evaluate how implementation of this Act is affecting performance management at the agencies described in section 901(b) of title 31, United States Code, including whether performance management is being used by those agencies to improve the efficiency and effectiveness of agency programs.

(ii) REPORTS.—The Comptroller General shall submit to Congress—

(I) an initial report on the evaluation under clause (i), not later than September 30, 2015; and

(II) a subsequent report on the evaluation under clause (i), not later than September 30, 2017.

(C) FEDERAL GOVERNMENT PLANNING AND REPORTING IMPLEMENTATION.—

(i) EVALUATIONS.—The Comptroller General shall evaluate the implementation of the Federal Government priority goals, Federal Government performance plans and related reporting required by this Act.

(ii) REPORTS.—The Comptroller General shall submit to Congress—

(I) an initial report on the evaluation under clause (i), not later than September 30, 2015; and

(II) subsequent reports on the evaluation under clause (i), not later than September 30, 2017 and every 4 years thereafter.

(D) RECOMMENDATIONS.—The Comptroller General shall include in the reports required by subparagraphs (B) and (C) any recommendations for improving implementation of this Act and for streamlining the planning and reporting requirements of the Government Performance and Results Act of 1993.

7. Inspector General Legislation

7. Inspector General Legislation

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A. INSPECTOR GENERAL ACT OF 1978, AS AMENDED

Public Law 95–452 **92 Stat. 1101**

October 1, 1978

5 U.S.C. Appendix 3

Sec. 1. Short Title

Sec. 2. Purpose and Establishment of Offices of Inspector General: Departments and Agencies Involved

In order to create independent and objective units–

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 12(2).[1]

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action; there is established–

(A) in each of such establishments an Office of Inspector General, subject to subparagraph (B); and

(B) in the establishment of the Department of the Treasury–

(i) an Office of Inspector General of the Department of the Treasury; and

(ii) an Office of Treasury Inspector General for Tax Administration.[2]

Sec. 3. Appointment of Inspector General. Supervision: Removal: Political Activities: Appointment of Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

(a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the Officer next in rank below such head, but shall not report to, or be subject to supervision by, any other Officer of such establishment. Neither the head of the establishment nor the Officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

President. Deadline.

(b) An Inspector General may be removed from Office by the President. If an Inspector General is removed from Office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal

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[1] Amended by P.L. 110–409, § 7(d)(A), 122 Stat. 4302 (2008).

[2] Amended P.L. 105–206, Title I, § 1103(a), 112 Stat. 705 (1998).

or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.[3]

(c) For the purposes of section 7324 of Title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service–

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

(e) The annual rate of basic pay for an Inspector General (as defined under section 12(3)) shall be the rate payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, plus 3 percent.[4]

(f) An Inspector General (as defined under section 8G(a)(6) or 12(3)) may not receive any cash award or cash bonus, including any cash award under chapter 45 of title 5, United States Code.[5]

(g) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service, obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General.[6]

Sec. 4. Duties and Responsibilities. Report of Criminal Violations to Attorney General

(a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by

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[3] Amended by P.L. 110–409, § 3(a), 122 Stat. 4302 (2008).
[4] Amended by P.L. 110–409, § 4(a)(1), 122 Stat. 4302 (2008).
[5] Amended by P.L. 110–409, § 5, 122 Stat. 4302 (2008).
[6] Amended by P.L. 110–409, § 6(a), 122 Stat. 4302 (2008).

such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b) (1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non–Federal auditors; and

(C) take appropriate steps to assure that any work performed by non–Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by offices of Inspector General of establishments defined under section 12(2), offices of Inspector General of designated Federal entities defined under section 8F(a)(2), and any audit Office established within a Federal entity defined under section 8F(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accounting Office [Government Accountability Office] or the Office of Inspector General of each establishment defined under section 12(2), or the Office of Inspector General of each designated Federal entity defined under section 8F(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.[7]

Sec. 5. Semiannual Reports; Transmittal to Congress; Availability to Public; Immediate Report on Serious or Flagrant Problems; Disclosure of Information; Definitions

(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six–month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant

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[7] Amended by P.L. 100–504, Title I, § 109, 102 Stat. 2529 (1988); P.L. 103–82, Title II, § 202(g)(5)(A), 107 Stat. 890 (1993); P.L. 110–409, § 7(d)(1)(A), 122 Stat. 4313 (2008).

problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period;

(6) a listing, subdivided according to subject matter, of each audit report, inspection reports [report], and evaluation reports [report] issued by the Office during the reporting period and for each report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs), for reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the dollar value of recommendations that funds be put to better use by management, for reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit report, inspection reports [report], and evaluation reports [report] issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period;

(12) information concerning any significant management decision with which the Inspector General is in disagreement;

(13) the information described under section 05(b) of the Federal Financial Management Improvement Act of 1996;

(14)(A) an appendix containing the results of any peer review conducted by another Office of Inspector General during the reporting period; or

(B) if no peer review was conducted within that reporting period, a statement identifying the date of the last peer review conducted by another Office of Inspector General;

(15) a list of any outstanding recommendations from any peer review conducted by another Office of Inspector General that have not been fully implemented, including a statement describing the status of the implementation and why implementation is not complete; and

(16) a list of any peer reviews conducted by the Inspector General of another Office of the Inspector General during the reporting period, including a list of any outstanding recommendations made from any previous peer review (including any peer review conducted before the reporting period) that remain outstanding or have not been fully implemented.[8]

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing—

(1) any comments such head determines appropriate;

(2) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the dollar value of disallowed costs, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and

(ii) the dollar value of disallowed costs that were written off by management; and

(D) for which no final action has been taken by the end of the reporting period;

(3) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of recommendations that were actually completed; and

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[8] Amended by P.L. 111–203, § 989C, 124 Stat. 1945(2010).

(ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and

(D) for which no final action has been taken by the end of the reporting period; and

(4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing—

(A) a list of such audit reports and the date each such report was issued;

(B) the dollar value of disallowed costs for each report;

(C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and

(D) an explanation of the reasons final action has not been taken with respect to each such audit report,

except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e) (1) Nothing in this section shall be construed to authorize the public disclosure of information which is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986, nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) As used in this section—

(1) the term "questioned cost" means a cost that is questioned by the Office because of—

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term "unsupported cost" means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term "disallowed cost" means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including—

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term "management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary; and

(6) the term "final action" means—

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made.[9]

Sec. 6. Authority of Inspector General; Information and Assistance from Federal Agencies, Unreasonable Refusal, Office Space and Equipment

(a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

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[9] Amended by P.L. 97–252, Title XI, § 1117(c), 96 Stat. 752 (1982); P.L. 100–504, Title I, §§ 102(g), 106(a)–(d), 102 Stat. 2521, 2525, 2527 (1988); P.L. 104–208, Div. A, Title I, § 101(f), Title VIII, § 805(c), 110 Stat. 3009–393 (1996); P.L. 110–409, § 12, 122 Stat. 4315 (2008).

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided,* That procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies;

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an Officer having a seal;

(6) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(7) to select, appoint, and employ such Officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(8) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code; and

(9) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b) (1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnished to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate Office space at central and field Office locations of such establishment, together with such equipment, Office supplies, and communications facilities and services

as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d) (1) (A) For purposes of applying the provisions of law identified in subparagraph (B)—

(i) each Office of Inspector General shall be considered to be a separate agency; and

(ii) the Inspector General who is the head of an Office referred to in clause (i) shall, with respect to such Office, have the functions, powers, and duties of an agency head or appointing authority under such provisions.

(B) This paragraph applies with respect to the following provisions of title 5, United States Code:

(i) Subchapter II of chapter 35.

(ii) Sections 8335(b), 8336, 8344, 8414, 8468, and 8425(b).

(iii) All provisions relating to the Senior Executive Service (as determined by the Office of Personnel Management), subject to paragraph (2).

(2) For purposes of applying section 4507(b) of title 5, United States Code, paragraph (1)(A)(ii) shall be applied by substituting "the Council of the Inspectors General on Integrity and Efficiency (established by section 11 of the Inspector General Act) shall" for "the Inspector General who is the head of an Office referred to in clause (i) shall, with respect to such Office,".

(e) (1) In addition to the authority otherwise provided by this Act, each Inspector General, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of

Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection [enacted Nov. 25, 2002], collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.

(9) In this subsection, the term "Inspector General" means an Inspector General appointed under section 3 or an Inspector General appointed under section 8G.

(f) (1) For each fiscal year, an Inspector General shall transmit a budget estimate and request to the head of the establishment or designated Federal entity to which the Inspector General reports. The budget request shall specify the aggregate amount of funds requested for such fiscal year for the operations of that Inspector General and shall specify the amount

requested for all training needs, including a certification from the Inspector General that the amount requested satisfies all training requirements for the Inspector General's Office for that fiscal year, and any resources necessary to support the Council of the Inspectors General on Integrity and Efficiency. Resources necessary to support the Council of the Inspectors General on Integrity and Efficiency shall be specifically identified and justified in the budget request.

(2) In transmitting a proposed budget to the President for approval, the head of each establishment or designated Federal entity shall include—

(A) an aggregate request for the Inspector General;

(B) amounts for Inspector General training;

(C) amounts for support of the Council of the Inspectors General on Integrity and Efficiency; and

(D) any comments of the affected Inspector General with respect to the proposal.

(3) The President shall include in each budget of the United States Government submitted to Congress—

(A) a separate statement of the budget estimate prepared in accordance with paragraph (1);

(B) the amount requested by the President for each Inspector General;

(C) the amount requested by the President for training of Inspectors General;

(D) the amount requested by the President for support for the Council of the Inspectors General on Integrity and Efficiency; and

(E) any comments of the affected Inspector General with respect to the proposal if the Inspector General concludes that the budget submitted by the President would substantially inhibit the Inspector General from performing the duties of the Office.[10]

Sec. 7. Complaints by Employees. Disclosure of Identity; Reprisals

(a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not with respect to such authority, take or threaten to take any actions against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made for the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

Sec. 8. Additional Provisions with Respect to the Inspector General of the Department of Defense

(a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b) (1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of

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[10] Amended by P.L. 100–504, Title I, §§ 107, 110(a), 102 Stat. 2528, 2529 (1988); P.L. 107–296, Title VIII, Subtitle B, § 812(a), 116 Stat. 2222 (2002); P.L. 110–409, §§ 8, 9, 11, 14(a), 122 Stat. 4313, 4315, 4316 (2008).

the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

(A) sensitive operational plans;

(B) intelligence matters;

(C) counterintelligence matters;

(D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement concerning such exercise within thirty days to the Committees on Armed Services and [Homeland Security and] Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Government Reform and Oversight of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after a submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the congressional committees specified in paragraph (3) and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—

(1) be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense, except that, when the Coast Guard operates as a service of another department or agency of the Federal Government, a member of the Coast Guard shall be deemed to be an employee of such department or agency.

(f) (1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Government Reform and Oversight of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven–day period specified in such section, to the congressional committees specified in paragraph (1).

(g) The provisions of section 1385 of title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.

(h) (1) There is a General Counsel to the Inspector General of the Department of Defense, who shall be appointed by the Inspector General of the Department of Defense.

(2) (A) Notwithstanding section 140(b) of title 10, United States Code, the General Counsel is the chief legal Officer of the Office of the Inspector General.

(B) The Inspector General is the exclusive legal client of the General Counsel.

(C) The General Counsel shall perform such functions as the Inspector General may prescribe.

(D) The General Counsel shall serve at the discretion of the Inspector General.

(3) There is an Office of the General Counsel to the Inspector General of the Department of Defense. The Inspector General may appoint to the Office to serve as staff of the General Counsel such legal counsel as the Inspector General considers appropriate.

(i) (1) The Inspector General of the Department of Defense is authorized to require by subpoena the attendance and testimony of witnesses as necessary in the performance of functions assigned to the Inspector General by this Act, except that the Inspector General shall use procedures other than subpoenas to obtain attendance and testimony from Federal employees.

(2) A subpoena issued under this subsection, in the case of contumacy

or refusal to obey, shall be enforceable by order of any appropriate United States district court.

(3) The Inspector General shall notify the Attorney General 7 days before issuing any subpoena under this section.[11]

(a) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency.

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the performance of security activities relating to programs and operations of the Agency for International Development.

(c) In addition to the Officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(d) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the monitoring Overseas Direct Employment policy.

(e) The Inspector General of the Agency for International Development shall be in addition to the Officers provided for in section 624(a) of the Foreign Assistance Act of 1961 [22 USC 2384(a)].

(f) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering Part I of the Foreign Assistance Act of 1961, an employee of the Inter–American Foundation, and an employee of the African Development Foundation.[12]

(g), (h) Redesignated (e), (f).

Sec. 8B. Special Provisions Concerning the Nuclear Regulatory Commission

(a) The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, but shall not delegate such authority to any other Officer or employee of the Commission.

(b) Notwithstanding sections 6(a)(7) and (8), the Inspector General of the Nuclear Regulatory Commission is authorized to select, appoint, and employ such Officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and

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[11] Amended by P.L. 97–252, Title XI, § 1117(b), 96 Stat. 751 (1982); P.L. 100–504, Title I, § 110(b), 102 Stat. 2529 (1988); P.L. 104–106, Div. A, Title XV, § 1502(f)(6), 110 Stat. 510 (1996); P.L. 106–65, Div. A, Title X, Subtitle G, § 1067(17), 113 Stat. 775 (1999); P.L. 110–417 [Div. A,] Title IX, Subtitle A, § 907, 122 Stat. 4569 (2008); P.L. 111–84, Div. A, Title X, Subtitle D, § 1042, 123 Stat. 2455 (2009).

[12] Amended by P.L. 105–277, Div. G, Title XIV, § 1422(b)(2), 112 Stat. 2681–792 (1998); P.L. 106–113, Div. B, § 1000(a)(7) [Div. A, Title II, § 205], 113 Stat. 1536, 1501A–422 (1999).

regulations that govern such selections, appointments and employment, and the obtaining of such services, within the Nuclear Regulatory Commission.

Sec. 8C. Special Provisions Concerning the Federal Deposit Insurance Corporation

(a) DELEGATION.–The Chairperson of the Federal Deposit Insurance Corporation may delegate the authority specified in the second sentence of section 3(a) to the Vice Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, but may not delegate such authority to any other Officer or employee of the Corporation.

(b) PERSONNEL.–Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of the Federal Deposit Insurance Corporation may select, appoint, and employ such Officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the Federal Deposit Insurance Corporation.;

Sec. 8D. Special Provisions Concerning the Department of the Treasury

(a) (1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of the Treasury shall be under the authority, direction, and control of the Secretary of the Treasury with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information concerning—

(A) ongoing criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior;

(E) intelligence or counterintelligence matters; or

(F) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 3056A of title 18, United States Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note; Public Law 94–524).

(2) With respect to the information described under paragraph (1), the Secretary of the Treasury may prohibit the Inspector General of the Department of the Treasury from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent significant impairment to the national interests of the United States.

(3) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General of the Department of the Treasury in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General of the Department of the Treasury shall

transmit a copy of such notice to the Committees on [Homeland Security and] Governmental Affairs and Finance of the Senate and the Committees on Government Operations and Ways and Means of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary of the Treasury may not exercise any power under paragraph (1) or (2) with respect to the Treasury Inspector General for Tax Administration.

(b) (1) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Tax and Trade Bureau. The head of such Office shall promptly report to the Inspector General of the Department of the Treasury the significant activities being carried out by such Office.

(2) The Inspector General of the Department of the Treasury shall exercise all duties and responsibilities of an Inspector General for the Department of the Treasury other than the duties and responsibilities exercised by the Treasury Inspector General for Tax Administration.

(3) The Secretary of the Treasury shall establish procedures under which the Inspector General of the Department of the Treasury and the Treasury Inspector General for Tax Administration will—

(A) determine how audits and investigations are allocated in cases of overlapping jurisdiction; and

(B) provide for coordination, cooperation, and efficiency in the conduct of such audits and investigations.

(c) Notwithstanding subsection (b), the Inspector General of the Department of the Treasury may initiate, conduct and supervise such audits and investigations in the Department of the Treasury (including the bureau referred to in subsection (b)) as the Inspector General of the Department of the Treasury considers appropriate.

(d) If the Inspector General of the Department of the Treasury initiates an audit or investigation under subsection (c) concerning the bureau referred to in subsection (b), the Inspector General of the Department of the Treasury may provide the head of the Office of such bureau referred to in subsection (b) with written notice that the Inspector General of the Department of the Treasury has initiated such an audit or investigation. If the Inspector General of the Department of the Treasury issues a notice under the preceding sentence, no other audit or investigation shall be initiated into the matter under audit or investigation by the Inspector General of the Department of the Treasury and any other audit or investigation of such matter shall cease.

(e) (1) The Treasury Inspector General for Tax Administration shall have access to return information, as defined in section 6103(b) of the Internal Revenue Code of 1986, only in accordance with the provisions of section 6103 of such Code and this Act.

(2) The Internal Revenue Service shall maintain the same system of standardized records or accountings of all requests from the Treasury Inspector General for Tax Administration for inspection or disclosure of returns and return information (including the reasons for and dates of such requests), and of returns and return information inspected or disclosed pursuant to such requests, as described under section 6103(p)(3)(A) of the Internal Revenue Code of 1986. Such system of standardized records or accountings shall also be available for examination in the same manner as provided under section 6103(p)(3) of the Internal Revenue Code of 1986.

(3) The Treasury Inspector General for Tax Administration shall be subject to the same safeguards and conditions for receiving returns and return information as are described under section 6103(p)(4) of the Internal Revenue Code of 1986.

(f) An audit or investigation conducted by the Inspector General of the Department of the Treasury or the Treasury Inspector General for Tax Administration shall not affect a final decision of the Secretary of the Treasury or his delegate under section 6406 of the Internal Revenue Code of 1986.

(g) (1) Any report required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven–day period specified under such section, to the Committees on [Homeland Security and] Governmental Affairs and Finance of the Senate and the Committees on Government Reform and Oversight and Ways and Means of the House of Representatives.

(2) Any report made by the Treasury Inspector General for Tax Administration that is required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7–day period specified under such subsection, to the Internal Revenue Service Oversight Board and the Commissioner of Internal Revenue.

(h) The Treasury Inspector General for Tax Administration shall exercise all duties and responsibilities of an Inspector General of an establishment with respect to the Department of the Treasury and the Secretary of the Treasury on all matters relating to the Internal Revenue Service. The Treasury Inspector General for Tax Administration shall have sole authority under this Act to conduct an audit or investigation of the Internal Revenue Service Oversight Board and the Chief Counsel for the Internal Revenue Service.

(i) In addition to the requirements of the first sentence of section 3(a), the Treasury Inspector General for Tax Administration should have demonstrated ability to lead a large and complex organization.

(j) An individual appointed to the position of Treasury Inspector General for Tax Administration, the Assistant Inspector General for Auditing of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(1), the Assistant Inspector General for Investigations of the Office of the Treasury Inspector General for Tax Administration under section 3(d)(2), or any position of Deputy Inspector General of the Office of the Treasury Inspector General for Tax Administration may not be an employee of the Internal Revenue Service—

(1) during the 2–year period preceding the date of appointment to such position; or

(2) during the 5–year period following the date such individual ends service in such position.

(k) (1) In addition to the duties and responsibilities exercised by an inspector general of an establishment, the Treasury Inspector General for Tax Administration—

(A) shall have the duty to enforce criminal provisions under section 7608(b) of the Internal Revenue Code of 1986;

(B) in addition to the functions authorized under section 7608(b)(2) of such Code, may carry firearms;

(C) shall be responsible for protecting the Internal Revenue Service against external attempts to corrupt or threaten employees of the Internal Revenue Service, but shall not be responsible for the conducting of

background checks and the providing of protection to the Commissioner of Internal Revenue; and

(D) may designate any employee in the Office of the Treasury Inspector General for Tax Administration to enforce such laws and perform such functions referred to under subparagraphs (A), (B), and (C).

(2)(A) In performing a law enforcement function under paragraph (1), the Treasury Inspector General for Tax Administration shall report any reasonable grounds to believe there has been a violation of Federal criminal law to the Attorney General at an appropriate time as determined by the Treasury Inspector General for Tax Administration, notwithstanding section 4(d).

(B) In the administration of section 5(d) and subsection (g)(2) of this section, the Secretary of the Treasury may transmit the required report with respect to the Treasury Inspector General for Tax Administration at an appropriate time as determined by the Secretary, if the problem, abuse, or deficiency relates to—

(i) the performance of a law enforcement function under paragraph (1); and

(ii) sensitive information concerning matters under subsection (a)(1)(A) through (F).

(3) Nothing in this subsection shall be construed to affect the authority of any other person to carry out or enforce any provision specified in paragraph (1).

(l) (1) The Commissioner of Internal Revenue or the Internal Revenue Service Oversight Board may request, in writing, the Treasury Inspector General for Tax Administration to conduct an audit or investigation relating to the Internal Revenue Service. If the Treasury Inspector General for Tax Administration determines not to conduct such audit or investigation, the Inspector General shall timely provide a written explanation for such determination to the person making the request.

(2) (A) Any final report of an audit conducted by the Treasury Inspector General for Tax Administration shall be timely submitted by the Inspector General to the Commissioner of Internal Revenue and the Internal Revenue Service Oversight Board.

(B) The Treasury Inspector General for Tax Administration shall periodically submit to the Commissioner and Board a list of investigations for which a final report has been completed by the Inspector General and shall provide a copy of any such report upon request of the Commissioner or Board.

(C) This paragraph applies regardless of whether the applicable audit or investigation is requested under paragraph (1).[13]

Sec. 8E. Special Provisions Concerning the Department of Justice

(a) (1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Attorney General with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information concerning—

(A) ongoing civil or criminal investigations or proceedings;

(B) undercover operations;

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[13] Added and amended by P.L. 100–504, Title I, § 102(f), 102 Stat. 2518 (1988); P.L. 103–204, § 23(a)(3), 107 Stat. 2408 (1993); P.L. 105–206, Title I, Subtitle B, §§ 1103(b), (e)(1), (2), 112 Stat. 705, 709 (1998); P.L. 107–296, Title XI, Subtitle B, § 1112(a)(1), 116 Stat. 2276 (2002); P.L. 108–7, Div. L, § 104(c)(2), 117 Stat. 531 (2003); P.L. 109–177, Title VI, § 605(e)(3), 120 Stat. 255 (2006); P.L. 110–409, § 14(b), 122 Stat. 4316 (2008).

(C) the identity of confidential sources, including protected witnesses;
(D) intelligence or counterintelligence matters; or
(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Attorney General determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent the significant impairment to the national interests of the United States.

(3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on [Homeland Security and] Governmental Affairs and Judiciary of the Senate and the Committees on Government Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Justice—

(1) may initiate, conduct and supervise such audits and investigations in the Department of Justice as the Inspector General considers appropriate;

(2) except as specified in subsection (a) and paragraph (3), may investigate allegations of criminal wrongdoing or administrative misconduct by an employee of the Department of Justice, or may, in the discretion of the Inspector General, refer such allegations to the Office of Professional Responsibility or the internal affairs Office of the appropriate component of the Department of Justice;

(3) shall refer to the Counsel, Office of Professional Responsibility of the Department of Justice, allegations of misconduct involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice, except that no such referral shall be made if the attorney is employed in the Office of Professional Responsibility;

(4) may investigate allegations of criminal wrongdoing or administrative misconduct by a person who is the head of any agency or component of the Department of Justice; and

(5) shall forward the results of any investigation conducted under paragraph (4), along with any appropriate recommendation for disciplinary action, to the Attorney General.

(c) Any report required to be transmitted by the Attorney General to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven–day period specified under such section, to the Committees on the Judiciary and [Homeland Security and] Governmental Affairs of the Senate and the Committees on the Judiciary and Government Operations of the House of Representatives.

(d) The Attorney General shall ensure by regulation that any component of the Department of Justice receiving a non-frivolous allegation of criminal wrongdoing or administrative misconduct by an employee of the

Department of Justice, except with respect to allegations described in subsection (b)(3), shall report that information to the Inspector General.[14]

Sec. 8F. Special Provisions Concerning the Corporation for National and Community Service

(a) Notwithstanding the provisions of paragraphs (7) and (8) of section 6(a), it is within the exclusive jurisdiction of the Inspector General of the Corporation for National and Community Service to—

(1) appoint and determine the compensation of such Officers and employees in accordance with section 195(b) of the National and Community Service Act of 1990; and

(2) procure the temporary and intermittent services of and compensate such experts and consultants, in accordance with section 3109(b) of title 5, United States Code, as may be necessary to carry out the functions, powers, and duties of the Inspector General.

(b) No later than the date on which the Chief Executive Officer of the Corporation for National and Community Service transmits any report to the Congress under subsection (a) or (b) of section 5, the Chief Executive Officer shall transmit such report to the Board of Directors of such Corporation.

(c) No later than the date on which the Chief Executive Officer of the Corporation for National and Community Service transmits a report described under section 5(b) to the Board of Directors as provided under subsection (b) of this section, the Chief Executive Officer shall also transmit any audit report which is described in the statement required under section 5(b)(4) to the Board of Directors. All such audit reports shall be placed on the agenda for review at the next scheduled meeting of the Board of Directors following such transmittal. The Chief Executive Officer of the Corporation shall be present at such meeting to provide any information relating to such audit reports.

(d) No later than the date on which the Inspector General of the Corporation for National and Community Service reports a problem, abuse, or deficiency under section 5(d) to the Chief Executive Officer of the Corporation, the Chief Executive Officer shall report such problem, abuse, or deficiency to the Board of Directors.[15]

Sec. 8G. Requirements for Federal Entities and Designated Federal Entities

(a) Notwithstanding section 12 of this Act, as used in this section—

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

(A) an establishment (as defined under section 12(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

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[14] Amended by 1978, P.L. 95–452, § 8E [8D], 92 Stat. 1101, (1978), as added by P.L. 100–504, Title I, § 102(f), 102 Stat. 2520 (1988); P.L. 103–204, § 23(a)(3), 107 Stat. 2408 (1993); P.L. 107–273, Div. A, Title III, § 308, 116 Stat. 1784 (2002).

[15] Amended by P.L. 95–452, § 8F [8E], 92 Stat. 1101, (1978), as added by P.L. 103–82, Title II, § 202(g)(1), 107 Stat. 889 (1993); P.L. 103–204, §§ 23(a)(3), (4), 107 Stat. 2408 (1993); P.L. 111–13, Title IV, § 4101, 123 Stat. 1597 (2009).

(E) the General Accounting Office [Government Accountability Office]; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Denali Commission, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Election Commission, the Election Assistance Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service;

(3) the term "head of the Federal entity" means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking Officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term "head of the designated Federal entity" means the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission, any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking Officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that—

(A) with respect to the National Science Foundation, such term means the National Science Board;

(B) with respect to the United States Postal Service, such term means the Governors (within the meaning of section 102(3) of title 39, United States Code);

(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);

(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;

(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);

(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;

(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and

(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;[16]

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section [enacted Oct. 18, 1988], there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such Office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such Office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Each Inspector General shall be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(d) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other Officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

(e) (1) In the case of a designated Federal entity for which a board or commission is the head of the designated Federal entity, a removal under this subsection may only be made upon the written concurrence of a 2/3 majority of the board or commission.

(2)If an Inspector General is removed from Office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.[17]

(f) (1) For purposes of carrying out subsection (c) with respect to the United States Postal Service, the appointment provisions of section 202(e) of title 39, United States Code, shall be applied.

(2) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the United States Postal Service (hereinafter in this subsection referred to as the "Inspector General") shall have oversight responsibility for all activities of the Postal Inspection Service, including any internal investigation performed by the Postal Inspection Service. The Chief Postal Inspector shall promptly report the significant activities being carried out by the Postal Inspection Service to such Inspector General.

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[16] Amended by P.L. 111–203, § 989B, 124 Stat. 1945 (2010).

[17] Amended by P.L. 111–203, § 989D, 124 Stat. 1946 (2010).

(3) (A) (i) Notwithstanding subsection (d), the Inspector General shall be under the authority, direction, and control of the Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information concerning—

(I) ongoing civil or criminal investigations or proceedings;

(II) undercover operations;

(III) the identity of confidential sources, including protected witnesses;

(IV) intelligence or counterintelligence matters; or

(V) other matters the disclosure of which would constitute a serious threat to national security.

(ii) With respect to the information described under clause (i), the Governors may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Governors determine that such prohibition is necessary to prevent the disclosure of any information described under clause (i) or to prevent the significant impairment to the national interests of the United States.

(iii) If the Governors exercise any power under clause (i) or (ii), the Governors shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committee on [Homeland Security and] Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(B) In carrying out the duties and responsibilities specified in this Act, the Inspector General—

(i) may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate; and

(ii) shall give particular regard to the activities of the Postal Inspection Service with a view toward avoiding duplication and insuring effective coordination and cooperation.

(C) Any report required to be transmitted by the Governors to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven–day period specified under such section, to the Committee on [Homeland Security and] Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

(4) Nothing in this Act shall restrict, eliminate, or otherwise adversely affect any of the rights, privileges, or benefits of either employees of the United States Postal Service, or labor organizations representing employees of the United States Postal Service, under chapter 12 of title 39, United States Code [39 USCS §§ 1201 et seq.], the National Labor Relations Act [29 USCS §§ 151 et seq.], any handbook or manual affecting employee labor relations with the United States Postal Service, or any collective bargaining agreement.

(5) As used in this subsection, the term "Governors" has the meaning given such term by section 102(3) of title 39, United States Code.

(6) There are authorized to be appropriated, out of the Postal Service Fund, such sums as may be necessary for the Office of Inspector General of the United States Postal Service.

(g) (1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) "designated Federal entity" for "establishment"; and

(B) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such Officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(4) Each Inspector General shall—

(A) in accordance with applicable laws and regulations governing appointments within the designated Federal entity, appoint a Counsel to the Inspector General who shall report to the Inspector General;

(B) obtain the services of a counsel appointed by and directly reporting to another Inspector General on a reimbursable basis; or

(C) obtain the services of appropriate staff of the Council of the Inspectors General on Integrity and Efficiency on a reimbursable basis.

(h) (1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and designated Federal entities and if the designated Federal entity is not a board or commission, include the head of each such entity (as defined under subsection (a) of this section).[18]

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an Office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non–Federal auditor during the reporting period and a summary of any particularly significant findings; and

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[18] Amended by P.L. 111–203, § 989B, 124 Stat. 1945(2010).

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.[19]

Sec. 8H. Additional Provisions with Respect to Inspectors General of the Intelligence Community

(a) (1) (A) An employee of the Defense Intelligence Agency, the National Geospatial–Intelligence Agency, the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

(B) An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

(C) Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act or section 17 of the Central Intelligence Agency Act of 1949.

(2) If a designee of an Inspector General under this section receives a complaint or information of an employee with respect to an urgent concern, that designee shall report the complaint or information to the Inspector General within 7 calendar days of receipt.

(b) Not later than the end of the 14–calendar day period beginning on the date of receipt of an employee complaint or information under subsection (a), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the head of the establishment notice of that determination, together with the complaint or information.

(c) Upon receipt of a transmittal from the Inspector General under subsection (b), the head of the establishment shall, within 7 calendar days

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[19] Amended by P.L. 95–452, § 8G [8F] [8E], 92 Stat. 1101, (1978), as added by P.L. 100–504, Title I, § 104(a), 102 Stat. 2522 (1988); P.L. 101–73, Title VII, Subtitle A, § 702(c), 103 Stat. 415 (1989); P.L. 103–82, Title II, §§ 202(g)(1), (2)(A), 107 Stat. 889 (1993); P.L. 103–204, §§ 23(a)(3), (4), 107 Stat. 2408 (1993); P.L. 104–88, Title III, Subtitle B, § 319, 109 Stat. 949 (1995); P.L. 104–208, Div. A, Title I, § 101(f) [Title VI, § 662(b)], 110 Stat. 3009–379 (1996); P.L. 105–134, Title IV, § 409(a)(1), 111 Stat. 2586 (1997); P.L. 105–277, Div. C, Title III, § 306(h), Oct. 21, 1998, as added P.L. 106–31, Title I, Ch. 1, § 105(a)(5), 113 Stat. 63 (1999); P.L. 106–422, § 1(b)(1), 114 Stat. 1872 (2000); P.L. 107–252, Title VIII, Subtitle B, § 812(a), 116 Stat. 1727 (2002); P.L. 109–435, Title VI, §§ 603(b), 605(a), 120 Stat. 3240, 3242 (2006); P.L. 110–409, §§ 2, 3(b), 6(b), 7(d)(1), 122 Stat. 4302, 4305, 4313 (2008). Also, note the following prospective amendment to subsection (a)(2), effective at the beginning of the first fiscal year after the fiscal year for which Amtrak receives no Federal subsidy. P.L. 105–134, Title IV, § 409(a), 111 Stat. 2586, (1997), provides the following:

(1) In general. § 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is Amended by striking 'Amtrak,'.

(2) Effective date. The amendment made by paragraph (1) shall take effect at the beginning of the first fiscal year after a fiscal year for which Amtrak receives no Federal subsidy.”.

of such receipt, forward such transmittal to the intelligence committees, together with any comments the head of the establishment considers appropriate.

(d) (1) If the Inspector General does not find credible under subsection (b) a complaint or information submitted to the Inspector General under subsection (a), or does not transmit the complaint or information to the head of the establishment in accurate form under subsection (b), the employee (subject to paragraph (2)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

(2) The employee may contact the intelligence committees directly as described in paragraph (1) only if the employee—

(A) before making such a contact, furnishes to the head of the establishment, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

(B) obtains and follows from the head of the establishment, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(3) A member or employee of one of the intelligence committees who receives a complaint or information under paragraph (1) does so in that member or employee's official capacity as a member or employee of that committee.

(e) The Inspector General shall notify an employee who reports a complaint or information under this section of each action taken under this section with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

(f) An action taken by the head of an establishment or an Inspector General under subsections (a) through (e) shall not be subject to judicial review.

(g) (1) The Inspector General of the Defense Intelligence Agency, the National Geospatial–Intelligence Agency, the National Reconnaissance Office, and the National Security Agency shall each submit to the congressional intelligence committees each year a report that sets forth the following:

(A) The personnel and funds requested by such Inspector General for the fiscal year beginning in such year for the activities of the Office of such Inspector General in such fiscal year.

(B) The plan of such Inspector General for such activities, including the programs and activities scheduled for review by the Office of such Inspector General during such fiscal year.

(C) An assessment of the current ability of such Inspector General to hire and retain qualified personnel for the Office of such Inspector General.

(D) Any matters that such Inspector General considers appropriate regarding the independence and effectiveness of the Office of such Inspector General.

(2) The submittal date for a report under paragraph (1) each year shall be the date provided in section 507 of the National Security Act of 1947 [50 USCS § 415b].

(3) In this subsection, the term “congressional intelligence committees” shall have the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(h) In this section:

(1) The term “urgent concern” means any of the following:

(A) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(B) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(C) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under section 7(c) [5 USCS Appx. § 7(c)] in response to an employee's reporting an urgent concern in accordance with this section.

(2) The term "intelligence committees" means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.[20]

Sec. 8I. Special Provisions Concerning the Department of Homeland Security

(a) (1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of Homeland Security shall be under the authority, direction, and control of the Secretary of Homeland Security with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(A) intelligence, counterintelligence, or counterterrorism matters;

(B) ongoing criminal investigations or proceedings;

(C) undercover operations;

(D) the identity of confidential sources, including protected witnesses;

(E) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 3056A of title 18 of such Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note); or

(F) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1), the Secretary of Homeland Security may prohibit the Inspector General of the Department of Homeland Security from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in paragraph (1), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(3) If the Secretary of Homeland Security exercises any power under paragraph (1) or (2), the Secretary shall notify the Inspector General of the Department of Homeland Security in writing within seven days stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit to the President of the

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[20] Amended by P.L. 95–452, § 8H, 92 Stat. 1101, (1978), as added by P.L. 105–272, Title VII, § 702(b)(1), 112 Stat. 2415, (1998); P.L. 107–108, Title III, § 309(b), 115 Stat. 1400, (2001); P.L. 107–306, Title VIII, Subtitle C, § 825, 116 Stat. 2429, (2002); P.L. 110-417,Div. A, Title IX, Subtitle D, § 931(b)(2), 122 Stat. 4575 (2008).

Senate, the Speaker of the House of Representatives, and appropriate committees and subcommittees of Congress the following:

(A) A copy of such notice.

(B) A written response to such notice that includes a statement regarding whether the Inspector General agrees or disagrees with such exercise, and the reasons for any disagreement.

(b) The exercise of authority by the Secretary described in paragraph (2) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(c) Subject to the conditions established in subsections (a) and (b) above, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security may initiate, conduct, and supervise such audits and investigations in the Department of Homeland Security as the Inspector General considers appropriate.

(d) Any report required to be transmitted by the Secretary of Homeland Security to the appropriate committees or subcommittees of Congress under section 5(d) shall be transmitted, within the seven–day period specified under such section, to the President of the Senate, the Speaker of the House of Representatives, and appropriate committees and subcommittees of Congress.

(e) Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service, the Office of Inspections of the United States Secret Service, the Bureau of Border Security, and the Bureau of Citizenship and Immigration Services. The head of each such Office or bureau shall promptly report to the Inspector General the significant activities being carried out by such Office or bureau.

(f) (1) The Inspector General of the Department of Homeland Security shall designate a senior official within the Office of Inspector General, who shall be a career member of the civil service at the equivalent to the GS–15 level or a career member of the Senior Executive Service, to perform the functions described in paragraph (2).

(2) The senior official designated under paragraph (1) shall—

(A) coordinate the activities of the Office of Inspector General with respect to investigations of abuses of civil rights or civil liberties;

(B) receive and review complaints and information from any source alleging abuses of civil rights and civil liberties by employees or officials of the Department and employees or officials of independent contractors or grantees of the Department;

(C) initiate investigations of alleged abuses of civil rights or civil liberties by employees or officials of the Department and employees or officials of independent contractors or grantees of the Department;

(D) ensure that personnel within the Office of Inspector General receive sufficient training to conduct effective civil rights and civil liberties investigations;

(E) consult with the Officer for Civil Rights and Civil Liberties regarding—

(i) alleged abuses of civil rights or civil liberties; and

(ii) any policy recommendations regarding civil rights and civil liberties that may be founded upon an investigation by the Office of Inspector General;

(F) provide the Officer for Civil Rights and Civil Liberties with information regarding the outcome of investigations of alleged abuses of civil rights and civil liberties;

(G) refer civil rights and civil liberties matters that the Inspector General decides not to investigate to the Officer for Civil Rights and Civil Liberties;

(H) ensure that the Office of the Inspector General publicizes and provides convenient public access to information regarding—

(i) the procedure to file complaints or comments concerning civil rights and civil liberties matters; and

(ii) the status of corrective actions taken by the Department in response to Office of the Inspector General reports; and

(I) inform the Officer for Civil Rights and Civil Liberties of any weaknesses, problems, and deficiencies within the Department relating to civil rights or civil liberties.[21]

Sec. 8J. Rule of Construction of Special Provisions

The special provisions under section 8, 8A, 8B, 8C, 8D, 8E, 8F, or 8H of this Act relate only to the establishment named in such section and no inference shall be drawn from the presence or absence of a provision in any such section with respect to an establishment not named in such section or with respect to a designated Federal entity as defined under section 8G(a).[22]

Sec. 8K. Authority to Establish Inspector General of the Office of the Director of National Intelligence

If the Director of National Intelligence determines that an Office of Inspector General would be beneficial to improving the operations and effectiveness of the Office of the Director of National Intelligence, the Director of National Intelligence is authorized to establish, with any of the duties, responsibilities, and authorities set forth in this Act, an Office of Inspector General.[23]

Sec. 8L. Information on Websites of Offices of Inspectors General

(a) DIRECT LINKS TO INSPECTORS GENERAL OFFICES.—

(1) IN GENERAL.—Each agency shall establish and maintain on the homepage of the website of that agency, a direct link to the website of the Office of the Inspector General of that agency.

(2) ACCESSIBILITY.—The direct link under paragraph (1) shall be obvious and facilitate accessibility to the website of the Office of the Inspector General.

(b) REQUIREMENTS FOR INSPECTORS GENERAL WEBSITES.—

(1) POSTING OF REPORTS AND AUDITS.—The Inspector General of each agency shall—

(A) not later than 3 days after any report or audit (or portion of any report or audit) is made publicly available, post that report or

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[21] A prior § 8I was redesignated § 8J by P.L. 108–7, Div. L, § 104(b)(2), 117 Stat. 529, (2003). 92 Stat. 1101, (1978), P.L. 95–452, § 8I, 92 Stat. 1101, (1978), as added by P.L. 108–7, Div L, § 104(b)(3), 117 Stat. 529, (2003); P.L. 108–458, Title VIII, Subtitle C, § 8304, 118 Stat. 3868 (2004); P.L. 109–177, Title VI, § 605(e)(4), 120 Stat. 255 (2006).

[22] A former § 8J in P.L. 95–452 was repealed by P.L. 108–7, Div. L, § 104(b)(1), 117 Stat. 529 (2003). It related to provisions concerning the Department of Homeland Security. Amended by P.L. 95–452, § 8J [8I] [8H] [8G] [8F], 92 Stat. 1101, (1978), as added by P.L. 100–504, Title I, § 105, 102 Stat. 2525, (1988); P.L. 103–82, Title II, § 202(g)(1), (5)(B), 107 Stat. 889, 890; Sept. 30, 1996, P.L. 104–208, Div A, Title I, § 101(f) [Title VI, § 662(b)(3)], 110 Stat. 3009–380 (1993); P.L. 105–206, Title I, Subtitle B, § 1103(e)(3), 112 Stat. 709 (1998); P.L. 105–272, Title VII, §§ 702(b)(1), (2), 112 Stat. 2415, 2417 (1998); P.L. 108–7, Div. L, § 104(b)(2), 117 Stat. 529 (2003).

[23] Amended by P.L. 108–458, § 1078, 118 Stat. 3636, (2004).

audit (or portion of that report or audit) on the website of the Office of Inspector General; and

(B) ensure that any posted report or audit (or portion of that report or audit) described under subparagraph (A)—

(i) is easily accessible from a direct link on the homepage of the website of the Office of the Inspector General;

(ii) includes a summary of the findings of the Inspector General; and

(iii) is in a format that—

(I) is searchable and downloadable; and

(II) facilitates printing by individuals of the public accessing the website.

(2) REPORTING OF FRAUD, WASTE, AND ABUSE.—

(A) IN GENERAL.—The Inspector General of each agency shall establish and maintain a direct link on the homepage of the website of the Office of the Inspector General for individuals to report fraud, waste, and abuse. Individuals reporting fraud, waste, or abuse using the direct link established under this paragraph shall not be required to provide personally identifying information relating to that individual.

(B) ANONYMITY.—The Inspector General of each agency shall not disclose the identity of any individual making a report under this paragraph without the consent of the individual unless the Inspector General determines that such a disclosure is unavoidable during the course of the investigation.[24]

Sec. 9. Transfer of Functions

(a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the Office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that department referred to as the "Defense Audit Service" and the "Office of Inspector General, Defense Logistics Agency", and that portion of the Office of that department referred to as the "Defense Investigative Service" which has responsibility for the investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or of the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act;

(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94–505;

(G) of the Department of Housing and Urban Development, the Office of that department referred to as the "Office of Inspector General";

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[24] Amended by P.L. 110–409, § 13(a), 122 Stat. 4302 (2008).

(H) of the Department of the Interior, the Office of that department referred to as the "Office of Audit and Investigation";

(I) of the Department of Justice, the offices of that Department referred to as (i) the "Audit Staff, Justice Management Division", (ii) the "Policy and Procedures Branch, Office of the Comptroller, Immigration and Naturalization Service", the "Office of Professional Responsibility, Immigration and Naturalization Service", and the "Office of Program Inspections, Immigration and Naturalization Service", (iii) the "Office of Internal Inspection, United States Marshals Service", (iv) the "Financial Audit Section, Office of Financial Management, Bureau of Prisons" and the "Office of Inspections, Bureau of Prisons", and (v) from the Drug Enforcement Administration, that portion of the "Office of Inspections" which is engaged in internal audit activities, and that portion of the "Office of Planning and Evaluation" which is engaged in program review activities;

(J) of the Department of Labor, the Office of that department referred to as the "Office of Special Investigations";

(K) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(L) (i) of the Department of the Treasury, the Office of that department referred to as the "Office of Inspector General", and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the "Office of Internal Affairs, Tax and Trade Bureau", the "Office of Internal Affairs, United States Customs Service", and the "Office of Inspections, United States Secret Service" which is engaged in internal audit activities; and

(ii) of the Treasury Inspector General for Tax Administration, effective 180 days after the date of the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998 [enacted July 22, 1998], the Office of Chief Inspector of the Internal Revenue Service;

(M) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(N) of the Federal Emergency Management Agency, the Office of that agency referred to as the "Office of Inspector General";

(O) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(P) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(Q) of the Nuclear Regulatory Commission, the Office of that commission referred to as the "Office of Inspector and Auditor";

(R) of the Office of Personnel Management, the offices of that agency referred to as the "Office of Inspector General", the "Insurance Audits Division, Retirement and Insurance Group", and the "Analysis and Evaluation Division, Administration Group";

(S) of the Railroad Retirement Board, the Office of Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);

(T) of the Small Business Administration, the Office of that agency referred to as the "Office of Audits and Investigations";

(U) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; [and]

(V) of the Corporation for National and Community Service, the Office of Inspector General of ACTION; [and]

(W) of the Social Security Administration, the functions of the Inspector General of the Department of Health and Human Services which are transferred to the Social Security Administration by the Social Security Independence and Program Improvements Act of 1994 (other than functions performed pursuant to section 105(a)(2) of such Act), except that such transfers shall be made in accordance with the provisions of such Act and shall not be subject to subsections (b) through (d) of this section; and

(2) to the Office of the Inspector General, such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act, except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorization, allocations, and other funds employed, held, used, arising from, available or to be made available, of any Office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any Office or agency are transferred pursuant to this subsection, such Office or agency shall lapse. Any person who, on the effective date of this Act [effective Oct. 1, 1978], held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.[25]

Sec. 10. Conforming and Technical Amendments

[Section amended sections 5315 and 5316 of Title 5, Government Organization and Employees, and section 3522 of Title 42, The Public Health and Welfare, which amendments have been executed to text.]

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[25] Amended by P.L. 95–452, § 9, 92 Stat. 1107 (1978); P.L. 96–88, Title V, § 508(n)(2), 93 Stat. 694 (1979); P.L. 97–252, Title XI, §§ 1117(a)(2), (3), 96 Stat. 750 (1982); P.L. 100–504, Title I, § 102(d), 102 Stat. 2516 (1988); P.L. 103–82, Title II, § 202(g)(3)(A), 107 Stat. 890 (1993); P.L. 103–296, Title I, § 108(l)(1), 108 Stat. 1488 (1994); P.L. 105-206, Title I, Subtitle B, § 1103(c)(1), 112 Stat. 708 (1998); P.L. 107–189, § 22(c), 116 Stat. 708 (2002); P.L. 107–296, Title XI, Subtitle B, § 1112(a)(2), 116 Stat. 2276 (2002).

5 USC app. 11.

Sec. 11. Establishment of the Council of the Inspectors General on Integrity and Efficiency

(a) ESTABLISHMENT AND MISSION.—

(1) ESTABLISHMENT.—There is established as an independent entity within the executive branch the Council of the Inspectors General on Integrity and Efficiency (in this section referred to as the 'Council').

(2) MISSION.—The mission of the Council shall be to—

(A) address integrity, economy, and effectiveness issues that transcend individual Government agencies; and

(B) increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well–trained and highly skilled workforce in the offices of the Inspectors General.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of the following members:

(A) All Inspectors General whose offices are established under—

(i) section 2; or

(ii) section 8G.

(B) The Inspectors General of the Office of the Director of National Intelligence and the Central Intelligence Agency.

(C) The Controller of the Office of Federal Financial Management.

(D) A senior level official of the Federal Bureau of Investigation designated by the Director of the Federal Bureau of Investigation.

(E) The Director of the Office of Government Ethics.

(F) The Special Counsel of the Office of Special Counsel.

(G) The Deputy Director of the Office of Personnel Management.

(H) The Deputy Director for Management of the Office of Management and Budget.

(I) The Inspectors General of the Library of Congress, Capitol Police, Government Printing Office, Government Accountability Office, and the Architect of the Capitol.

(2) CHAIRPERSON AND EXECUTIVE CHAIRPERSON.—

(A) EXECUTIVE CHAIRPERSON.—The Deputy Director for Management of the Office of Management and Budget shall be the Executive Chairperson of the Council.

(B) CHAIRPERSON.—The Council shall elect 1 of the Inspectors General referred to in paragraph (1)(A) or (B) to act as Chairperson of the Council. The term of Office of the Chairperson shall be 2 years.

(3) FUNCTIONS OF CHAIRPERSON AND EXECUTIVE CHAIRPERSON.—

(A) EXECUTIVE CHAIRPERSON—

The Executive Chairperson shall—

(i) preside over meetings of the Council;

Reports.

(ii) provide to the heads of agencies and entities represented on the Council summary reports of the activities of the Council; and

(iii) provide to the Council such information relating to the agencies and entities represented on the Council as assists the Council in performing its functions.

(B) CHAIRPERSON.—The Chairperson shall—

(i) convene meetings of the Council—

(I) at least 6 times each year;

(II) monthly to the extent possible; and

(III) more frequently at the discretion of the Chairperson;

(ii) carry out the functions and duties of the Council under subsection (c);

Appointments.

(iii) appoint a Vice Chairperson to assist in carrying out the functions of the Council and act in the absence of the Chairperson, from a category of Inspectors General described in subparagraph (A)(i), (A)(ii), or (B) of paragraph (1), other than the category from which the Chairperson was elected;

(iv) make such payments from funds otherwise available to the Council as may be necessary to carry out the functions of the Council;

(v) select, appoint, and employ personnel as needed to carry out the functions of the Council subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates;

Contracts.

(vi) to the extent and in such amounts as may be provided in advance by appropriations Acts, made available from the revolving fund established under subsection (c)(3)(B), or as otherwise provided by law, enter into contracts and other arrangements with public agencies and private persons to carry out the functions and duties of the Council;

(vii) establish, in consultation with the members of the Council, such committees as determined by the Chairperson to be necessary and appropriate for the efficient conduct of Council functions; and

Reports.
Deadlines.

(viii) prepare and transmit a report annually on behalf of the Council to the President on the activities of the Council.

(c) FUNCTIONS AND DUTIES OF COUNCIL.—

(1) IN GENERAL.—The Council shall—

(A) continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations with respect to fraud, waste, and abuse;

Plans.

(B) develop plans for coordinated, Government wide activities that address these problems and promote economy and efficiency in Federal programs and operations, including interagency and interentity audit, investigation, inspection, and evaluation programs and projects to deal efficiently and effectively with those problems concerning fraud and waste that exceed the capability or jurisdiction of an individual agency or entity;

(C) develop policies that will aid in the maintenance of a corps of well–trained and highly skilled Office of Inspector General personnel;

Web site.

(D) maintain an Internet website and other electronic systems for the benefit of all Inspectors General, as the Council determines are necessary or desirable;

(E) maintain 1 or more academies as the Council considers desirable for the professional training of auditors, investigators, inspectors, evaluators, and other personnel of the various offices of Inspector General;

Recommendations.

(F) submit recommendations of individuals to the appropriate appointing authority for any appointment to an Office of Inspector General described under subsection (b)(1)(A) or (B);

Reports.

(G) make such reports to Congress as the Chairperson determines are necessary or appropriate; and

(H) perform other duties within the authority and jurisdiction of the Council, as appropriate.

(2) ADHERENCE AND PARTICIPATION BY MEMBERS.—To the extent permitted under law, and to the extent not inconsistent with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions, each member of the Council, as appropriate, shall—

(A) adhere to professional standards developed by the Council; and

(B) participate in the plans, programs, and projects of the Council, except that in the case of a member described under subsection (b)(1)(I) , the member shall participate only to the extent requested by the member and approved by the Executive Chairperson and Chairperson.

(3) ADDITIONAL ADMINISTRATIVE AUTHORITIES.—

(A) INTERAGENCY FUNDING.—Notwithstanding section 1532 of title 31, United States Code, or any other provision of law prohibiting the interagency funding of activities described under subclause (I), (II), or (III) of clause (i), in the performance of the responsibilities, authorities, and duties of the Council—

(i) the Executive Chairperson may authorize the use of interagency funding or—

(I) Governmentwide training of employees of the offices of the Inspectors General;

(II) the functions of the Integrity Committee of the Council; and

(III) any other authorized purpose determined by the Council; and

(ii) upon the authorization of the Executive Chairperson, any department, agency, or entity of the executive branch which has a member on the Council shall fund or participate in the funding of such activities.

(B) REVOLVING FUND.—

(i) IN GENERAL.—The Council may—

(I) establish in the Treasury of the United States a revolving fund to be called the Inspectors General Council Fund; or

(II) enter into an arrangement with a department or agency to use an existing revolving fund.

(ii) AMOUNTS IN REVOLVING FUND.—

(I) IN GENERAL.—Amounts transferred to the Council under this subsection shall be deposited in the revolving fund described under clause (i)(I) or (II).

(II) TRAINING.—Any remaining unexpended balances appropriated for or otherwise available to the

Inspectors General Criminal Investigator Academy and the Inspectors General Auditor Training Institute shall be transferred to the revolving fund described under clause (i)(I) or (II).

(iii) USE OF REVOLVING FUND.—

(I) IN GENERAL.—Except as provided under subclause (II), amounts in the revolving fund described under clause (i)(I) or (II) may be used to carry out the functions and duties of the Council under this subsection.

(II) TRAINING.—Amounts transferred into the revolving fund described under clause (i)(I) or (II) may be used for the purpose of maintaining any training academy as determined by the Council.

(iv) AVAILABILITY OF FUNDS.—Amounts in the revolving fund described under clause (i)(I) or (II) shall remain available to the Council without fiscal year limitation.

(C) SUPERSEDING PROVISIONS.—No provision of law enacted after the date of enactment of this subsection shall be construed to limit or supersede any authority under subparagraph (A) or (B), unless such provision makes specific reference to the authority in that paragraph.

(4) EXISTING AUTHORITIES AND RESPONSIBILITIES.—The establishment and operation of the Council shall not affect—

(A) the role of the Department of Justice in law enforcement and litigation;

(B) the authority or responsibilities of any Government agency or entity; and

(C) the authority or responsibilities of individual members of the Council.

(d) INTEGRITY COMMITTEE.—

(1) ESTABLISHMENT.—The Council shall have an Integrity Committee, which shall receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General and staff members of the various offices of Inspector General described under paragraph (4)(C).

(2) MEMBERSHIP.—The Integrity Committee shall consist of the following members:

(A) The official of the Federal Bureau of Investigation serving on the Council, who shall serve as Chairperson of the Integrity Committee, and maintain the records of the Committee.

(B) Four Inspectors General described in subparagraph (A) or (B) of subsection (b)(1) appointed by the Chairperson of the Council, representing both establishments and designated Federal entities (as that term is defined in section 8G(a)).

(C) The Special Counsel of the Office of Special Counsel.

(D) The Director of the Office of Government Ethics.

(3) LEGAL ADVISOR.—The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or his designee, shall serve as a legal advisor to the Integrity Committee.

(4) REFERRAL OF ALLEGATIONS.—

(A) REQUIREMENT.—An Inspector General shall refer to the Integrity Committee any allegation of wrongdoing against a staff member of the Office of that Inspector General, if—

(i) review of the substance of the allegation cannot be assigned to an agency of the executive branch with appropriate jurisdiction over the matter; and

(ii) the Inspector General determines that—

(I) an objective internal investigation of the allegation is not feasible; or

(II) an internal investigation of the allegation may appear not to be objective.

(B) DEFINITION.—In this paragraph the term 'staff member' means any employee of an Office of Inspector General who—

(i) reports directly to an Inspector General; or

(ii) is designated by an Inspector General under subparagraph (C).

Deadline.

(C) DESIGNATION OF STAFF MEMBERS.—Each Inspector General shall annually submit to the Chairperson of the Integrity Committee a designation of positions whose holders are staff members for purposes of subparagraph (B).

(5) REVIEW OF ALLEGATIONS.—The Integrity Committee shall—

(A) review all allegations of wrongdoing the Integrity Committee receives against an Inspector General, or against a staff member of an Office of Inspector General described under paragraph (4)(C);

(B) refer any allegation of wrongdoing to the agency of the executive branch with appropriate jurisdiction over the matter; and

(C) refer to the Chairperson of the Integrity Committee any allegation of wrongdoing determined by the Integrity Committee under subparagraph (A) to be potentially meritorious that cannot be referred to an agency under subparagraph (B).

(6) AUTHORITY TO INVESTIGATE ALLEGATIONS.—

(A) REQUIREMENT.—The Chairperson of the Integrity Committee shall cause a thorough and timely investigation of each allegation referred under paragraph (5)(C) to be conducted in accordance with this paragraph.

(B) RESOURCES.—At the request of the Chairperson of the Integrity Committee, the head of each agency or entity represented on the Council—

(i) may provide resources necessary to the Integrity Committee; and

(ii) may detail employees from that agency or entity to the Integrity Committee, subject to the control and direction of the Chairperson, to conduct an investigation under this subsection.

(7) PROCEDURES FOR INVESTIGATIONS.—

(A) STANDARDS APPLICABLE.—Investigations initiated under this subsection shall be conducted in accordance with the most current Quality Standards for Investigations issued by the Council or by its predecessors (the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency).

(B) ADDITIONAL POLICIES AND PROCEDURES.—

(i) ESTABLISHMENT.—The Integrity Committee, in conjunction with the Chairperson of the Council, shall establish additional policies and procedures necessary to ensure fairness and consistency in—

(I) determining whether to initiate an investigation;

(II) conducting investigations;

(III) reporting the results of an investigation; and

(IV) providing the person who is the subject of an investigation with an opportunity to respond to any Integrity Committee report.

(ii) SUBMISSION TO CONGRESS.—The Council shall submit a copy of the policies and procedures established under clause (i) to the congressional committees of jurisdiction.

(C) REPORTS.—

(i) POTENTIALLY MERITORIOUS ALLEGATIONS.—For allegations described under paragraph (5)(C), the Chairperson of the Integrity Committee shall make a report containing the results of the investigation of the Chairperson and shall provide such report to members of the Integrity Committee.

(ii) ALLEGATIONS OF WRONGDOING.—For allegations referred to an agency under paragraph (5)(B), the head of that agency shall make a report containing the results of the investigation and shall provide such report to members of the Integrity Committee.

(8) ASSESSMENT AND FINAL DISPOSITION.—

(A) IN GENERAL.—With respect to any report received under paragraph (7)(C), the Integrity Committee shall—

(i) assess the report;

Deadline.

(ii) forward the report, with the recommendations of the Integrity Committee, including those on disciplinary action, within 30 days (to the maximum extent practicable) after the completion of the investigation, to the Executive Chairperson of the Council and to the President (in the case of a report relating to an Inspector General of an establishment or any employee of that Inspector General) or the head of a designated Federal entity (in the case of a report relating to an Inspector General of such an entity or any employee of that Inspector General) for resolution; and

Executive summary. Deadline.

(iii) submit to the Committee on Government Oversight and Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and other congressional committees of jurisdiction an executive summary of such report and recommendations within 30 days after the submission of such report to the Executive Chairperson under clause (ii).

Reports.

(B) DISPOSITION.—The Executive Chairperson of the Council shall report to the Integrity Committee the final disposition of the matter, including what action was taken by the President or agency head.

(9) ANNUAL REPORT.—The Council shall submit to Congress and the President by December 31 of each year a report on the activities of the Integrity Committee during the preceding fiscal year, which shall include the following:

(A) The number of allegations received.

(B) The number of allegations referred to other agencies, including the number of allegations referred for criminal investigation.

(C) The number of allegations referred to the Chairperson of the Integrity Committee for investigation.

(D) The number of allegations closed without referral.

(E) The date each allegation was received and the date each allegation was finally disposed of.

(F) In the case of allegations referred to the Chairperson of the Integrity Committee, a summary of the status of the investigation of the allegations and, in the case of investigations completed during the preceding fiscal year, a summary of the findings of the investigations.

(G) Other matters that the Council considers appropriate.

(10) REQUESTS FOR MORE INFORMATION.—With respect to paragraphs (8) and (9), the Council shall provide more detailed information about specific allegations upon request from any of the following:

(A) The chairperson or ranking member of the Committee on Homeland Security and Governmental Affairs of the Senate.

(B) The chairperson or ranking member of the Committee on Oversight and Government Reform of the House of Representatives.

(C) The chairperson or ranking member of the congressional committees of jurisdiction.

(11) NO RIGHT OR BENEFIT.—This subsection is not intended to create any right or benefit, substantive or procedural, enforceable at law by a person against the United States, its agencies, its Officers, or any person.[26]

Sec. 12. Definitions

As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, Homeland Security, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs; the Director [Administrator] of the Federal Emergency Management Agency, or the Office of Personnel Management; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board;[;] the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service; the Administrator of the Community Development Financial Institutions Fund; the chief executive Officer of the Resolution Trust Corporation; the Chairperson of the Federal Deposit Insurance Corporation; the Commissioner of Social Security, Social Security Administration; the Director of the Federal Housing Finance Agency; the Board of Directors of the Tennessee Valley Authority; the President of the Export–Import Bank; or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, Homeland Security, or the Treasury; the Agency for International Development, the Community Development Financial

[26] Amended by P.L. 110–409, § 7(a), 122 Stat. 4302 (2008).

Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the Corporation for National and Community Service, the Veterans' Administration, the Social Security Administration, the Federal Housing Finance Agency, the Tennessee Valley Authority, the Export–Import Bank, or the Commissions established under section 15301 of title 40, United States Code, as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(f) of title 5 (including an establishment as defined in paragraph (2), United States Code, but shall not be construed to include the General Accounting Office [Government Accountability Office].[27]

Sec. 13. Effective Date

The [original] provisions of this Act and the amendments [to other laws] made by this Act [see section 10 of this Act] shall take effect October 1, 1978.

Pertinent Portions of Inspector General Act Amendment of 1988 (which did not amend Inspector General Act of 1978)

Uniform Salaries for Inspectors General

(a) UNIFORM SALARIES.–Section 5315 of Title 5, United States Code, is amended by adding at the end thereof the following new paragraphs

Inspector General, Department of Commerce.
Inspector General, Department of the Interior.
Inspector General, Department of Justice.
Inspector General, Department of the Treasury.
Inspector General, Agency for International Development.
Inspector General, Environmental Protection Agency.
Inspector General, Federal Emergency Management Agency.
Inspector General, General Services Administrator.
Inspector General, National Aeronautics and Space Administration.

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[27] Added and Amended by P.L. 95–452, § 12 [11], 92 Stat. 1109 (1978); P.L. 96–88, Title V, §§ 508(n)(3), (4), 93 Stat. 695 (1979); P.L. 97–113, Title VII, § 705(a)(2), 95 Stat. 1544 (1981); P.L. 97–252, Title XI, §§ 1117(a)(4), (5), 96 Stat. 751 (1982); P.L. 99-93, Title I, § 150(a)(2), 99 Stat. 427 (1985); P.L. 99–399, Title IV, § 412(a)(2), 100 Stat. 867 (1986); P.L. 100–504, Title I, § 102(c), 102 Stat. 2515 (1988); P.L. 100–527, § 13(h)(2), (3), 102 Stat. 2643 (1988); P.L. 101–73, Title V, Subtitle A, § 501(b)(1), 103 Stat. 393 (1989); P.L. 102–233, Title III, § 315(a), 105 Stat. 1772 (1991); P.L. 103–82, Title II, § 202(g)(4), 107 Stat. 890 (1993); P.L. 103–204, § 23(a)(1), 107 Stat. 2407 (1993); P.L. 103–296, Title I, § 108(l)(2), 108 Stat. 1489 (1994); P.L. 103–325, Title I, Subtitle A, § 118(a), 108 Stat. 2188 (1994); P.L. 104–106, Div. D, Title XLIII, Subtitle B, §§ 4322(b)(1), (3), 110 Stat. 677 (1996); P.L. 105–277, Div. G, Subdiv. A, Title XIII, Ch. 2, § 1314(b), 112 Stat. 2681–776 (1998); P.L. 106–422, § 1(b)(2), 114 Stat. 422 (2000); P.L. 107–189, §§ 22(a), (d), 116 Stat. 707, 708 (2002); P.L. 107–296, Title XVII, § 1701, 116 Stat. 2313 (2002); P.L. 110–234, Title XIV, Subtitle C, § 14217(c), 122 Stat. 1482 (2008); P.L. 110–246, § 4(a), Title XIV, Subtitle C, § 14217(c), 122 Stat. 1664, 2244 (2008); P.L. 110–289, Div. A, Title I, Subtitle A, § 1105(c), 122 Stat. 2668 (2008); P.L. 110–409, § 7(a), 122 Stat. 4305 (2008).

Inspector General, Nuclear Regulatory Commission.Inspector General, Office of Personnel Management.
Inspector General, Railroad Retirement Board.
Inspector General, Small Business Administration.

Appropriation Accounts

Section 1105(a)(25) of Title 31, United States code, is amended to read as follows:

(a) During the first 15 days of each regular session of Congress, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(25) a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) of the Inspector General Act of 1978.

Payment Authority Subject to Appropriations

Any authority to make payments under this Title (Inspector General Act Amendments) shall be effective only to such extent as provided in appropriations Acts.

Effective Date

This Title and the amendments made by this Title shall take effect 180 days after the date of the enactment of this Title, except that section 5(a)(6) through (12) of the Inspector General Act of 1978 (as amended by section 106(a) of this Title) and section (5)(b)(1) through (4) of the Inspector General Act of 1978 (as amended by section 106(b) of this Title) shall take effect 1 year after the date of the enactment of this Title.

8. Information Management Legislation

8. Information Management Legislation

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A. INFORMATION TECHNOLOGY MANAGEMENT REFORM ACT OF 1996

Public Law 107–217 **116 Stat. 1235**

[Selected Portions]

Subtitle III–Information Technology Management[1]

40 USC 11101. **Sec. 11101. Definitions**

In this subtitle, the following definitions apply:

(1) COMMERCIAL ITEM.–The term "commercial item" has the meaning given that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) EXECUTIVE AGENCY.–The term "executive agency" has the meaning given that term in section 4 of the Act (41 U.S.C. 403).

(3) INFORMATION RESOURCES.–The term "information resources" has the meaning given that term in section 3502 of title 44.

(4) INFORMATION RESOURCES MANAGEMENT.–The term "information resources management" has the meaning given that term in section 3502 of title 44.

(5) INFORMATION SYSTEM.–The term "information system" has the meaning given that term in section 3502 of title 44.

(6) INFORMATION TECHNOLOGY.– The term "information technology"–

(A) with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use–

(i) of that equipment; or

(ii) of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(B) includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(C) does not include any equipment acquired by a federal contractor incidental to a federal contract.[2]

40 USC 11102. **Sec. 11102. Sense of Congress**

It is the sense of Congress that, during the five–year period beginning with 1996, executive agencies should achieve each year through improvements in information resources management by the agency–

(1) at least a five percent decrease in the cost (in constant fiscal year 1996 dollars) incurred by the agency in operating and maintaining information technology; and

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[1] P.L. 107–217, 116 Stat. 1235, (2002), recodified provisions of P.L. 104–106, 110 Stat. 679, (1996), the Information Technology Management Reform Act of 1996 (Clinger–Cohen; formerly codified at 40 U.S.C. 1401, *et. seq.*).

[2] Amended by P.L. 108–199, Div. F, Title V, § 535(b), 118 Stat. 345 (2004).

(2) a five percent increase in the efficiency of the agency operations.

40 USC 11103. **Sec. 11103. Applicability to National Security Systems**

(a) DEFINITION.–

(1) NATIONAL SECURITY SYSTEM.–In this section, the term "national security system" means a telecommunications or information system operated by the Federal Government, the function, operation, or use of which–

(A) involves intelligence activities;

(B) involves cryptologic activities related to national security;

(C) involves command and control of military forces;

(D) involves equipment that is an integral part of a weapon or weapons system; or

(E) subject to paragraph (2), is critical to the direct fulfillment of military or intelligence missions.

(2) LIMITATION.– Paragraph (1)(E) does not include a system to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(b) IN GENERAL.–Except as provided in subsection (c), chapter 113 of this title does not apply to national security systems.

(c) EXCEPTIONS.–

(1) IN GENERAL.–Sections 11313, 11315, and 11316 of this title apply to national security systems.

(2) CAPITAL PLANNING AND INVESTMENT CONTROL.– The heads of executive agencies shall apply sections 11302 and 11312 of this title to national security systems to the extent practicable.

(3) APPLICABILITY OF PERFORMANCE–BASED AND RESULTS–BASED MANAGEMENT TO NATIONAL SECURITY SYSTEMS.–

(A) IN GENERAL.–Subject to subparagraph (B), the heads of executive agencies shall apply section 11303 of this title to national security systems to the extent practicable.

(B) EXCEPTION.–National security systems are subject to section 11303(b)(5) of this title, except for subparagraph (B)(iv).

Chapter 113–Responsibility for Acquisitions of Information Technology

Subchapter I–Director of Office of Management and Budget

Sec.
11301. Responsibility of Director.
11302. Capital planning and investment control.
11303. Performance–based and results–based management.

Subchapter II–Executive Agencies

11311. Responsibilities.
11312. Capital planning and investment control.
11313. Performance and results–based management.
11314. Authority to acquire and manage information technology.
11315. Agency Chief Information Officer.
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11318. Interagency support.

Subchapter III–Other Responsibilities

11331. Responsibilities Regarding Efficiency, Security, and Privacy of Federal Computer Systems
11332. Federal Computer System Security Training and Plan

Subchapter I–Director of Office of Management and Budget

40 USC 11301. **Sec. 11301. Responsibility of Director**

In fulfilling the responsibility to administer the functions assigned under chapter 35 of title 44, the Director of the Office of Management and Budget shall comply with this chapter with respect to the specific matters covered by this chapter.

40 USC 11302. **Sec. 11302. Capital Planning and Investment Control**

(a) FEDERAL INFORMATION TECHNOLOGY.–The Director of the Office of Management and Budget shall perform the responsibilities set forth in this section in fulfilling the responsibilities under section 3504(h) of title 44.

(b) USE OF INFORMATION TECHNOLOGY IN FEDERAL PROGRAMS.–The Director shall promote and improve the acquisition, use, security, and disposal of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

(c) USE OF BUDGET PROCESS.–

(1) ANALYZING, TRACKING, AND EVALUATING CAPITAL INVESTMENTS.– As part of the budget process, the Director shall develop a process for analyzing, tracking, and evaluating the risks, including information security risks, and results of all major capital investments made by an executive agency for information systems. The process shall cover the life of each system and shall include explicit criteria for analyzing the projected and actual costs, benefits, and risks, including information security risks, associated with the investments.[3]

(2) REPORT TO CONGRESS.–At the same time that the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, the Director shall submit to Congress a report on the net program performance benefits achieved as a result of major capital investments made by executive agencies for information systems and how the benefits relate to the accomplishment of the goals of the executive agencies.

(d) INFORMATION TECHNOLOGY STANDARDS.–The Director shall oversee the development and implementation of standards and guidelines pertaining to federal computer systems by the Secretary of Commerce through the National Institute of Standards and Technology under section 11331 of this title and section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

(e) DESIGNATION OF EXECUTIVE AGENTS FOR ACQUISITIONS.–The Director shall designate the head of one or more executive agencies, as the Director considers appropriate, as executive agent for Government–wide acquisitions of information technology.

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[3] Amended by P.L. 108–458, Title VIII, §§ 8401(1), (2), 118 Stat. 3869 (2004).

(f) USE OF BEST PRACTICES IN ACQUISITIONS.–The Director shall encourage the heads of the executive agencies to develop and use the best practices in the acquisition of information technology.

(g) ASSESSMENT OF OTHER MODELS FOR MANAGING INFORMATION TECHNOLOGY.– On a continuing basis, the Director shall assess the experiences of executive agencies, state and local governments, international organizations, and the private sector in managing information technology.

(h) COMPARISON OF AGENCY USES OF INFORMATION TECHNOLOGY.–The Director shall compare the performances of the executive agencies in using information technology and shall disseminate the comparisons to the heads of the executive agencies.

(i) MONITORING TRAINING.–The Director shall monitor the development and implementation of training in information resources management for executive agency personnel.

(j) INFORMING CONGRESS.–The Director shall keep Congress fully informed on the extent to which the executive agencies are improving the performance of agency programs and the accomplishment of the agency missions through the use of the best practices in information resources management.

(k) COORDINATION OF POLICY DEVELOPMENT AND REVIEW.–The Director shall coordinate with the Office of Federal Procurement Policy the development and review by the Administrator of the Office of Information and Regulatory Affairs of policy associated with federal acquisition of information technology.

40 USC 11303.

Sec. 11303. Performance–Based and Results–Based Management

(a) IN GENERAL.–The Director of the Office of Management and Budget shall encourage the use of performance–based and results–based management in fulfilling the responsibilities assigned under section 3504(h) of title 44.

(b) EVALUATION OF AGENCY PROGRAMS AND INVESTMENTS.–

(1) REQUIREMENT.–The Director shall evaluate the information resources management practices of the executive agencies with respect to the performance and results of the investments made by the executive agencies in information technology.

(2) DIRECTION FOR EXECUTIVE AGENCY ACTION.–The Director shall issue to the head of each executive agency clear and concise direction that the head of each agency shall–

(A) establish effective and efficient capital planning processes for selecting, managing, and evaluating the results of all of its major investments in information systems;

(B) determine, before making an investment in a new information system–

(i) whether the function to be supported by the system should be performed by the private sector and, if so, whether any component of the executive agency performing that function should be converted from a governmental organization to a private sector organization; or

(ii) whether the function should be performed by the executive agency and, if so, whether the function should be performed by a private sector source under contract or by executive agency personnel;

(C) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission–related

processes and administrative processes, as appropriate, before making significant investments in information technology to be used in support of those missions; and

(D) ensure that the information security policies, procedures, and practices are adequate.

(3) GUIDANCE FOR MULTIAGENCY INVESTMENTS.–The direction issued under paragraph (2) shall include guidance for undertaking efficiently and effectively interagency and Federal Government–wide investments in information technology to improve the accomplishment of missions that are common to the executive agencies.

(4) PERIODIC REVIEWS.–The Director shall implement through the budget process periodic reviews of selected information resources management activities of the executive agencies to ascertain the efficiency and effectiveness of information technology in improving the performance of the executive agency and the accomplishment of the missions of the executive agency.

(5) ENFORCEMENT OF ACCOUNTABILITY.–

(A) IN GENERAL.–The Director may take any action that the Director considers appropriate, including an action involving the budgetary process or appropriations management process, to enforce accountability of the head of an executive agency for information resources management and for the investments made by the executive agency in information technology.

(B) SPECIFIC ACTIONS.–Actions taken by the Director may include–

(i) recommending a reduction or an increase in the amount for information resources that the head of the executive agency proposes for the budget submitted to Congress under section 1105(a) of title 31;

(ii) reducing or otherwise adjusting apportionments and reapportionments of appropriations for information resources;

(iii) using other administrative controls over appropriations to restrict the availability of amounts for information resources; and

(iv) designating for the executive agency an executive agent to contract with private sector sources for the performance of information resources management or the acquisition of information technology.

Subchapter II–Executive Agencies

40 USC 11311.

Sec. 11311. Responsibilities

In fulfilling the responsibilities assigned under chapter 35 of title 44, the head of each executive agency shall comply with this subchapter with respect to the specific matters covered by this subchapter.

40 USC 11312.

Sec. 11312. Capital Planning and Investment Control

(a) DESIGN OF PROCESS.–In fulfilling the responsibilities assigned under section 3506(h) of title 44, the head of each executive agency shall design and implement in the executive agency a process for maximizing the value, and assessing and managing the risks, of the information technology acquisitions of the executive agency.

(b) CONTENT OF PROCESS.–The process of an executive agency shall–

(1) provide for the selection of investments in information technology (including information security needs)[4] to be made by the executive agency, the management of those investments, and the evaluation of the results of those investments;

(2) be integrated with the processes for making budget, financial, and program management decisions in the executive agency;

(3) include minimum criteria to be applied in considering whether to undertake a particular investment in information systems, including criteria related to the quantitatively expressed projected net, risk–adjusted return on investment and specific quantitative and qualitative criteria for comparing and prioritizing alternative information systems investment projects;

(4) identify information systems investments that would result in shared benefits or costs for other federal agencies or state or local governments;

(5) identify quantifiable measurements for determining the net benefits and risks of a proposed investment; and

(6) provide the means for senior management personnel of the executive agency to obtain timely information regarding the progress of an investment in an information system, including a system of milestones for measuring progress, on an independently verifiable basis, in terms of cost, capability of the system to meet specified requirements, timeliness, and quality.

40 USC 11313.

Sec. 11313. Performance and Results–Based Management

In fulfilling the responsibilities under section 3506(h) of title 44, the head of an executive agency shall–

(1) establish goals for improving the efficiency and effectiveness of agency operations and, as appropriate, the delivery of services to the public through the effective use of information technology;

(2) prepare an annual report, to be included in the executive agency's budget submission to Congress, on the progress in achieving the goals;

(3) ensure that performance measurements–

(A) are prescribed for information technology used by, or to be acquired for, the executive agency; and

(B) measure how well the information technology supports programs of the executive agency;

(4) where comparable processes and organizations in the public or private sectors exist, quantitatively benchmark agency process performance against those processes in terms of cost, speed, productivity, and quality of outputs and outcomes;

(5) analyze the missions of the executive agency and, based on the analysis, revise the executive agency's mission–related processes and administrative processes as appropriate before making significant investments in information technology to be used in support of the performance of those missions; and

(6) ensure that the information security policies, procedures, and practices of the executive agency are adequate.

40 USC 11314.

Sec. 11314. Authority to Acquire and Manage Information Technology

(a) IN GENERAL.–The authority of the head of an executive agency to acquire information technology includes–

(1) acquiring information technology as authorized by law;

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[4] Amended by P.L. 108–458, Title VIII, § 8401(3), 118 Stat. 3869 (2004).

(2) making a contract that provides for multiagency acquisitions of information technology in accordance with guidance issued by the Director of the Office of Management and Budget; and

(3) if the Director finds that it would be advantageous for the Federal Government to do so, making a multiagency contract for procurement of commercial items of information technology that requires each executive agency covered by the contract, when procuring those items, to procure the items under that contract or to justify an alternative procurement of the items.

(b) FTS 2000 PROGRAM.–The Administrator of General Services shall continue to manage the FTS 2000 program, and to coordinate the follow–on to that program, for and with the advice of the heads of executive agencies.

40 USC 11315.

Sec. 11315. Agency Chief Information Officer

(a) DEFINITION.–In this section, the term ``information technology architecture'', with respect to an executive agency, means an integrated framework for evolving or maintaining existing information technology and acquiring new information technology to achieve the agency's strategic goals and information resources management goals.

(b) GENERAL RESPONSIBILITIES.–The Chief Information Officer of an executive agency is responsible for–

(1) providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of this subtitle, consistent with chapter 35 of title 44 and the priorities established by the head of the executive agency;

(2) developing, maintaining, and facilitating the implementation of a sound, secure, and integrated information technology architecture for the executive agency; and[5]

(3) promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.

(c) DUTIES AND QUALIFICATIONS.–The Chief Information Officer of an agency listed in section 901(b) of title 31–

(1) has information resources management duties as that official's primary duty;

(2) monitors the performance of information technology programs of the agency, evaluates the performance of those programs on the basis of the applicable performance measurements, and advises the head of the agency regarding whether to continue, modify, or terminate a program or project; and

(3) annually, as part of the strategic planning and performance evaluation process required (subject to section 1117 of title 31) under section 306 of title 5 and sections 1105(a)(28), 1115–1117, and 9703 (as added by section 5(a) of the Government Performance and Results Act of 1993 (Public Law 103–62, 107 Stat. 289)) of title 31–

(A) assesses the requirements established for agency personnel regarding knowledge and skill in information resources management and the adequacy of those requirements for

[5] Amended by P.L. 108–458, Title VIII, § 8401(4), 118 Stat. 3869 (2004).

facilitating the achievement of the performance goals established for information resources management;

(B) assesses the extent to which the positions and personnel at the executive level of the agency and the positions and personnel at management level of the agency below the executive level meet those requirements;

(C) develops strategies and specific plans for hiring, training, and professional development to rectify any deficiency in meeting those requirements; and

(D) reports to the head of the agency on the progress made in improving information resources management capability.

40 USC 11316. **Sec. 11316. Accountability**

The head of each executive agency, in consultation with the Chief Information Officer and the Chief Financial Officer of that executive agency (or, in the case of an executive agency without a chief financial Officer, any comparable official), shall establish policies and procedures to ensure that–

(1) the accounting, financial, asset management, and other information systems of the executive agency are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the executive agency;

(2) financial and related program performance data are provided on a reliable, consistent, and timely basis to executive agency financial management systems; and

(3) financial statements support–

(A) assessments and revisions of mission–related processes and administrative processes of the executive agency; and

(B) measurement of the performance of investments made by the agency in information systems.

40 USC 11317. **Sec. 11317. Significant Deviations**

The head of each executive agency shall identify in the strategic information resources management plan required under section 3506(b)(2) of title 44 any major information technology acquisition program, or any phase or increment of that program, that has significantly deviated from the cost, performance, or schedule goals established for the program.

40 USC 11318. **Sec. 11318. Interagency Support**

The head of an executive agency may use amounts available to the agency for oversight, acquisition, and procurement of information technology to support jointly with other executive agencies the activities of interagency groups that are established to advise the Director of the Office of Management and Budget in carrying out the Director's responsibilities under this chapter. The use of those amounts for that purpose is subject to requirements and limitations on uses and amounts that the Director may prescribe. The Director shall prescribe the requirements and limitations during the Director's review of the executive agency's proposed budget submitted to the Director by the head of the executive agency for purposes of section 1105 of title 31.

Subchapter III–Other Responsibilities

40 USC 11331. **Sec. 11331. Responsibilities Regarding Efficiency, Security, and Privacy of Federal Computer Systems**

(a) DEFINITION. In this section, the term “information security” has the meaning given that term in section 3532(b)(1) of title 44.

(b) REQUIREMENT TO PRESCRIBE STANDARDS.

(1) In general.

(A) Requirement. Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

(B) Required standards. Standards promulgated under subparagraph (A) shall include—

(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

(C) Required standards binding. Information security standards described under subparagraph (B) shall be compulsory and binding.

(2) Standards and guidelines for national security systems. Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

(c) APPLICATION OF MORE STRINGENT STANDARDS. The head of an agency may employ standards for the cost–effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44.

(d) REQUIREMENTS REGARDING DECISIONS BY DIRECTOR.

(1) Deadline. The decision regarding the promulgation of any standard by the Director under subsection (b) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

(2) Notice and comment. A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.[6]

40 USC 11332.

Sec. 11332. Federal Computer System Security Training and Plan [Repealed][7]

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[6] Amended by P.L. 107–296, Title X, § 1002(a), 116 Stat. 2268 (2002); P.L. 107–347, Title III, § 302(a), 116 Stat. 2956 (2002).

[7] Repealed by P.L. 107–296, Title X, § 1005(a)(1), 116 Stat. 2272 (2002); P.L. 107-347, Title III, § 305(a), 116 Stat. 2960 (2002).

B. PAPERWORK REDUCTION ACT OF 1995, AS AMENDED

Public Law 104–13 **109 Stat. 163**

May 22, 1995

An Act

To further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Short Title

44 USC 101 note.

This Act may be cited as the "Paperwork Reduction Act of 1995."

Sec. 2. Coordination of Federal Information Policy

Chapter 35 of Title 44, United States Code, is amended to read as follows:

Chapter 35–Coordination of Federal Information Policy

Sec.
3501. Purposes.
3502. Definitions.
3503. Office of Information and Regulatory Affairs.
3504. Authority and functions of Director.
3505. Assignment of tasks and deadlines.
3506. Federal agency responsibilities.
3507. Public information collection activities; submission to Director; approval and delegation.
3508. Determination of necessity for information; hearing.
3509. Designation of central collection agency.
3510. Cooperation of agencies in making information available.
3511. Establishment and operation of Government Information Locator Service.
3512. Public protection.
3513. Director review of agency activities; reporting; agency response.
3514. Responsiveness to Congress.
3515. Administrative powers.
3516. Rules and regulations.
3517. Consultation with other agencies and the public.
3518. Effect on existing laws and regulations.
3519. Access to information.
3520. Authorization of appropriations.

44 USC 3501.

Sec. 3501. Purposes

The purposes of this subchapter[1] are to–

(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons

[1] Amended by P.L. 106–398, § 1, 114 Stat. 1654 (2000), substituted "subchapter" for "chapter" wherever occurring.

resulting from the collection of information by or for the Federal Government;

(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

(4) improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society;

(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to–

(A) privacy and confidentiality, including section 552a of Title 5;

(B) security of information, including section 11332 of title 40[2]; and

(C) access to information, including section 552 of Title 5;

(9) ensure the integrity, quality, and utility of the Federal statistical system;

(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this Chapter.

44 USC 3502.

Sec. 3502. Definitions

As used in this subchapter [44 USCS §§ 3501 et seq.]—

(1) the term "agency" means 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, but does not include—

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[2] Amended by P.L. 107–217, § 3(1)(4), 116 Stat. 1301 (2002).

(A) the General Accounting Office [Government Accountability Office];

(B) Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government–owned contractor–operated facilities, including laboratories engaged in national defense research and production activities;

(2) the term "burden" means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

(A) reviewing instructions;

(B) acquiring, installing, and utilizing technology and systems;

(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

(D) searching data sources;

(E) completing and reviewing the collection of information; and

(F) transmitting, or otherwise disclosing the information;

(3) the term "collection of information"—

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1);

(4) the term "Director" means the Director of the Office of Management and Budget;

(5) the term "independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Agency, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, Office of the Comptroller of the Currency, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

(6) the term "information resources" means information and related resources, such as personnel, equipment, funds, and information technology;

(7) the term "information resources management" means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

(8) the term "information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

(9) the term "information technology" has the meaning given that term in section 11101 of title 40 but does not include national security systems as defined in section 11103 of title 40;

(10) the term "person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision;

(11) the term "practical utility" means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

(12) the term "public information" means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public;

(13) the term "recordkeeping requirement" means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

(A) retain such records;

(B) notify third parties, the Federal Government, or the public of the existence of such records;

(C) disclose such records to third parties, the Federal Government, or the public; or

(D) report to third parties, the Federal Government, or the public regarding such records; and

(14) the term "penalty" includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.[3]

44 USC 3503. Establishment.

Sec. 3503. Office of Information and Regulatory Affairs

(a) There is established in the Office of Management and Budget an Office to be known as the Office of Information and Regulatory Affairs.

(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this Chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.[4]

44 USC 3504.

Sec. 3504. Authority and Functions of Director

(a) (1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including burden reduction and service delivery to the public. In performing such oversight, the Director shall—

(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

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[3] Added and amended by P.L. 104–13, § 2, 109 Stat. 164 (1995); P.L. 104–106, Div. E, Title LVI, § 5605(a), 110 Stat. 700 (1996); P.L. 105–85, Div. A, Title X, Subtitle G, § 1073(h)(5)(A), 111 Stat. 1907 (1997); P.L. 106–398, § 1, 114 Stat. 1654 (2000); P.L. 107–217, § 3(l)(4), 116 Stat. 1301 (2002); P.L. 109–435, Title VI, § 604(e), 120 Stat. 3242 (2006); P.L. 110–289, Div. A, Title II, § 1216(e), 122 Stat. 2792 (2008); P.L. 111 203, Title III, Subtitle A, § 315, Title X, Subtitle H, § 1100D(a), 124 Stat. 1524, 2111 (2010).

[4] Added by P.L. 104–13, § 2, 109 Stat. 166 (1995), and Amended P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A–275 (2000).

(B) provide direction and oversee—

(i) the review and approval of the collection of information and the reduction of the information collection burden;

(ii) agency dissemination of and public access to information;

(iii) statistical activities;

(iv) records management activities;

(v) privacy, confidentiality, security, disclosure, and sharing of information; and

(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.

(2) The authority of the Director under this subchapter [44 USCS §§ 3501 et seq.] shall be exercised consistent with applicable law.

(b) With respect to general information resources management policy, the Director shall—

(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

(2) foster greater sharing, dissemination, and access to public information, including through—

(A) the use of the Government Information Locator Service; and

(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

(4) oversee the development and implementation of best practices in information resources management, including training; and

(5) oversee agency integration of program and management functions with information resources management functions.

(c) With respect to the collection of information and the control of paperwork, the Director shall—

(1) review and approve proposed agency collections of information;

(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition and payment, and to reduce information collection burdens on the public;

(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government;

(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information; [and]

(6) publish in the Federal Register and make available on the Internet (in consultation with the Small Business Administration) on an annual basis a list of the compliance assistance resources available to small businesses, with the first such publication occurring not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002.

(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

(2) promote public access to public information and fulfill the purposes of this subchapter [44 USCS §§ 3501 et seq.], including through the effective use of information technology.

(e) With respect to statistical policy and coordination, the Director shall—

(1) coordinate the activities of the Federal statistical system to ensure—

(A) the efficiency and effectiveness of the system; and

(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

(2) ensure that budget proposals of agencies are consistent with system–wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—

(A) statistical collection procedures and methods;

(B) statistical data classification;

(C) statistical information presentation and dissemination;

(D) timely release of statistical data; and

(E) such statistical data sources as may be required for the administration of Federal programs;

(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

(A) be headed by the chief statistician; and

(B) consist of—

(i) the heads of the major statistical programs; and

(ii) representatives of other statistical agencies under rotating membership; and

(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

(B) all costs of the training shall be paid by the agency requesting training.

(f) With respect to records management, the Director shall—

(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title [44 USCS §§ 2901

et seq., 3101 et seq., 3301 et seq.] with the information resources management policies, principles, standards, and guidelines established under this subchapter [44 USCS §§ 3501 et seq.];

(2) review compliance by agencies with—

(A) the requirements of chapters 29, 31, and 33 of this title [44 USCS §§ 2901 et seq., 3101 et seq., 3301 et seq.]; and

(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

(g) With respect to privacy and security, the Director shall—

(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies; and

(2) oversee and coordinate compliance with sections 552 and 552a of title 5, sections 20 and 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3 and 278g–4), section 11331 of title 40 and subchapter II of this chapter [44 USCS §§ 3531 et seq.], and related information management laws.

(3) [Deleted]

(h) With respect to Federal information technology, the Director shall—

(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

(B) oversee the development and implementation of standards under section 11331 of title 40;

(2) monitor the effectiveness of, and compliance with, directives issued under subtitle III of title 40 [40 USCS §§ 11101 et seq.] and directives issued under section 322 of title 40;

(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

(B) the efficiency and effectiveness of inter–agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.[5]

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[5] Added and amended by P.L. 104–13, § 2, 109 Stat. 167 (1995); P.L. 104–106, Div. E, Title LI, Subtitle D, § 5131(e)(1), Title LVI, §§ 5605(b), (c), 110 Stat. 688, 700 (1996); P.L. 105–85, Div. A, Title X, Subtitle G, §§ 1073(h)(5)(B), (C), 111 Stat. 1907 (1997); P.L. 105–277, Div. C, Title XVII, § 1702, 112 Stat. 2681–749 (1998); P.L. 106–398,

44 USC 3505.

Sec. 3505. Assignment of Tasks and Deadlines

(a) In carrying out the functions under this subchapter [44 USCS §§ 3501 et seq.], the Director shall—

(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least 10 percent during each of fiscal years 1996 and 1997 and 5 percent during each of fiscal years 1998, 1999, 2000, and 2001, and set annual agency goals to—

(A) reduce information collection burdens imposed on the public that—

(i) represent the maximum practicable opportunity in each agency; and

(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

(2) with selected agencies and non–Federal entities on a voluntary basis, conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this subchapter [44 USCS §§ 3501 et seq.], particularly with regard to minimizing the Federal information collection burden; and

(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

(B) plans for—

(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this subchapter [44 USCS §§ 3501 et seq.]; and

(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may, after consultation with the agency head, waive the application of any administrative directive issued by an agency with which the project is conducted, including any directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

(c) Inventory of major information systems.

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§ 1, 114 Stat. 1654 (2000); P.L. 107–198, § 2(a), 116 Stat. 729 (2002); P.L. 107–217, § 3(l)(5), 116 Stat. 1301 (2002); P.L. 107–296, Title X, § 1005(c)(1), 116 Stat. 2272 (2002); P.L. 107-347, Title III, § 305(c)(1), 116 Stat. 2960 (2002).

(1) The head of each agency shall develop and maintain an inventory of major information systems (including major national security systems) operated by or under the control of such agency.

(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency.

(3) Such inventory shall be—

(A) updated at least annually;

(B) made available to the Comptroller General; and

(C) used to support information resources management, including—

(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4) [44 USCS § 3506(b)(4)];

(ii) information technology planning, budgeting, acquisition, and management under section 3506(h) [44 USCS § 3506(h)], subtitle III of title 40 [40 USCS §§ 11101 et seq.], and related laws and guidance;

(iii) monitoring, testing, and evaluation of information security controls under subchapter II [44 USCS §§ 3531 et seq.];

(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33 [44 USCS §§ 2101 et seq., 2901 et seq., 3101 et seq., 3301 et seq.].

(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.

[(d)](c) Inventory of information systems.

(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

(3) Such inventory shall be—

(A) updated at least annually;

(B) made available to the Comptroller General; and

(C) used to support information resources management, including—

(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4) [44 USCS § 3506(b)(4)];

(ii) information technology planning, budgeting, acquisition, and management under section 3506(h) [44 USCS § 3506(h)], subtitle III of title 40 [40 USCS §§ 11101 et seq.], and related laws and guidance;

(iii) monitoring, testing, and evaluation of information security controls under subchapter II [44 USCS §§ 3531 et seq.];

(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33 [44 USCS §§ 2101 et seq., 2901 et seq., 3101 et seq., 3301 et seq.].

(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.[6]

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[6] Amended P.L. 106–398, § 1, 114 Stat. 1654 (2000); P.L. 107–296, Title X, § 1005(c)(2), 116 Stat. 2272 (2002); P.L. 107–347, Title III, § 305(c)(2), 116 Stat. 2961 (2002).

44 USC 3506.

Sec. 3506. Federal Agency Responsibilities

(a) (1) The head of each agency shall be responsible for—

(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

(B) complying with the requirements of this subchapter [44 USCS §§ 3501 et seq.] and related policies established by the Director.

(2) (A) Except as provided under subparagraph (B), the head of each agency shall designate a Chief Information Officer who shall report directly to such agency head to carry out the responsibilities of the agency under this subchapter [44 USCS §§ 3501 et seq.].

(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate Chief Information Officers who shall report directly to such Secretary to carry out the responsibilities of the department under this subchapter [44 USCS §§ 3501 et seq.]. If more than one Chief Information Officer is designated, the respective duties of the Chief Information Officers shall be clearly delineated.

(3) The Chief Information Officer designated under paragraph (2) shall head an Office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this subchapter [44 USCS §§ 3501 et seq.], including the reduction of information collection burdens on the public. The Chief Information Officer and employees of such Office shall be selected with special attention to the professional qualifications required to administer the functions described under this subchapter [44 USCS §§ 3501 et seq.].

(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the Chief Information Officer designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

(b) With respect to general information resources management, each agency shall—

(1) manage information resources to—

(A) reduce information collection burdens on the public;

(B) increase program efficiency and effectiveness; and

(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

(3) develop and maintain an ongoing process to—

(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this subchapter [44 USCS § 3511]; and

(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

(c) With respect to the collection of information and the control of paperwork, each agency shall—

(1) establish a process within the Office headed by the Chief Information Officer designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this subchapter [44 USCS §§ 3501 et seq.], to—

(A) review each collection of information before submission to the Director for review under this subchapter [44 USCS §§ 3501 et seq.], including—

(i) an evaluation of the need for the collection of information;

(ii) a functional description of the information to be collected;

(iii) a plan for the collection of the information;

(iv) a specific, objectively supported estimate of burden;

(v) a test of the collection of information through a pilot program, if appropriate; and

(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

(B) ensure that each information collection—

(i) is inventoried, displays a control number and, if appropriate, an expiration date;

(ii) indicates the collection is in accordance with the clearance requirements of section 3507 [44 USCS § 3507]; and

(iii) informs the person receiving the collection of information of—

(I) the reasons the information is being collected;

(II) the way such information is to be used;

(III) an estimate, to the extent practicable, of the burden of the collection;

(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number; and

(C) assess the information collection burden of proposed legislation affecting the agency;

(2) (A) except as provided under subparagraph (B) or section 3507(j) [44 USCS § 3507(j)], provide 60–day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d) [44 USCS § 3507(d)]), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A)(i) through (iv);

(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507 [44 USCS § 3507]—

(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(iii) an exemption from coverage of the collection of information, or any part thereof;

(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(G) contains the statement required under paragraph (1)(B)(iii);

(H) has been developed by an Office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public; and

(4) in addition to the requirements of this chapter [44 USCS §§ 3501 et seq.] regarding the reduction of information collection burdens for small

business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), make efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees.

(d) With respect to information dissemination, each agency shall—

(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through—

(A) encouraging a diversity of public and private sources for information based on government public information;

(B) in cases in which the agency provides public information maintained in electronic format, providing timely and equitable access to the underlying data (in whole or in part); and

(C) agency dissemination of public information in an efficient, effective, and economical manner;

(2) regularly solicit and consider public input on the agency's information dissemination activities;

(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

(4) not, except where specifically authorized by statute—

(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

(B) restrict or regulate the use, resale, or redissemination of public information by the public;

(C) charge fees or royalties for resale or redissemination of public information; or

(D) establish user fees for public information that exceed the cost of dissemination.

(e) With respect to statistical policy and coordination, each agency shall—

(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

(6) make data available to statistical agencies and readily accessible to the public.

(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

(g) With respect to privacy and security, each agency shall—

(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency; and

(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, subchapter II of this chapter [44 USCS §§ 3531 et seq.], and related information management laws.

(3) [Deleted]

(h) With respect to Federal information technology, each agency shall—

(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

(2) assume responsibility and accountability for information technology investments;

(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

(A) integrated with budget, financial, and program management decisions; and

(B) used to select, control, and evaluate the results of major information systems initiatives.

(i) (1) In addition to the requirements described in subsection (c), each agency shall, with respect to the collection of information and the control of paperwork, establish 1 point of contact in the agency to act as a liaison between the agency and small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)).

(2) Each point of contact described under paragraph (1) shall be established not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002 [enacted June 28, 2002].[7]

44 USC 3507.

Sec. 3507. Public Information Collection Activities; Submission to Director; Approval and Delegation

(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information–

(1) the agency has–

(A) conducted the review established under section 3506(c)(1);

(B) evaluated the public comments received under section 3506(c)(2);

(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

Federal Register, publication.

(D) published a notice in the Federal Register–"(i) stating that the agency has made such submission; and

(ii) setting forth–

(I) a title for the collection of information;

(II) a summary of the collection of information;

(III) a brief description of the need for the information and the proposed use of the information;

[7] Amended P.L. 104–106, Div. E, Title LI, Subtitle C, § 5125(a), 110 Stat. 684 (1996); P.L. 106–398, § 1, 114 Stat. 1654 (2000); P.L. 107–198, §§ 2(b), (c), 116 Stat. 729 (2002); P.L. 107–217, § 3(l)(6), 116 Stat. 1302 (2002); P.L. 107–296, Title X, § 1005(c)(3), 116 Stat. 2273 (2002); P.L. 107–347, Title III, § 305(c)(3), 116 Stat. 2961 (2002).

(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

(V) an estimate of the burden that shall result from the collection of information; and

(VI) notice that comments may be submitted to the agency and Director;

(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

(3) If the Director does not notify the agency of a denial or approval within the 60–day period described under paragraph (2)–

(A) the approval may be inferred;

(B) a control number shall be assigned without further delay; and

(C) the agency may collect the information for not more than 1 year.

Proposed rule.

(d)(1) For any proposed collection of information contained in a proposed rule–

(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

Federal Register, publication.

(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

Federal Register, publication.

Regulations.

(2) When a final rule is published in the Federal Register, the agency shall explain–

(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

(B) the reasons such comments were rejected.

(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion–

(A) from disapproving any collection of information which was not specifically required by an agency rule;

(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or

(D) from disapproving any collection of information contained in a final rule, if–

(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

(3) This subsection shall not require the disclosure of–

(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

(B) any communication relating to a collection of information which is not approved under this Subchapter, the disclosure of which could lead to retaliation or discrimination against the communicator.

(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void–

(A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or

(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

(g) The Director may not approve a collection of information for a period in excess of 3 years.

(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall–

(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall–

Federal Register, publication.

(A) publish an explanation thereof in the Federal Register; and

(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this subchapter.

(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this subchapter.

(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of Chapter 5 of Title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

(j)(1) The agency head may request the Director to authorize a collection of information, if an agency head determines that–

(A) a collection of information–

(i) is needed prior to the expiration of time periods established under this Subchapter; and

(ii) is essential to the mission of the agency; and

(B) the agency cannot reasonably comply with the provisions of this Subchapter because–

(i) public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) an unanticipated event has occurred; or

(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this subchapter for a maximum of 180 days after the date on which the Director received the request to authorize such collection.[8]

44 USC 3508. **Sec. 3508. Determination of Necessity for Information; Hearing**

Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

44 USC 3509. **Sec. 3509. Designation of Central Collection Agency**

The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this subchapter.[9]

44 USC 3510. **Sec. 3510. Cooperation of Agencies in Making Information Available**

(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties) that relate to the unlawful disclosure of information apply to the Officers and employees of the agency to which information is released to the same

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[8] Amended by P.L. 104–13, § 2, 109 Stat. 171 (1995); P.L. 104–106, Div. E, Title LVI, § 5605(d), 110 Stat. 700 (1996); P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A–275 (2000).

[9] Amended by P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A–275 (2000).

extent and in the same manner as the provisions apply to the Officers and employees of the agency which originally obtained the information.

(2) The Officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

44 USC 3511.

Sec. 3511. Establishment and Operation of Government Information Locator Service

(a) In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall–

(1) cause to be established and maintained a distributed agency–based electronic Government Information Locator Service (hereafter in this section referred to as the "Service"), which shall identify the major information systems, holdings, and dissemination products of each agency;

(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

Establishment.

(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

(4) consider public access and other user needs in the establishment and operation of the Service;

(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 USC 431 et seq.).

44 USC 3512.

Sec. 3512. Public Protection

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if–[10]

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this Chapter; or

(2) the agency fails to inform the person who is to respond to required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

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[10] Amended by P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A-275, (2000).

44 USC 3513.

Sec. 3513. Director Review of Agency Activities; Reporting; Agency Response

(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to–

(1) be taken to address information resources management problems identified in the report; and

(2) improve agency performance and the accomplishment of agency missions.

44 USC 3514.

Sec. 3514. Responsiveness to Congress

(a)(1) The Director shall–

(A) keep the Congress and congressional committees fully and currently informed of the major activities under this subchapter; and

Reports.

(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

(2) The Director shall include in any such report a description of the extent to which agencies have–

(A) reduced information collection burdens on the public, including–

(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

(ii) a list of all violations of this subchapter and of any rules, guidelines, policies, and procedures issued pursuant to this subchapter;[11]

(iii) a list of any increase in the collection of information burden, including the authority for each such collection; and

(iv) a list of agencies that in the preceding year did not reduce information collection burdens in accordance with section 3505(a)(1), a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;

(B) improved the quality and utility of statistical information;

(C) improved public access to Government information; and

(D) improved program performance and the accomplishment of agency missions through information resources management.

(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

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[11] Amended by P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A-275, (2000).

44 USC 3515. **Sec. 3515. Administrative Powers**

Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this subchapter.[12]

44 USC 3516. **Sec. 3516. Rules and Regulations**

The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this subchapter.[13]

44 USC 3517. **Sec. 3517. Consultation with Other Agencies and the Public**

(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this subchapter,[14] a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information–

(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

(2) take appropriate remedial action, if necessary.

44 USC 3518. **Sec. 3518. Effect on Existing Laws and Regulations**

(a) Except as otherwise provided in this subchapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this subchapter.

(b) Nothing in this subchapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

(c) (1) Except as provided in paragraph (2), this subchapter shall not apply to the collection of information—

(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

(B) during the conduct of—

(i) a civil action to which the United States or any official or agency thereof is a party; or

(ii) an administrative action or investigation involving an agency against specific individuals or entities;

(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

(D) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or

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[12] Amended by P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A-275, (2000).

[13] Amended by P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A-275, (2000).

[14] Amended by P.L. 106–398, § 1 [Div. A, Title X, § 1064(b)], 114 Stat. 1654, 1654A-275, (2000).

successor orders, or during the conduct of cryptologic activities that are communications security activities.

(2) This subchapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

(d) Nothing in this subchapter shall be interpreted as increasing or decreasing the authority conferred by sections 11331 and 11332 of title 40 on the Secretary of Commerce or the Director of the Office of Management and Budget.

(e) Nothing in this subchapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.[15]

44 USC 3519. **Sec. 3519. Access to Information**

Under the conditions and procedures prescribed in section 716 of Title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

44 USC 3520. **Sec. 3520. Establishment of Task Force on Information Collection and Dissemination**[16]

"a) There is established a task force to study the feasibility of streamlining requirements with respect to small business concerns regarding collection of information and strengthening dissemination of information (in this section referred to as the `task force').

"(b)(1) The Director shall determine–

"(A) subject to the minimum requirements under paragraph (2), the number of representatives to be designated under each subparagraph of that paragraph; and

"(B) the agencies to be represented under paragraph (2)(K).

"(2) After all determinations are made under paragraph (1), the members of the task force shall be designated by the head of each applicable department or agency, and include–

"(A) 1 representative of the Director, who shall convene and chair the task force;

"(B) not less than 2 representatives of the Department of Labor, including 1 representative of the Bureau of Labor Statistics and 1 representative of the Occupational Safety and Health Administration;

"(C) not less than 1 representative of the Environmental Protection Agency;

"(D) not less than 1 representative of the Department of Transportation;

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[15] Amended by P.L. 104–106, Div. E, Title LI, Subtitle D, § 5131(e)(2), 110 Stat. 688 (1996); P.L. 105–85, Div. A, Title X, Subtitle G, § 1073(h)(5)(C), 111 Stat. 1907 (1997); P.L. 106–398, § 1, 114 Stat. 1654 (2000); P.L. 107–217, § 3(l)(7), 116 Stat. 1302 (2002).

[16] Added by P.L. 107–198, § 3, 116 Stat. 730 (2002).

"(E) not less than 1 representative of the Office of Advocacy of the Small Business Administration;

"(F) not less than 1 representative of the Internal Revenue Service;

"(G) not less than 2 representatives of the Department of Health and Human Services, including 1 representative of the Centers for Medicare and Medicaid Services;

"(H) not less than 1 representative of the Department of Agriculture;

"(I) not less than 1 representative of the Department of the Interior;

"(J) not less than 1 representative of the General Services Administration; and

"(K) not less than 1 representative of each of 2 agencies not represented by representatives described under subparagraphs (A) through (J).

"(c) The task force shall–

"(1) identify ways to integrate the collection of information across Federal agencies and programs and examine the feasibility and desirability of requiring each agency to consolidate requirements regarding collections of information with respect to small business concerns within and across agencies, without negatively impacting the effectiveness of underlying laws and regulations regarding such collections of information, in order that each small business concern may submit all information required by the agency–

"(A) to 1 point of contact in the agency;

"(B) in a single format, such as a single electronic reporting system, with respect to the agency; and

"(C) with synchronized reporting for information submissions having the same frequency, such as synchronized quarterly, semiannual, and annual reporting dates;

"(2) examine the feasibility and benefits to small businesses of publishing a list by the Director of the collections of information applicable to small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)), organized–

"(A) by North American Industry Classification System code;

"(B) by industrial sector description; or

"(C) in another manner by which small business concerns can more easily identify requirements with which those small business concerns are expected to comply;

"(3) examine the savings, including cost savings, and develop recommendations for implementing–

"(A) systems for electronic submissions of information to the Federal Government; and

"(B) interactive reporting systems, including components that provide immediate feedback to assure that data being submitted–

"(i) meet requirements of format; and

"(ii) are within the range of acceptable options for each data field;

"(4) make recommendations to improve the electronic dissemination of information collected under Federal requirements;

"(5) recommend a plan for the development of an interactive Government wide system, available through the Internet, to allow each small business to–

"(A) better understand which Federal requirements regarding collection of information (and, when possible, which other Federal regulatory requirements) apply to that particular business; and

"(B) more easily comply with those Federal requirements; and

"(6) in carrying out this section, consider opportunities for the coordination–

"(A) of Federal and State reporting requirements; and

"(B) among the points of contact described under section 3506(i), such as to enable agencies to provide small business concerns with contacts for information collection requirements for other agencies.

Federal Register, publication. Notice.

"(d) The task force shall–

"(1) by publication in the Federal Register, provide notice and an opportunity for public comment on each report in draft form; and

"(2) make provision in each report for the inclusion of–

"(A) any additional or dissenting views of task force members; and

"(B) a summary of significant public comments.

Deadline. Reports.

"(e) Not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002, the task force shall submit a report of its findings under subsection (c) (1), (2), and (3) to–

"(1) the Director;

"(2) the chairpersons and ranking minority members of–

"(A) the Committee on Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and

"(B) the Committee on Government Reform and the Committee on Small Business of the House of Representatives; and

"(3) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

Deadline. Reports.

"(f) Not later than 1 year after the date of enactment of the Small Business Paperwork Relief Act of 2002, the task force shall submit a report of its findings under subsection (c) (1), (2), and (3) to–

"(1) the Director;

"(2) the chairpersons and ranking minority members of–

"(A) the Committee on Governmental Affairs and the Committee on Small Business and Entrepreneurship of the Senate; and

"(B) the Committee on Government Reform and the Committee on Small Business of the House of Representatives; and

"(3) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

Termination date.

"(g) The task force shall terminate after completion of its work.

"(h) In this section, the term `small business concern' has the meaning given under section 3 of the Small Business Act (15 U.S.C. 632).".

(b) TECHNICAL AND CONFORMING AMENDMENT.–The table of sections for chapter 35 of title 44, United States Code, is amended by striking the item relating to section 3520 and inserting the following:

"3520. Establishment of task force on information collection and dissemination.

"3521. Authorization of appropriations.".

* * * *

44 USC 3521.

Sec. 3521. Authorization of Appropriations[17]

There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this Chapter, and for no other purpose, $8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, and 2001.

Subchapter II.

Information Security

44 USC 3531.

Sec. 3531. Purposes

The purposes of this subchapter are to—

(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

(4) provide a mechanism for improved oversight of Federal agency information security programs;

(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.[18]

44 USC 3532.

Sec. 3532. Definitions

(a) In general. Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter [44 USCS §§ 3531 et seq.].

(b) Additional definitions. As used in this subchapter [44 USCS §§ 3531 et seq.]—

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[17] Amended by by P.L. 107–198, § 3, 116 Stat. 730 (2002).

[18] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2135, (2002). A prior § 3531 relating to information security, was replaced as part of the general revision of this subchapter by § 1001(b)(1) of P.L. 107–296, 116 Stat. 2135, (2002). Such section set out the purposes of former 44 U.S.C.S. § 3531 et seq. For similar provisions, see this section.

(1) the term "information security" means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

(C) availability, which means ensuring timely and reliable access to and use of information; and

(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

(2) the term "national security system" means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

(A) involves intelligence activities;

(B) involves cryptologic activities related to national security;

(C) involves command and control of military forces;

(D) involves equipment that is an integral part of a weapon or weapons system; or

(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

(3) the term "information technology" has the meaning given that term in section 11101 of title 40; and

(4) the term "information system" means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

(A) computers and computer networks;

(B) ancillary equipment;

(C) software, firmware, and related procedures;

(D) services, including support services; and

(E) related resources.[19]

44 USC 3533.

Sec. 3533. Authority and Functions of the Director

(a) The Director shall oversee agency information security policies and practices, by—

(1) promulgating information security standards under section 11331 of title 40;

(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter [44 USCS §§ 3531 et seq.], to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

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[19] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2135, (2002). A prior § 3532 relating to information security, was replaced as part of the general revision of this subchapter by § 1001(b)(1) of P.L. 107–296, 116 Stat. 2135, (2002). Such section set out the purposes of former 44 U.S.C.S. § 3531 et seq. For similar provisions, see this section.

(A) information collected or maintained by or on behalf of an agency; or

(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

(5) overseeing agency compliance with the requirements of this subchapter [44 USCS §§ 3531 et seq.], including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b) [44 USCS § 3534(b)];

(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter [44 USCS §§ 3531 et seq.], including—

(A) a summary of the findings of evaluations required by section 3535 [44 USCS § 3535];

(B) significant deficiencies in agency information security practices;

(C) planned remedial action to address such deficiencies; and

(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.[20]

44 USC 3534.

Sec. 3534. Federal Agency Responsibilities

(a) The head of each agency shall—

(1) be responsible for—

(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

(i) information collected or maintained by or on behalf of the agency; and

(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

(B) complying with the requirements of this subchapter [44 USCS §§ 3531 et seq.] and related policies, procedures, standards, and guidelines, including—

(i) information security standards promulgated by the Director under section 11331 of title 40; and

[20] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2135, (2002). A prior § 3533, relating to information security, was replaced as part of the general revision of this subchapter by § 1001(b)(1) of P.L. 107–296, 116 Stat. 2135, (2002). Such section set out the purposes of former 44 U.S.C.S. § 3531 et seq. For similar provisions, see this section.

(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

(C) implementing policies and procedures to cost–effectively reduce risks to an acceptable level; and

(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

(3) delegate to the agency Chief Information Officer established under section 3506 [44 USCS § 3506] (or comparable official in an agency not covered by such section) the authority to ensure compliance with the requirements imposed on the agency under this subchapter [44 USCS §§ 3531 et seq.], including—

(A) designating a senior agency information security Officer who shall—

(i) carry out the Chief Information Officer's responsibilities under this section;

(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

(iii) have information security duties as that official's primary duty; and

(iv) head an Office with the mission and resources to assist in ensuring agency compliance with this section;

(B) developing and maintaining an agencywide information security program as required by subsection (b);

(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title [44 USCS § 3533], and section 11331 of title 40;

(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter [44 USCS §§ 3531 et seq.] and related policies, procedures, standards, and guidelines; and

(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section

3533(a)(5) [44 USCS § 3533(a)(5)], to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

(2) policies and procedures that—

(A) are based on the risk assessments required by paragraph (1);

(B) cost–effectively reduce information security risks to an acceptable level;

(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

(D) ensure compliance with—

(i) the requirements of this subchapter [44 USCS §§ 3531 et seq.];

(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

(iii) minimally acceptable system configuration requirements, as determined by the agency; and

(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

(A) information security risks associated with their activities; and

(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c) [44 USCS § 3505(c)]; and

(B) may include testing relied on in a evaluation under section 3535 [44 USCS § 3535];

(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

(7) procedures for detecting, reporting, and responding to security incidents, including—

(A) mitigating risks associated with such incidents before substantial damage is done; and

(B) notifying and consulting with, as appropriate—

(i) law enforcement agencies and relevant offices of Inspector General;

(ii) an Office designated by the President for any incident involving a national security system; and

(iii) any other agency or Office, in accordance with law or as directed by the President; and

(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

(c) Each agency shall—

(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter [44 USCS §§ 3531 et seq.], including compliance with each requirement of subsection (b);

(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

(A) annual agency budgets;

(B) information resources management under subchapter 1 of this chapter [44 USCS §§ 3501 et seq.];

(C) information technology management under subtitle III of title 40 [40 USCS §§ 11101 et seq.];

(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

(E) financial management under chapter 9 of title 31 [31 USCS §§ 901 et seq.], and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the "Federal Managers Financial Integrity Act"); and

(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

(A) as a material weakness in reporting under section 3512 of title 31; and

(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

(d) (1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

(A) the time periods; and

(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.[21]

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[21] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2135, (2002). A prior § 3534 relating to information security, was replaced as part of the general revision of this subchapter by § 1001(b)(1) of P.L. 107–296, 116 Stat. 2135, (2002). Such section set out the purposes of former 44 U.S.C.S. § 3531 et seq. For similar provisions, see this section.

44 USC 3535.

Sec. 3535. Annual Independent Evaluation

(a) (1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

(2) Each evaluation by an agency under this section shall include—

(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

(B) an assessment (made on the basis of the results of the testing) of compliance with—

(i) the requirements of this subchapter [44 USCS §§ 3531 et seq.]; and

(ii) related information security policies, procedures, standards, and guidelines; and

(C) separate presentations, as appropriate, regarding information security relating to national security systems.

(b) Subject to subsection (c)—

(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978 [5 USCS Appx (IGA)] or any other law, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

(1) only by an entity designated by the agency head; and

(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

(d) The evaluation required by this section—

(1) shall be performed in accordance with generally accepted government auditing standards; and

(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

(g) (1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or

of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

(h) The Comptroller General shall periodically evaluate and report to Congress on—

(1) the adequacy and effectiveness of agency information security policies and practices; and

(2) implementation of the requirements of this subchapter [44 USCS §§ 3531 et seq.][22]

44 USC 3536. **Sec. 3536. National Security Systems.**

The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

(3) complies with the requirements of this subchapter.[23]

44 USC 3537. **Sec. 3537. Authorization of Appropriations**

There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.[24]

44 USC 3538. **Sec. 3538. Effect on Existing Law**

Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.[25]

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[22] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2135 (2002); P.L. 108–177, Title III, Subtitle E, § 377(e), 117 Stat. 2631 (2003). A prior § 3535 relating to information security, was replaced as part of the general revision of this subchapter by § 1001(b)(1) of P.L. 107–296 (2002). Such section set out the purposes of former 44 U.S.C. § 3531 et seq. .For similar provisions, see this section.

[23] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2266, (2002). A prior § 3536 relating to information security, was replaced as part of the general revision of this subchapter by § 1001(b)(1) of P.L. 107–296, 116 Stat. 2135, (2002). Such section provided for the expiration of former 44 U.S.C. § 3531 et seq. on May 31, 2003. This section is not to apply while Subchapter III of this chapter (44 U.S.C. § 3541 et seq.) is in effect. See 44 U.S.C. § 3549.

[24] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2267, (2002). This section is not to apply while Subchapter III of this chapter (44 U.S.C. § 3541 et seq.) is in effect. See 44 U.S.C. § 3549.

[25] Added by P.L. 107–296, Title X, § 1001(b)(1), 116 Stat. 2267, (2002). This section is not to apply while Subchapter III of this chapter (44 U.S.C. § 3541 et seq.) is in effect. See 44 U.S.C. § 3549.

C. GOVERNMENT PAPERWORK ELIMINATION ACT

Public Law 105–277 **112 Stat. 2681–749**

Division C–Title XVII

October 21, 1998

44 USC 3504 note. Government Paperwork Elimination Act.

Sec. 1701. Short Title.

Government Paperwork Elimination Act, 44 USC 3504 note. This Title may be cited as the "Government Paperwork Elimination Act of 1996."

Sec. 1702. Authority of OMB to Provide for Acquisition and Use of Alternative Information Technologies by Executive Agencies

Section 3504(a)(1)(B)(vi) of Title 44, United States Code, is amended to read as follows:

"(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.".

Sec. 1703. Procedures for Use and Acceptance of Electronic Signatures by Executive Agencies

(a) IN GENERAL.–In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger–Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall, in consultation with the National Telecommunications and Information Administration and not later than 18 months after the date of enactment of this Act, develop procedures for the use and acceptance of electronic signatures by Executive agencies.

(b) REQUIREMENTS FOR PROCEDURES.–

(1) The procedures developed under subsection (a)–

(A) shall be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments;

(B) may not inappropriately favor one industry or technology;

(C) shall ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted;

(D) shall provide for the electronic acknowledgment of electronic forms that are successfully submitted; and

(E) shall, to the extent feasible and appropriate, require an Executive agency that anticipates receipt by electronic means of 50,000 or more submittals of a particular form to take all steps necessary to ensure that multiple methods of electronic signatures are available for the submittal of such form.

(2) The Director shall ensure the compatibility of the procedures under paragraph (1)(A) in consultation with appropriate private bodies and State government entities that set standards for the use and acceptance of electronic signatures.

Sec. 1704. Deadline for Implementation by Executive Agencies of Procedures for Use and Acceptance of Electronic Signatures

In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger–Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall ensure that, commencing not later than five years after the date of enactment of this Act, Executive agencies provide–

(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and

(2) for the use and acceptance of electronic signatures, when practicable.

Sec. 1705. Electronic Storage and Filing of Employment Forms

In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger–Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

Sec. 1706. Study on Use of Electronic Signatures

(a) ONGOING STUDY REQUIRED.–In order to fulfill the responsibility to administer the functions assigned under Chapter 35 of Title 44, United States Code, the provisions of the Clinger–Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this Title, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information Administration, conduct an ongoing study of the use of electronic signatures under this Title on–

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.–The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

Sec. 1707. Enforceability and Legal Effect of Electronic Records

Electronic records submitted or maintained in accordance with procedures developed under this Title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

Sec. 1708. Disclosure of Information

Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this Title, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

Sec. 1709. Application with Internal Revenue Laws

No provision of this Title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision–

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

Sec. 1710. Definitions

For purposes of this Title:

(1) ELECTRONIC SIGNATURE.–The term "electronic signature" means a method of signing an electronic message that–

(A) identifies and authenticates a particular person as the source of the electronic message.

(2) EXECUTIVE AGENCY.–The term "Executive agency" has the meaning given that term in section 105 of Title 5, United States Code.

D. CONSOLIDATED APPROPRIATIONS ACT, 2001 (DATA QUALITY)

Public Law 106–554 **114 Stat. 2763A–153**

December 21, 2000

Appendix C
(Treasury and General Government Appropriations Act, 2001)

44 USC 3516 note.

Sec. 515

(a) IN GENERAL.–The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of Title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of Chapter 35 of Title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) CONTENT OF GUIDELINES.–The guidelines under subsection (a) shall–

(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

(2) require that each Federal agency to which the guidelines apply–

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

(C) report periodically to the Director–

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and

(ii) how such complaints were handled by the agency.

E. ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

Public Law 106–229 **114 Stat. 464**

June 30, 2000

An Act

To facilitate the use of electronic records and signatures in interstate or foreign commerce

Sec. 1. Short Title

This Act may be cited as the "Electronic Signatures in Global and National Commerce Act".

Title I–Electronic Records and Signatures In Commerce

15 USC 7001.

Sec. 101. General Rule of Validity

(a) IN GENERAL.–Notwithstanding any statute, regulation, or other rule of law (other than this Title and Title II), with respect to any transaction in or affecting interstate or foreign commerce–

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) PRESERVATION OF RIGHTS AND OBLIGATIONS.–This Title does not–

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) CONSUMER DISCLOSURES.–

(1) CONSENT TO ELECTRONIC RECORDS.–Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if–

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement–

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions,

consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer–

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record–

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and (ii) again complies with subparagraph (C).

(2) OTHER RIGHTS.–

(A) PRESERVATION OF CONSUMER PROTECTIONS–

Nothing in this Title affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) VERIFICATION OR ACKNOWLEDGMENT–If a law that was enacted prior to this Act expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) EFFECT OF FAILURE TO OBTAIN ELECTRONIC CONSENT OR CONFIRMATION OF CONSENT–The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain

electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) PROSPECTIVE EFFECT.–Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) PRIOR CONSENT.–This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this Title to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) ORAL COMMUNICATIONS.–An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) RETENTION OF CONTRACTS AND RECORDS.–

(1) ACCURACY AND ACCESSIBILITY.–If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that–

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) EXCEPTION.–A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated, or received.

(3) ORIGINALS.–If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) CHECKS.–If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) ACCURACY AND ABILITY TO RETAIN CONTRACTS AND OTHER RECORDS.–Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately

reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) PROXIMITY.–Nothing in this Title affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) NOTARIZATION AND ACKNOWLEDGMENT.–If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) ELECTRONIC AGENTS.–A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

Applicability.

(i) INSURANCE.–It is the specific intent of the Congress that this Title and Title II apply to the business of insurance.

(j) INSURANCE AGENTS AND BROKERS.–An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if–

(1) the agent or broker has not engaged in negligent, reckless, or intentional tortuous conduct;

(2) the agent or broker was not involved in the development or establishment of such electronic procedures; and

(3) the agent or broker did not deviate from such procedures.

15 USC 7002.

Sec. 102. Exemption to Preemption

(a) IN GENERAL.–A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 with respect to State law only if such statute, regulation, or rule of law–

(1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this Title or Title II, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if–

(i) such alternative procedures or requirements are consistent with this Title and Title II; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating,

storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

(b) EXCEPTIONS FOR ACTIONS BY STATES AS MARKET PARTICIPANTS.–Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) PREVENTION OF CIRCUMVENTION.–Subsection (a) does not permit a State to circumvent this Title or Title II through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

15 USC 7003.

Sec. 103. Specific Exceptions

(a) EXCEPTED REQUIREMENTS.–The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by–

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

(b) ADDITIONAL EXCEPTIONS.–The provisions of section 101 shall not apply to–

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of–

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(c) REVIEW OF EXCEPTIONS.–

(1) EVALUATION REQUIRED.–The Secretary of Commerce acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers.

Deadline.
Reports.

Secretary shall submit a report to the Congress on the results of such evaluation.

(2) DETERMINATIONS.–If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 101 to the exceptions identified in such finding.

15 USC 7004.

Sec. 104. Applicability to Federal and State

(a) FILING AND ACCESS REQUIREMENTS.–Subject to subsection (c)(2), nothing in this Title limits or supersedes any requirement by a Federal regulatory agency, self–regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

(b) PRESERVATION OF EXISTING RULEMAKING AUTHORITY.–

(1) Use of authority to interpret.–Subject to paragraph (2) and subsection (c), a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 101 with respect to such statute through–

(A) the issuance of regulations pursuant to a statute; or

(B) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency).

This paragraph does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations, orders, or guidance pursuant to any statute that does not authorize such issuance.

(2) Limitations on interpretation authority.–Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any regulation, order, or guidance described in paragraph (1), and a State regulatory agency is preempted by section 101 from adopting any regulation, order, or guidance described in paragraph (1), unless–

(A) such regulation, order, or guidance is consistent with section 101;

(B) such regulation, order, or guidance does not add to the requirements of such section; and

(C) such agency finds, in connection with the issuance of such regulation, order, or guidance, that–

(i) there is a substantial justification for the regulation, order, or guidance;

(ii) the methods selected to carry out that purpose–

(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and

(II) will not impose unreasonable costs on the acceptance and use of electronic records; and

(iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

(3) PERFORMANCE STANDARDS.–

(A) ACCURACY, RECORD INTEGRITY, ACCESSIBILITY.–Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Such performance standards may be specified in a manner that imposes a requirement in violation of paragraph (2)(C)(iii) if the requirement (i) serves an important

governmental objective; and (ii) is substantially related to the achievement of that objective. Nothing in this paragraph shall be construed to grant any Federal regulatory agency or State regulatory agency authority to require use of a particular type of software or hardware in order to comply with section 101(d).

(B) PAPER OR PRINTED FORM.–Notwithstanding subsection (c)(1), a Federal regulatory agency or State regulatory agency may interpret section 101(d) to require retention of a record in a tangible printed or paper form if–

(i) there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement; and (ii) imposing such requirement is essential to attaining such interest.

(4) Exceptions for actions by government as market participant.–Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of law governing procurement by the Federal or any State government, or any agency or instrumentality thereof.

(c) ADDITIONAL LIMITATIONS.–

(1) REIMPOSING PAPER PROHIBITED.–Nothing in subsection (b) (other than paragraph (3)(B) thereof) shall be construed to grant any Federal regulatory agency or State regulatory agency authority to impose or reimpose any requirement that a record be in a tangible printed or paper form.

(2) CONTINUING OBLIGATION UNDER GOVERNMENT PAPERWORK ELIMINATION ACT.–Nothing in subsection (a) or (b) relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (Title XVII of Public Law 105–277).

(d) AUTHORITY TO EXEMPT FROM CONSENT PROVISION.–

(1) IN GENERAL.–A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 101(c) if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

Deadline.
Regulations.

2) PROSPECTUSES.–Within 30 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue a regulation or order pursuant to paragraph (1) exempting from section 101(c) any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company that is registered under the Investment Company Act of 1940, or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 2(a)(10)(A) of the Securities Act of 1933.

(e) ELECTRONIC LETTERS OF AGENCY–The Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization.

15 USC 7005.

Sec. 105. Studies

Mail.

(a) DELIVERY.–Within 12 months after the date of the enactment of this Act, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 12–month period.

Reports.

b) STUDY OF ELECTRONIC CONSENT.–Within 12 months after the date of the enactment of this Act, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii); any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 101(c)(1)(C)(ii) would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

Reports.

Public information.

15 USC 7006.

Sec. 106. Definitions

For purposes of this Title:

(1) CONSUMER.–The term "consumer" means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(2) ELECTRONIC.–The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) ELECTRONIC AGENT.–The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

(4) ELECTRONIC RECORD.–The term "electronic record" means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

(5) ELECTRONIC SIGNATURE.–The term "electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(6) FEDERAL REGULATORY AGENCY.–The term "Federal regulatory agency" means an agency, as that term is defined in section 552(f) of Title 5, United States Code.

(7) INFORMATION.–The term "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(8) PERSON.–The term "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(9) RECORD.–The term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) REQUIREMENT.–The term "requirement" includes a prohibition.

(11) SELF–REGULATORY ORGANIZATION.–The term "self–regulatory organization" means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self–regulatory organization.

(12) STATE.–The term "State" includes the District of Columbia and the territories and possessions of the United States.

(13) TRANSACTION.–The term "transaction" means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct–

(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and

(B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

15 USC 7001 note.

Sec. 107. Effective Date

(a) IN GENERAL.–Except as provided in subsection (b), this Title shall be effective on October 1, 2000.

(b) EXCEPTIONS.–

(1) RECORD RETENTION.–

(A) IN GENERAL.–Subject to subparagraph (B), this Title shall be effective on March 1, 2001, with respect to a requirement that a record be retained imposed by–

(i) a Federal statute, regulation, or other rule of law, or

(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency.

(B) DELAYED EFFECT FOR PENDING RULEMAKINGS.– If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) with respect to a requirement described in subparagraph (A), this Title shall be effective on June 1, 2001, with respect to such requirement.

(2) CERTAIN GUARANTEED AND INSURED LOANS.–With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this Title applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act.

(3) Student loans.—With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to Title IV of the Higher Education Act of 1965, section 101(c) of this Act shall not apply until the earlier of–

(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965; or

(B) one year after the date of enactment of this Act.

Title II–Transferable Records

15 USC 7021. **Sec. 201. Transferable Records**

(a) DEFINITIONS.–For purposes of this section:

(1) TRANSFERABLE RECORD.–The term "transferable record" means an electronic record that–

(A) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(B) the issuer of the electronic record expressly has agreed is a transferable record; and

(C) relates to a loan secured by real property.

A transferable record may be executed using an electronic signature.

(2) OTHER DEFINITIONS.–The terms "electronic record", "electronic signature", and "person" have the same meanings provided in section 106 of this Act.

(b) CONTROL.–A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) CONDITIONS.–A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that–

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as–

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Status as Holder.–Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1–201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under sections 3–302(a), 9–308, or revised sections 9–330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Obligor Rights.–Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent

obligor under equivalent records or writings under the Uniform Commercial Code.

(f) Proof of Control.–If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

(g) UCC References.–For purposes of this subsection, all references to the Uniform Commercial Code are to the Uniform Commercial Code as in effect in the jurisdiction the law of which governs the transferable record.

15 USC 7021 note.

Sec. 202. Effective Date

This Title shall be effective 90 days after the date of enactment of this Act.

Title III–Promotion of International Electronic Commerce

15 USC 7031.

Sec. 301. Principles Governing the Use of Electronic Signatures in International Transactions

(a) PROMOTION OF ELECTRONIC SIGNATURES.–

(1) REQUIRED ACTIONS.–The Secretary of Commerce shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.–The principles specified in this paragraph are the following:

(A) Remove paper–based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law.

(B) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(C) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(D) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

(b) CONSULTATION.–In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(c) DEFINITIONS.–As used in this section, the terms ``electronic record'' and ``electronic signature'' have the same meanings provided in section 106 of this Act.

Title IV–Commission On Online Child Protection

Sec. 401. Authority to Accept Gifts

Section 1405 of the Child Online Protection Act (47 USC 231 note) is amended by inserting after subsection (g) the following new subsection:

"(h) GIFTS, BEQUESTS, AND DEVISES.–The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real (including the use of Office space) and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts or grants not used at the termination of the Commission shall be returned to the donor or grantee."

F. PLAIN WRITING ACT OF 2010

Public Law 111–274 **124 Stat. 2861**

October 13, 2010

An Act

To enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

5 USC 301 note.

Sec. 1. Short Title

This Act may be cited as the "Plain Writing Act of 2010".

5 USC 301 note.

Sec. 2. Purpose

The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.

Sec. 3. Definitions

In this Act:

(1) Agency.— The term "agency" means an Executive agency, as defined under section 105 of title 5, United States Code.

(2) Covered document.— The term "covered document"—

(A) means any document that—

(i) is necessary for obtaining any Federal Government benefit or service or filing taxes;

(ii) provides information about any Federal Government benefit or service; or

(iii) explains to the public how to comply with a requirement the Federal Government administers or enforces;

(B) includes (whether in paper or electronic form) a letter, publication, form, notice, or instruction; and

(C) does not include a regulation.

(3) Plain writing.— The term "plain writing" means writing that is clear, concise, well–organized, and follows other best practices appropriate to the subject or field and intended audience.

5 USC 301 note.

Sec. 4. Responsibilities of Federal Agencies

(a) Preparation for Implementation of Plain Writing Requirements.—

(1) In general.— Not later than 9 months after the date of enactment of this Act, the head of each agency shall—

(A) designate 1 or more senior officials within the agency to oversee the agency implementation of this Act;

(B) communicate the requirements of this Act to the employees of the agency;

(C) train employees of the agency in plain writing;

(D) establish a process for overseeing the ongoing compliance of the agency with the requirements of this Act;

(E) create and maintain a plain writing section of the agency's website as required under paragraph (2) that is accessible from the homepage of the agency's website; and

(F) designate 1 or more agency points–of–contact to receive and respond to public input on—

(i) agency implementation of this Act; and

(ii) the agency reports required under section 5.

(2) Website.— The plain writing section described under paragraph (1)(E) shall—

(A) inform the public of agency compliance with the requirements of this Act; and

(B) provide a mechanism for the agency to receive and respond to public input on—

(i) agency implementation of this Act; and

(ii) the agency reports required under section 5.

(b) Requirement to Use Plain Writing in New Documents.—Beginning not later than 1 year after the date of enactment of this Act, each agency shall use plain writing in every covered document of the agency that the agency issues or substantially revises.

(c) Guidance.—

(1) In general.— Not later than 6 months after the date of enactment of this Act, the Director of the Office of Management and Budget shall develop and issue guidance on implementing the requirements of this section. The Director may designate a lead agency, and may use interagency working groups to assist in developing and issuing the guidance.

(2) Interim guidance.— Before the issuance of guidance under paragraph (1), agencies may follow the guidance of—

(A) the writing guidelines developed by the Plain Language Action and Information Network; or

(B) guidance provided by the head of the agency that is consistent with the guidelines referred to in subparagraph (A).

5 USC 301 note.

Sec. 5. Reports to Congress

(a) Initial Report.—Not later than 9 months after the date of enactment of this Act, the head of each agency shall publish on the plain writing section of the agency's website a report that describes the agency plan for compliance with the requirements of this Act.

(b) Annual Compliance Report.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the head of each agency shall publish on the plain writing section of the agency's website a report on agency compliance with the requirements of this Act.

5 USC 301 note.

Sec. 6. Judicial Review and Enforceability

(a) Judicial Review.—There shall be no judicial review of compliance or noncompliance with any provision of this Act.

(b) Enforceability.—No provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any administrative or judicial action.

5 USC 301 note.

Sec. 7. Budgetary Effects of Paygo Legislation for this Act

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay–As–You–Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

9. Environmental Legislation

9. Environmental Legislation

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A. PERTINENT SECTIONS OF THE CLEAN AIR ACT OF 1977, AS AMENDED

(Including amendments made by)
Public Law 101–549 104 Stat. 2399

November 14, 1990

42 USC 7602. **Sec. 302. Definitions**

When used in this Chapter

(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 Chapter.

(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.

(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.

(5) An agency of an Indian tribe.

(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 and includes the Commonwealth of the Northern Mariana Islands.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department or instrumentality of the United States and any Officer, agent, or employee thereof.

(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 any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used.

(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, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this Chapter.

(l) The term "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term "means of emission limitation" means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution (characteristics).

(n) The term "primary standard attainment date" means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(o) The term "delayed compliance order" means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term "schedule and timetable of compliance" means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this Chapter, the term "applicable implementation plan" means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 7410 of this Title, or promulgated under section 7410(c) of this Title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this Title and which implements the relevant requirements of this Chapter.

(r) INDIAN TRIBE

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(s) VOC

The term "VOC" means volatile organic compound, as defined by the Administrator.

(t) PM–10

The term "PM–10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG

The term "NAAQS" means national ambient air quality standard. The term "CTG" means a Control Technique Guideline published by the Administrator under section 7408 of this Title.

(v) NO_X

The term "NO_X" means oxides of nitrogen.

(w) CO

The term "CO" means carbon monoxide.

(x) SMALL SOURCE

The term "small source" means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

(y) FEDERAL IMPLEMENTATION PLAN

The term "Federal implementation plan" means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) STATIONARY SOURCE

The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this Title.[1]

Title III

Sec. 301. Hazardous Air Pollutants

Section 112 of the Clean Air Act is amended to read as follows:

42 USC 7412. **Sec. 112. Hazardous Air Pollutants**

(a) DEFINITIONS.–For purposes of this section, except subsection (R)–

(1) Major Source.–The term "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence,

[1] July 14, 1955, Chapter 360, Title III, §302, formerly §9, as added by P.L. 88–206, §1, 77 Stat. 400, (1963), by P.L. 89–272, Title I, §101(4), 79 Stat. 992, (1965); Amended by P.L. 90–48, §2, 81 Stat. 504, (1967); P.L. 91–604, §15(a)(1), (c)(1), 84 Stat. 1710, 1713, (1970); P.L. 95–95, Title II, §218(c), Title III, §301, 91 Stat. 761, 769, (1977); P.L. 95–190, §14(a)(76), 91 Stat. 1404, (1977); P.L. 101–549, Title I, §§101(d)(4), 107(a), (b), 108(i), 109(b), Title III, §302(e), Title VII, §709, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684, (1990).

potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(2) Area source.–The term "area source" means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term "area source" shall not include motor vehicles or non–road vehicles subject to regulation under Title II.

(3) Stationary Source.–The term "stationary source" shall have the same meaning as such term has under section 111(a).

(4) New Source.–The term "new source" means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification.–The term "modification" means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(6) Hazardous Air Pollutant.–The term "hazardous air pollutant" means any air pollutant listed pursuant to subsection (b).

(7) Adverse Environmental Effect.–The term "adverse environmental effect" means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

(8) Electric Utility Steam Generating Unit.–The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one–third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

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

(10) Existing Source.–The term "existing source" means any stationary source other than a new source.

(11) Carcinogenic Effect.–Unless revised, the term "carcinogenic effect" shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment. Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

(b) LIST OF POLLUTANTS.–

(1) Initial List.–The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

* * * *

0 Radionuclides (including radon)[2]

[2] A type of atom which spontaneously undergoes radioactive decay.

* * * *

(2) Revision of The List.–The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection r. as a result of emissions to the air. No air pollutant which is listed under section 108(a) may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 108(a) or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under Title VI of this act shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions To Modify The List.–

(A) Beginning at any time after 6 months after the date of enactment of the Clean Air Act Amendments of 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) for which a deletion petition has been filed within 12 months of the date of enactment of the Clean Air Act Amendments of 1990.

(4) Further Information.–If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) Test Methods.–The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) Prevention of Significant Deterioration.–The provisions of Part C (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead.–The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) LIST OF SOURCE CATEGORIES.–

(1) In General.–Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and Part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) Requirement for Emissions Standards.–For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d), according to the schedule in this subsection and subsection (e).

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(3) Area Sources.–The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990 and pursuant to subsection (k)(3)(B), list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the

area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after such date of enactment.

(4) Previously Regulated Categories.–The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(5) Additional Categories.–In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) for the category or subcategory shall be promulgated within 10 years after the date of enactment of the Clean Air Act Amendments of 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

* * * *

(9) Deletions From This List.–

(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from this list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3).

(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

(d) EMISSION STANDARDS.–

(1) In General.–The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) as the result of the authority provided by this sentence.

(2) Standards and Methods.–Emissions standard promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non–air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which–

(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

(B) enclose systems or processes to eliminate emissions,

(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

(E) are a combination of the above,

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 114(c), in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New and Existing Sources.–The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than–

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source

category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) Health Threshold.–With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) Alternative Standard For Area Sources.–With respect only to categories and subcategories of area sources listed pursuant to subsection (c), the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f), elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

(6) Review and Revision.–The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

(7) Other Requirements Preserved.–No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, Part C or D, or other authority of this Act or a standard issued under State authority.

* * * *

(9) Sources Licensed By The Nuclear Regulatory Commission.–No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 111 or this section.

(10) Effective Date.–Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

* * * *

(q) SAVINGS PROVISION.–

(1) Standard Previously Promulgated.–Any standard under this section in effect before the date of enactment of the Clean Air Act

Amendments of 1990 shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 307 is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special Rule.–Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other Categories.–Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from non–Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal–fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical Facilities.–Notwithstanding paragraph (1), no standard promulgated under this section prior to the date of enactment of the Clean Air Act Amendments of 1990 with respect to medical research or treatment facilities shall take effect for two years following the date of enactment of the Clean Air Act Amendments of 1990, unless the Administrator makes a determination pursuant to a rulemaking under section 112(d)(9). If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of section 112 shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in section 112(d)(9).

r) PREVENTION OF ACCIDENTAL RELEASES.–

(1) Purpose and General Duty.–It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such

release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654, Title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 304 shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions.–

(A) The term "accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term "regulated substance" means a substance listed under paragraph (3).

(C) The term "stationary source" means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(3) List of Substances.–The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right–to–Know Act of 1986, with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this Chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list

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established under this paragraph consistent with those applicable to the list in subsection (b).

(4) Factors to be considered. In listing substances under paragraph (3), the Administrator—

(A) shall consider—

(i) the severity of any acute adverse health effects associated with accidental releases of the substance;

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

(5) Threshold Quantity.–At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

* * * *

(11) State Authority.–Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

* * * *

(7) Accident Prevention.–

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record–keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the

Administrator, assuring compliance as expeditiously as practicable.

Regulations.

(B)(i) Within 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to

accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 114(c). The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of section 113, 114, 116, 120, 304, and 307 and other enforcement provisions of this Act, be treated as a standard in effect under subsection (d).

(F) Notwithstanding the provisions of Title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such Title solely because such

source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of Title 29 of the United States Code, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.[3]

42 USC 7416. **Sec. 116. Retention of State Authority**

Except as otherwise provided in sections 1857c–10(e), (e), and (ff) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this Title (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 7411 or 7412, 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.[4]

42 USC 7422. **Sec. 122. Listing of Certain Unregulated Pollutants**

(a) Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 7408(a)(1) or 7412(b)(1)(A) (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 7411(b)(1)(A), or take any combination of such actions.

(b) Nothing in subsection (a) shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) with respect to any substance (whether or not enumerated in subsection (a)).

(c)(1) Before listing any source material, special nuclear, or byproduct material (or component or derivative thereof) as provided in subsection (a), the Administrator shall consult with the Nuclear Regulatory Commission.

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[3] July 14, 1955, Chapter 360, Title I, 112, as added P.L. 91–604, 4(a), 84 Stat. 1685, (1970); Amended by P.L. 95–95, Title I, 109(d)(2), 110, Title 401(c), 91 Stat. 701, 703, 791, (1977); P.L. 95– 623, 13(b), 92 Stat. 3458 (1978); P.L. 101–549, Title III, 301, 104 Stat. 2531 (1990); P.L. 102–187, 105 Stat. 1285 (1991); P.L. 105–362, Title IV, § 402(b), 112 Stat. 3283 (1998); P.L. 106–40, §§ 2, 3(a), 113 Stat. 207 (1999).

[4] July 14, 1955, Chapter 360, Title I, §116, formerly § 109, as added by P.L. 90–148, § 2, 81 Stat. 497 (1967), renumbered and amended by P.L. 91–604, §4(a),(c), 84 Stat. 1678, 1689, (1970); P.L. 93–319, §6(b), 88 Stat. 259, (1974); P.L. 95–190, §14(a)(24), 91 Stat. 1400, (1978).

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this Act, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this Act respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

(3) In case of any standard or emission limitation promulgated by the Administrator, under this Act or by any State (or the Administrator) under any applicable implementation plan under this Act, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Commission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.[5]

Title IV

Sec. 501. Permits

Add the following new Title after Title IV:

Title V

Sec. 501. Definitions.
Sec. 502. Permit programs.
Sec. 503. Permit applications.
Sec. 504. Permit requirements and conditions.
Sec. 505. Notification to Administrator and contiguous States.
Sec. 506. Other authorities.
Sec. 507. Small business stationary source technical and environmental compliance assistance program.

42 USC 7661.

Sec. 501. Definitions

As used in this Title–

(1) Affected source.–The term "affected source" shall have the meaning given such term in Title IV.

(2) Major source.–The term "major source" means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source as defined in section 112.

(B) A major stationary source as defined in section 302 or Part D of Title I.

(3) Schedule of compliance.–The term "schedule of compliance" means a schedule of remedial measures, including an enforceable

[5] July 14, 1955, Chapter 360, Title I, §122, as added P.L. 95–95, Title I, §120(a), 91 Stat. 720, (1977).

sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority.–The term "permitting authority" means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this Title.

42 USC 7661a. **Sec. 502. Permit Programs**

(a) VIOLATIONS.–After the effective date of any permit program approved or promulgated under this Title, it shall be unlawful for any person to violate any requirement of a permit issued under this Title, or to operate an affected source (as provided in Title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under Parts C or D of Title I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this Title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements in impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) REGULATIONS.–The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this Title pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this Title, including section 507, including the reasonable costs of–

(i) reviewing and acting upon any application for such a permit,

(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term "regulated pollutant" shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause–

(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all–urban consumers published by the Department of Labor, as of the close of the 12–month period ending on August 31 of each calendar year, and

(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this Title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the

Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury or licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

(4) Requirements for adequate personnel and funding to administer the program.

(5) A requirement that the permitting authority have adequate authority to:

(A) issue permits and assure compliance by all sources required to have a permit under this Title with each applicable standard, regulation or requirement under this Act;

(B) issue permits for a fixed term, not to exceed 5 years;

(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

(D) terminate, modify, or revoke and reissue permits for cause;

(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this Title.

(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appropriate, Title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this Title regarding renewals.

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d) without requiring a permit revision, if the changes are not modifications under any provision of Title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

(c) SINGLE PERMIT.–A single permit may be issued for a facility with multiple sources.

(d) SUBMISSION AND APPROVAL.–(1) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this Title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal Officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18–month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other

conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in Part D of Title I).

(3) If a program meeting the requirements of this Title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this Title for that State.

(e) SUSPENSION.–The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this Title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) PROHIBITION.–No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this Title and each of the following:

(1) All requirements established under Title IV applicable to affected sources.

(2) All requirements established under section 112 applicable to major sources, area sources, and new sources.

(3) All requirements of Title I (other than section 112) applicable to sources required to have a permit under this Title.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

(g) INTERIM APPROVAL.–If a program (including a partial permit program) submitted under this Title substantially meets the requirements of this Title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than two years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this Title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

(h) EFFECTIVE DATE.–The effective date of a permit program, or partial or interim program, approved under this Title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) ADMINISTRATION AND ENFORCEMENT.–(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in

accordance with the requirements of this Title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18–month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this Title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this Title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this Title or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

42 USC 7661b.

Sec. 503. Permit Applications

(a) APPLICABLE DATE.–Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates–

(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

(2) the date such source becomes subject to section 502(a).

Reports.

(b) COMPLIANCE PLAN.–(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

(c) DEADLINE.–Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this Title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application consistent with the procedures established under this Title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that

the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one–third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Act.

(d) TIMELY AND COMPLETE APPLICATIONS.–Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this Title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this Title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

Public information.

(e) COPIES; AVAILABILITY.–A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this Title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

42 USC 7661c.

Sec. 504. Permit Requirements and Conditions

(a) CONDITIONS.–Each permit issued under this Title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.

(b) MONITORING AND ANALYSIS.–The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of Title IV, or where required elsewhere in this Act.

(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.–Each permit issued under this Title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this Title shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) GENERAL PERMITS.–The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering

numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this Title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 503.

(e) TEMPORARY SOURCES.–The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under Part C of Title I. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) PERMIT SHIELD.–Compliance with a permit issued in accordance with this Title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if–

(1) the permit includes the applicable requirements of such provisions, or

(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section.

42 USC 7661d.

Sec. 505. Notification to Administrator and Contiguous States

(a) TRANSMISSION AND NOTICE.–(1) Each permitting authority–

(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this Act, and

(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) The permitting authority shall notify all States–

(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) OBJECTION BY EPA.–(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an

applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1), or (B) within 45 days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45–day review period specified in paragraph (1) to take such action. A copy of such petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 307. The Administrator shall include in regulations under this Title provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c). If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c).

(c) ISSUANCE OR DENIAL.–If the permitting authority fails, within 90 days after the date of an objection under subsection (b), to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this Title. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) WAIVER OF NOTIFICATION REQUIREMENTS.–(1) The Administrator may waive the requirements of subsections (a) and (b) at the time of approval of a permit program under this Title for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2). Any waiver granted under this subsection may be revoke or modified by the Administrator by rule.

(e) REFUSAL OF PERMITTING AUTHORITY TO TERMINATE, MODIFY, OR REVOKE AND REISSUE.–If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this Title, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b). If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

42 USC 7661e.

Sec. 506. Other Authorities

(a) IN GENERAL.–Nothing in this Title shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this Act.

(b) PERMITS IMPLEMENTING ACID RAIN PROVISIONS.–The provisions of this Title, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of Title IV except as modified by that Title.

42 USC 7661f.

Sec. 507. Small Business Stationary Source Technical and Environmental Compliance Assistance Program

(Text not reprinted.)[6]

[6] Added byP.L. 101–549, §501, 104 Stat. 2468, (1990).

B. SECTION 511 OF THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972

Public Law 92–500 **86 Stat. 893**

October 18, 1972

33 USC 1371.

Sec. 511. Other Affected Authority

(a) This act shall not be construed as (1) limiting the authority or functions of any Officer or agency of the United States under any other law or regulation not inconsistent with this Act; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899 (30 Stat. 1112); except that any permit issued under section 404 of this Act shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 10 of the Act of March 3, 1899, or (3) affecting or impairing the provisions of any treaty of the United States.

(b) Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 (36 Stat. 593; 33 USC 421) and the Supervisory Harbors Act of 1888 (25 Stat. 209; 33 USC 441–451b) shall be regulated pursuant to this Act, and not subject to such Act of 1910 and Act of 1888 except to effect on navigation and anchorage.

(c)(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 201 of this Act, and the issuance of a permit under section 402 of this Act for the discharge of any pollutant by a new source as defined in section 306 of this Act, no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852); and

42 USC 4321 note.

(2) Nothing in the National Environmental Policy Act of 1969 (83 Stat. 852) shall be deemed to–

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this Act or the adequacy of any certification under section 401 of this Act; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this Act.

(d) Not withstanding this Act or any other provision of law, the Administrator (1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in Title II of this Act), any water pollution control agreement which may have been entered into between the United States and any other nation, and (2) shall not consider any such agreement in the approval of any such priority ranking.[1]

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[1] Amended by P.L. 93–243, § 3, 87 Stat. 1069, (1974).

C. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED

Public Law 91–190 **83 Stat. 852**

January 1, 1970

An Act

To establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

National Environmental Policy Act of 1969.

Sec. 1. Short Title

That this Act may be cited as the "National Environmental Policy Act of 1969"

42 USC 4321. Policies and goals.

Sec. 2. Purpose

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.

Title I

42 USC 4331.

Sec. 101. Declaration of National Environmental Policy

(a) The Congress, recognizing the profound impact of man's activity in 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 aesthetically 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.

42 USC 4332.

Sec. 102. Cooperation of Agencies; Reports; Availability of Information; Recommendations; International and National Coordination of Efforts

Administration.

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

(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.

Copies of statements, etc.; availability.

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 provided by section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or officials, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any alternative, thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.[1]

(E) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) 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;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource–oriented projects; and

(I) assist the Council on Environmental Quality established by Title II of this Act.

42 USC 4333.

Sec. 103. Conformity of Administrative Procedures to National Environmental Policy

Review.

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.

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[1] Amended by P.L. 94–83, 89 Stat. 424, (1975).

42 USC 4334.

Sec. 104. Other Statutory Obligations of Agencies

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 USC 4335.

Sec. 105. Efforts Supplemental to Existing Authorizations

The polices and goals set forth in this Act are supplementary to those set forth in existing authorization of Federal agencies.

Title II

42 USC 4341.
Report to Congress.

Sec. 201. Council on Environmental Quality (Omit)[2]

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 non–governmental 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 USC 4342.
Council on Environmental Quality.
Report to Congress.

Sec. 202. Establishment; Membership; Chairman; Appointments

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.

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[2] Amended by P.L. 91–190, Title II, § 201, 83 Stat. 854 (1970), which required the President to transmit to Congress annually an Environmental Quality Report, terminated, effective May 15, 2000, pursuant to P.L. 104–66, § 3003, 109 Stat. 734, (1995), set out as a note under 31 U.S.C. § 1113.

42 USC 4343.

Sec. 203. Employment of Personnel, Experts and Consultants

(a)[3] 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).

Voluntary and uncompensated services.

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 USC 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.[4]

42 USC 4344.

Sec. 204. Duties and Functions

Duties and functions.

It shall be the duty and function of the Council–

(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 USC 4345.

Sec. 205. Consultation with Citizens' Advisory Committee on Environmental Quality and Other Representatives

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

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[3] Amended by P.L. 94–52, § 2, 89 Stat. 258, (1975).
[4] Amended by P.L. 94–52, § 2, 89 Stat. 258, (1975).

(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 USC 4346. Tenure and compensation.

Sec. 206. Tenure and Compensation of Members

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 USC 5313). The other members of the council shall be compensated at the rate provided for Level IV or the Executive Schedule Pay Rates (5 USC 5315).

42 USC 4346a.

Sec. 207. Travel Reimbursement by Private Organizations and Federal, State, and Local Governments

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an Officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.[5]

42 USC 4346b.

Sec. 208. Expenditures in Support of International Activities

The Council may make expenditures in support of its international activities, including expenditures for; (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

42 USC 4347. Appropriations.

Sec. 209. Authorization of Appropriations

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.[6]

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[5] Amended by P.L. 94–52, § 2, 89 Stat. 258, (1975).
[6] Amended by P.L. 94–52, § 2, 89 Stat. 258, (1975).

D. WEST VALLEY DEMONSTRATION PROJECT ACT

Public Law 96–368 **94 Stat. 1347**

October 1, 1980

An Act

To authorize the Department of Energy to carry out a high–level liquid nuclear waste management demonstration project at the Western New York Service Center in West Valley, New York.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

42 USC 2021a note. West Valley Demonstration Project Act.

Sec. 1. Title

This Act may be cited as the "West Valley Demonstration Project Act."

42 USC 2021a note. Activities.

Sec. 2. Purpose

"(a) The Secretary shall carry out, in accordance with this Act a high level radioactive waste management demonstration project at the Western New York Service Center in West Valley, New York, for the purpose of demonstrating solidification techniques which can be used for preparing high level radioactive waste for disposal. Under the project the Secretary shall carry out the following activities:

"(1) The Secretary shall solidify, in a form suitable for transportation and disposal, the high level radioactive waste at the Center by vitrification or by such other technology which the Secretary determines to be the most effective for solidification.

"(2) The Secretary shall develop containers suitable for the permanent disposal of the high level radioactive waste solidified at the Center.

"(3) The Secretary shall, as soon as feasible, transport, in accordance with applicable provisions of law, the waste solidified at the Center to an appropriate Federal repository for permanent disposal.

"(4) The Secretary shall, in accordance with applicable licensing requirements, dispose of low level radioactive waste and transuranic waste produced by the solidification of the high level radioactive waste under the project.

"(5) The Secretary shall decontaminate and decommission—

"(A) the tanks and other facilities of the Center in which the high level radioactive waste solidified under the project was stored,

"(B) the facilities used in the solidification of the waste, and

"(C) any material and hardware used in connection with the project,

in accordance with such requirements as the Commission may prescribe.

"(b) Before undertaking the project and during the fiscal year ending September 30, 1981, the Secretary shall carry out the following:

"(1) The Secretary shall hold in the vicinity of the Center public hearings to inform the residents of the area in which the Center is located of the activities proposed to be undertaken under the project and to receive their comments on the project.

"(2) The Secretary shall consider the various technologies available for the solidification and handling of high level radioactive waste taking into account the unique characteristics of such waste at the Center.

"(3) The Secretary shall—

"(A) undertake detailed engineering and cost estimates for the project,

"(B) prepare a plan for the safe removal of the high level radioactive waste at the Center for the purposes of solidification and include in the plan provisions respecting the safe breaching of the tanks in which the waste is stored, operating equipment to accomplish the removal, and sluicing techniques,

"(C) conduct appropriate safety analyses of the project, and

"(D) prepare required environmental impact analyses of the project.

"(4) The Secretary shall enter into a cooperative agreement with the State in accordance with the Federal Grant and Cooperative Agreement Act of 1977 [41 USCS §§ 501 et seq.] under which the State will carry out the following:

"(A) The State will make available to the Secretary the facilities of the Center and the high level radioactive waste at the Center which are necessary for the completion of the project. The facilities and the waste shall be made available without the transfer of title and for such period as may be required for completion of the project.

"(B) The Secretary shall provide technical assistance in securing required license amendments.

"(C) The State shall pay 10 per centum of the costs of the project, as determined by the Secretary. In determining the costs of the project, the Secretary shall consider the value of the use of the Center for the project. The State may not use Federal funds to pay its share of the cost of the project, but may use the perpetual care fund to pay such share.

"(D) Submission jointly by the Department of Energy and the State of New York of an application for a licensing amendment as soon as possible with the Nuclear Regulatory Commission providing for the demonstration.

(c) Within one year from the date of the enactment of this Act [enacted Oct. 1, 1980], the Secretary shall enter into an agreement with the Commission to establish arrangements for review and consultation by the Commission with respect to the project: Provided, That review and consultation by the Commission pursuant to this subsection shall be conducted informally by the Commission and shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended [42 USCS §§ 2011 et seq. generally], the Energy Reorganization Act of 1974, as amended [42 USCS §§ 5801 et seq. generally], or any other law. The agreement shall provide for the following:

"(1) The Secretary shall submit to the Commission, for its review and comment, a plan for the solidification of the high level radioactive waste at the Center, the removal of the waste for purposes of its solidification, the preparation of the waste for disposal, and the decontamination of the facilities to be used in solidifying the waste. In preparing its comments on the plan, the Commission shall specify with precision its objections to any provision of the plan. Upon submission of a plan to the Commission, the Secretary shall publish a notice in the Federal Register of the submission of the plan and of its availability for public inspection, and, upon receipt of the comments of the Commission respecting a plan, the Secretary shall publish a notice in the Federal Register of the receipt of the comments and of the availability of the comments for public inspection. If the Secretary does not revise the plan to meet objections

specified in the comments of the Commission, the Secretary shall publish in the Federal Register a detailed statement for not so revising the plan.

"(2) The Secretary shall consult with the Commission with respect to the form in which the high level radioactive waste at the Center shall be solidified and the containers to be used in the permanent disposal of such waste.

"(3) The Secretary shall submit to the Commission safety analysis reports and such other information as the Commission may require to identify any danger to the public health and safety which may be presented by the project.

"(4) The Secretary shall afford the Commission access to the Center to enable the Commission to monitor the activities under the project for the purpose of assuring the public health and safety.

"(d) In carrying out the project, the Secretary shall consult with the Administrator of the Environmental Protection Agency, the Secretary of Transportation, the Director of the [United States] Geological Survey, and the commercial operator of the Center.

42 USC 2021a note. Appropriation authorization.

Sec. 3. Appropriation/Authorization

(a) There are authorized to be appropriated to the Secretary for the project not more than $5,000,000 for the fiscal year ending September 30, 1981.

(b) The total amount obligated for the project by the Secretary shall be 90 per centum of the costs of the project.

(c) The authority of the Secretary to enter into contracts under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

42 USC 2021a note. Report to Speaker of the House and President pro tempore of the Senate.

Sec. 4. Report

Not later than February 1, 1981, and on February 1 of each calendar year thereafter during the term of the project, the Secretary shall transmit to the Speaker of the House of Representatives and the President pro tempore of the Senate an up–to–date report containing a detailed description of the activities of the Secretary in carrying out the project, including agreements entered into and the costs incurred during the period reported on and the activities to be undertaken in the next fiscal year and the estimated costs thereof.

42 USC 2021a note.

42 USC 2011 note.

42 USC 5801 note.

Sec. 5. Rights and Obligations

(a) Other than the costs and responsibilities established by this Act for the project, nothing in this Act shall be construed as affecting any rights, obligations, or liabilities of the commercial operator of the Center, the State, or any person, as is appropriate, arising under the Atomic Energy Act of 1954 or under any other law, contract, or agreement for the operation, maintenance, or decontamination of any facility or property at the Center or for any wastes at the Center. Nothing in this Act shall be construed as affecting any applicable licensing requirement of the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974. This Act shall not apply or be extended to any facility or property at the Center which is not used in conducting the project. This Act may not be construed to expand or diminish the rights of the Federal Government.

(b) This Act does not authorize the Federal Government to acquire title to any high level radioactive waste at the Center or to the Center or any portion thereof.

42 USC 2021a note. Definitions.

Sec. 6. Definitions

For purposes of this Act:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "State" means the State of New York.

(4) The term "high level radioactive waste" means the high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste, and such other material as the Commission designates as high level radioactive waste for the purposes of protecting the public health and safety.

(5) The term "transuranic waste" means material contaminated with elements which have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and which are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Commission may prescribe to protect the public health and safety.

42 USC 2014.

(6) The term "low level radioactive waste" means radioactive waste not classified as high level radioactive waste, transuranic waste, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954.

(7) The term "project" means the project prescribed by section 2(a).

(8) The term "Center" means the Western New York Service Center in West Valley, New York.

* * * *

Other Provisions: Reduction In Funding For West Valley Demonstration Project

Act November 12, 2001, Public Law 107–66, Title III, 115 Stat. 503, provides:

Funding for the West Valley Demonstration Project shall be reduced in subsequent fiscal years to the minimum necessary to maintain the project in a safe and stable condition, unless not later than September 30, 2002, the Secretary:

(1) provides written notification to the Committees on Appropriations of the House of Representatives and the Senate that agreement has been reached with the State of New York on the final scope of Federal activities at the West Valley site and on the respective Federal and State cost shares for those activities;

(2) submits a written copy of that agreement to the Committees on Appropriations of the House of Representatives and the Senate; and

(3) provides a written certification that the Federal actions proposed in the agreement will be in full compliance with all relevant Federal statutes and are in the best interest of the Federal Government.

10. Miscellaneous Domestic Legislation and Executive Orders

10. Miscellaneous Domestic Legislation and Executive Orders

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A. UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT ACT) ACT OF 2001

Public Law 107–56 **115 Stat. 379**

October 26, 2001

An Act

To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

Sec. 808. Definition of Federal Crime of Terrorism

Section 2332b of title 18, United States Code, is amended–

(1) in subsection (f), by inserting "and any violation of section 351(e), 844(e), 844(f)(1), 956(b), 1361, 1366(b), 1366(c), 1751(e), 2152, or 2156 of this title," before "and the Secretary"; and

(2) in subsection (g)(5)(B), by striking clauses (i) through (iii) and inserting the following:

"(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 or 175b (relating to biological weapons), 229 (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 (relating to congressional, cabinet, and Supreme Court assassination and kidnapping), 831 (relating to nuclear materials), 842(m) or (n) (relating to plastic explosives), 844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death), 844(i) (relating to arson and bombing of property used in interstate commerce), 930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) (relating to protection of computers), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) (relating to protection of computers), 1114 (relating to killing or attempted killing of Officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1362 (relating to destruction of communication lines, stations, or systems), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnapping), 1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems), 2155 (relating to destruction of national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a

(relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339 (relating to harboring terrorists), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title;

(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 USC 2284); or

(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.

B. NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002 (HOMELAND SECURITY)

Public Law 107–107 **115 Stat. 1271**

December 28, 2001

An Act

To authorize appropriations for fiscal year 2002 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Sec. 3154. Annual Assessment and Report on Vulnerability of Department of Energy Facilities to Terrorist Attack

(a) IN GENERAL.–Part C of title VI of the Department of Energy Organization Act (42 U.S.C. 7251 et seq.) is amended by adding at the end the following new section:

Sec. 663.

42 USC 7270c.

(a) The Secretary shall, on an annual basis, conduct a comprehensive assessment of the vulnerability of Department facilities to terrorist attack.

Deadline.

(b) Not later than January 31 each year, the Secretary shall submit to Congress a report on the assessment conducted under subsection (a) during the preceding year. Each report shall include the results of the assessment covered by such report, together with such findings and recommendations as the Secretary considers appropriate.".

(b) CLERICAL AMENDMENT.–The table of sections at the beginning of that Act is amended by inserting after the item relating to section 662 the following new item:

Sec. 663. Annual assessment and report on vulnerability of facilities to terrorist attack.

* * * *

C. PERTINENT SECTIONS OF THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

Public Law 108–458 **118 Stat. 3755**

December 17, 2004

Subtitle E–Criminal History Background Checks

42 USC 5119a note.

Sec. 6401. Protect Act

Public Law 108–21 is amended–

(1) in section 108(a)(2)(A) by striking "an 18 month" and inserting "a 30–month"; and

(2) in section 108(a)(3)(A) by striking "an 18–month" and inserting "a 30–month".

28 USC 534 note.

Private Security Officer Employment Authorization Act of 2004.

Sec. 6402. Reviews of Criminal Records of Applicants for Private Security Officer Employment

Security Officer Employment Authorization Act of 2004".

(a) SHORT TITLE.–This section may be cited as the "Private Security Officer Employment Authorization Act of 2004".

(b) FINDINGS.–Congress finds that–

(1) employment of private security Officers in the United States is growing rapidly;

(2) private security Officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security Officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, Office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement Officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security Officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security Officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7) such growth makes available more public sector law enforcement Officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well–trained private security personnel as an adjunct to sworn law enforcement Officers; and

(9) private security Officers and applicants for private security Officer positions should be thoroughly screened and trained.

(c) DEFINITIONS.–In this section:

(1) EMPLOYEE.–The term "employee" includes both a current employee and an applicant for employment as a private security Officer.

(2) AUTHORIZED EMPLOYER–The term "authorized employer" means any person that–

(A) employs private security Officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.–The term "private security Officer"–

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full or part time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this Act if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include–

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.–The term "security services" means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.–The term "State identification bureau" means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) CRIMINAL HISTORY RECORD INFORMATION SEARCH.–

(1) IN GENERAL.–

(A) SUBMISSION OF FINGERPRINTS.–An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this Act.

(B) EMPLOYEE RIGHTS.–

(i) PERMISSION.–An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of the participating State the request to search the criminal history record information of the employee under this Act.

(ii) ACCESS.–An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this Act.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.–Upon receipt of a request for a criminal history record information search from an authorized

employer pursuant to this Act, submitted through the State identification bureau of a participating State, the Attorney General shall–

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.–

(i) IN GENERAL.–Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS–In the case of–

Notification.

(I) a participating State that has no State standards for qualification to be a private security Officer, the State shall notify an authorized employer as to the fact of whether an employee has been–

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security Officer, the State shall use the information received pursuant to this Act in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.–An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.–Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act, including–

Deadline.

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTIES FOR USE OF INFORMATION.–Whoever knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security Officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.–

(A) IN GENERAL.–The Director of the Federal Bureau of Investigation may–

(i) collect fees to process background checks provided for by this Act; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) LIMITATIONS.–Any fee collected under this subsection–

(i) shall, consistent with Public Law 101–515 and Public Law 104–99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

(C) STATE COSTS.–Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(5) STATE OPT OUT.–A State may decline to participate in the background check system authorized by this Act by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

Sec. 6403. Criminal History Background Checks

Deadline Reports.

(a) IN GENERAL. –Not later than 180 days after the date of enactment of this Act, the Attorney General shall report to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives regarding all statutory requirements for criminal history record checks that are required to be conducted by the Department of Justice or any of its components.

(b) DEFINITIONS.–As used in this section–

(1) the terms "criminal history information" and "criminal history records" include–

(A) an identifying description of the individual to whom the information or records pertain;

(B) notations of arrests, detentions, indictments, or other formal criminal charges pertaining to such individual; and

(C) any disposition to a notation described in subparagraph (B), including acquittal, sentencing, correctional supervision, or release; and

(2) the term "IAFIS" means the Integrated Automated Fingerprint Identification System of the Federal Bureau of Allocation, which serves as the national depository for fingerprint, biometric, and criminal history information, through which fingerprints are processed electronically.

(c) IDENTIFICATION OF INFORMATION.–The Attorney General shall identify–

(1) the number of criminal history record checks requested, including the type of information requested;

(2) the usage of different terms and definitions regarding criminal history information; and

(3) the variation in fees charged for such information and who pays such fees.

Procedures.

(d) RECOMMENDATIONS. –The Attorney General shall make recommendations to Congress for improving, standardizing, and consolidating the existing statutory authorization, programs, and procedures for the conduct of criminal history record checks for non–criminal justice purposes. In making these recommendations to Congress, the Attorney General shall consider–

(1) the effectiveness and efficiency of utilizing commercially available databases as a supplement to IAFIS criminal history information checks;

(2) any security concerns created by the existence of these commercially available databases concerning their ability to provide sensitive information that is not readily available about law enforcement or intelligence officials, including their identity, residence, and financial status;

(3) the effectiveness of utilizing State databases;

(4) any feasibility studies by the Department of Justice of the resources and structure of the Federal Bureau of Investigation to establish a system to provide criminal history information;

(5) privacy rights and other employee protections, including–

(A) employee consent;

(B) access to the records used if employment was denied;

(C) the disposition of the fingerprint submissions after the records are searched;

(D) an appeal mechanism; and

(E) penalties for misuse of the information;

(6) the scope and means of processing background checks for private employers utilizing data maintained by the Federal Bureau of Investigation that the Attorney General should be allowed to authorize in cases where the authority for such checks is not available at the State level;

(7) any restrictions that should be placed on the ability of an employer to charge an employee or prospective employee for the cost associated with the background check;

(8) which requirements should apply to the handling of incomplete records;

(9) the circumstances under which the criminal history information should be disseminated to the employer;

(10) the type of restrictions that should be prescribed for the handling of criminal history information by an employer;

(11) the range of Federal and State fees that might apply to such background check requests;

(12) any requirements that should be imposed concerning the time for responding to such background check requests;

(13) any infrastructure that may need to be developed to support the processing of such checks, including–

(A) the means by which information is collected and submitted in support of the checks; and

(B) the system capacity needed to process such checks at the Federal and State level;

(14) the role that States should play; and

(15) any other factors that the Attorney General determines to be relevant to the subject of the report.

(e) CONSULTATION.–In developing the report under this section, the Attorney General shall consult with representatives of State criminal history record repositories, the National Crime Prevention and Privacy Compact Council, appropriate representatives of private industry, and representatives of labor, as determined appropriate by the Attorney General.

Subtitle F–Grand Jury Information Sharing

Sec. 6501. Grand Jury Information Sharing

(a) RULE AMENDEMENTS.–Rule 6(e) of the Federal Rules of Criminal Procedure is amended–

18 USC app.

(1) in paragraph (3)–

(A) in subparagraph (A)(ii), by striking "or state subdivision or of an Indian tribe" and inserting ", state subdivision, Indian tribe, or foreign government";

(B) in subparagraph (D)–

(i) by inserting after the first sentence the following: "An attorney for the government may also disclose any grand jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate Federal, State, State subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities."; and

(ii) in clause (i)–

(I) by striking "federal"; and

(II) by adding at the end the following: "Any State, State subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only consistent with such guidelines as the Attorney General and the Director of National Intelligence shall jointly issue."; and

(C) in subparagraph (E)–

(i) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively;

(ii) by inserting after clause (ii) the following:

"(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;"; and

(iii) in clause (iv), as redesignated–

(I) by striking "state or Indian tribal" and inserting "State, Indian tribal, or foreign"; and

(II) by striking "or Indian tribal official" and inserting "Indian tribal, or foreign government official"; and

(2) in paragraph (7), by inserting", or of guidelines jointly issued by the Attorney General and the Director of National Intelligence pursuant to Rule 6," after "Rule 6".

(b) CONFORMING AMENDMENT.–Section 203(c) of Public Law 107–56 (18 U.S.C. 2517 note) is amended by striking "Rule 6(e)(3)(C)(i)(V) and (VI)" and inserting "Rule 6(e)(3)(D)".

* * * *

18

18 USC 1 note.

Sec. 6702. Hoaxes and Recovery Costs

(a) PROHIBITION ON HOAXES.– Chapter 47 of title 18, United States Code, is amended b inserting after section 1037 the following:

"§1038. False Information and Hoaxes

(a) CRIMINAL VIOLATION.–

(1) IN GENERAL.–Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505(b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49, shall–

"(A) be fined under this title or imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, be fined under this title or imprisoned not more than 20 years, or both; and

(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

"(2) ARMED FORCES.–Any person who makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged–

(A) shall be fined under this title, imprisoned not more than 5 years, or both;

(B) if serious bodily injury results, shall be fined under this title, imprisoned not more than 20 years, or both; and

(C) if death results, shall be fined under this title, imprisoned for any number of years or for life, or both.

(b) CIVIL ACTION.–Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(c) REIMBURSEMENT.–

(1) IN GENERAL.–The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any state or local government, or private not–for–profit organization that provides fire or rescue service incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

(2) LIABILITY.–A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses

with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

(3) CIVIL JUDGMENT.–An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

(d) ACTIVITIES OF LAW ENFORCEMENT.–This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.

(b) CLERICAL AMENDMENT.–The table of sections as the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1037 the following:

"1038. False information and hoaxes.".

Sec. 6703. Obstruction of Justice and False Statements in Terrorism Cases

(a) ENHANCED PENALTY–Section 1001(a) and the third undesignated paragraph of section 1505 of title 18, United States Code, are amended by striking ``be fined under this title or imprisoned not more than 5 years, or both" and inserting ``be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both".

(b) SENTENCING GUIDELINE. –Not later than 30 days of the enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves international or domestic terrorism, as defined in section 2331 of such title.

Deadline. 28 USC 994 note.

Sec. 6704. Clarification of Definition

Section 1958 of title 18, United States Code, is amended–

(1) in subsection (a), by striking "facility in" and inserting "facility of"; and

(2) in subsection (b)(2), by inserting "or foreign" after "interstate".

* * * *

Sec. 6803. Participation in Nuclear and Weapons of Mass Destruction Threats to the United States

(2) by inserting after section 831 the following:

"**Sec. 832. Participation in Nuclear and Weapons of Mass Destruction Threats to the United States**

"(a) Whoever , within the United States or subject to the jurisdiction of the United States, willfully participates in or knowingly provides material support or resources (as defined in section 2339A) to a nuclear weapons program or other weapons of mass destruction program of a foreign terrorist power, or attempts or conspires to do so, shall be imprisoned for not more than 20 years.

"(b) There is extraterritorial Federal jurisdiction over an offense under this section.

"(c) Whoever without lawful authority develops, possesses, or attempts or conspires to develop or possess a radiological weapon, or threatens to use or uses a radiological weapon against any person within the United States, or a national of the United States while such

national is outside of the United States or against any property that is owned, leased, funded, or used by the United States, whether that property is within or outside of the United States, shall be imprisoned for any term of years or for life.

"(d) As used in this section–

"(1) 'nuclear weapons program' means a program or plan for the development, acquisition, or production of any nuclear weapon or weapons;

"(2) ʻweapons of mass destruction programʼ means a program or plan for the development, acquisition, or production of any weapon or weapons of mass destruction (as defined in section 2332a(c));

"(3) 'foreign terrorist power' means a terrorist organization designated under section 219 of the Immigration and Nationality Act, or a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 or section 620A of the Foreign Assistance Act of 1961; and

"(4) `nuclear weapon' means any weapon that contains or uses nuclear material as defined in section 831(f)(1)."; and

"(3) in section 2332b(g)(5)(B)(i), by inserting after "nuclear materials)," the following: ``832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)".

* * * *

Sec. 6905. Radiological Dispersal Devices

Chapter 113B of title 18, United States Code, is amended by adding after section 2332g the following:

Sec. 2332h. Radiological dispersal devices

(a) UNLAWFUL CONDUCT.–

"(1) IN GENERAL.–Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use–

"(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

"(B) any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

"(2) EXCEPTION.–This subsection does not apply with respect to–

"(A) conduct by or under the authority of the United States or any department or agency thereof; or

"(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

"(b) JURISDICTION.–Conduct prohibited by subsection (a) is within the jurisdiction of the United States if–

"(1) the offense occurs in or affects interstate or foreign commerce;

"(2) the offense occurs outside of the United States and is committed by a national of the United States;

"(3) the offense is committed against a national of the United States while the national is outside the United States;

"(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

"(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

"(c) CRIMINAL PENALTIES.–

"(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 25 years or to imprisonment for life.

"(2) OTHER CIRCUMSTANCES.–Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for not less than 30 years or imprisoned for life.

"(3) SPECIAL CIRCUMSTANCES.–If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by imprisonment for life.".

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D. NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2000 (TRITIUM PRODUCTION)[1]

FISCAL YEAR 2000

Public Law 106–65 **113 Stat. 927**

October 5, 1999

* * * *

50 USC 2545.

Sec. 3134. Procedures for Meeting Tritium Production Requirements

(a) PRODUCTION OF NEW TRITIUM–The Secretary of Energy shall produce new tritium to meet the requirements of the Nuclear Weapons Stockpile Memorandum at the Tennessee Valley Authority Watts Bar or Sequoyah nuclear power plants consistent with the Secretary's December 22, 1998, decision document designating the Secretary's preferred tritium production technology.

(b) SUPPORT–To support the method of tritium production set forth in subsection (a), the Secretary shall design and construct a new tritium extraction facility in the H–Area of the Savannah River Site, Aiken, South Carolina.

(c) DESIGN AND ENGINEERING DEVELOPMENT–The Secretary shall–

(1) complete preliminary design and engineering development of the Accelerator Production of Tritium technology design as a backup source of tritium to the source set forth in subsection (a) and consistent with the Secretary's December 22, 1998, decision document; and

(2) make available those funds necessary to complete engineering development and demonstration, preliminary design, and detailed design of key elements of the system consistent with the Secretary's decision document of December 22, 1998.

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[1] P.L. 107-314, Div. D, Title XLII, § 4235, as added by P.L. 108-136, Div. C, Title XXXI, § 3141(e)(20), 117 Stat. 1762, (2003).

E. STROM THURMOND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999 (LICENSING MOX FUEL FACILITIES)

Public Law 105–261 **112 Stat. 2247**

October 17, 1998

* * * *

Sec. 3134. Licensing of Certain Mixed Oxide Fuel Fabrication and Irradiation Facilities

(a) LICENSE REQUIREMENT–Section 202 of the Energy Reorganization Act of 1974 (42 USC 5842) is amended by adding at the end the following new paragraph:

"(5) Any facility under a contract with and for the account of the Department of Energy that is utilized for the express purpose of fabricating mixed plutonium–uranium oxide nuclear reactor fuel for use in a commercial nuclear reactor licensed under such Act, other than any such facility t hat is utilized for research, development, demonstration, testing, or analysis purposes.".

42 USC 5842 note.

(b) AVAILABILITY OF FUNDS FOR LICENSING BY NRC–Section 210 of the Department of Energy Authorization Act of 1981 (42 USC 7272) shall not apply to any licensing activities required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 USC 5842), as added by subsection (a).

42 USC 5842 note.

(c) APPLICABILITY OF OCCUPATIONAL SAFETY AND HEALTH REQUIREMENTS TO ACTIVITIES UNDER LICENSE–Any activities carried out under a license required pursuant to section 202(5) of the Energy Reorganization Act of 1974 (42 USC 5842), as added by subsection (a), shall be subject to regulation under the Occupational Safety and Health Act of 1970 (29 USC 651 *et seq*.).

F. NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002 (MOX FUEL)

Public Law 107–107 **115 STAT. 1012**

December 28, 2001

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50 USC 2567.

Sec. 3155. Disposition of Surplus Defense Plutonium at Savannah River Site, Aiken, South Carolina

(a) CONSULTATION REQUIRED.–The Secretary of Energy shall consult with the Governor of the State of South Carolina regarding any decisions or plans of the Secretary related to the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, Aiken, South Carolina.

(b) NOTICE REQUIRED.–For each shipment of defense plutonium or defense plutonium materials to the Savannah River Site, the Secretary shall, not less than 30 days before the commencement of such shipment, submit to the congressional defense committees a report providing notice of such shipment.

(c) PLAN FOR DISPOSITION.–The Secretary shall prepare a plan for disposal of the surplus defense plutonium and defense plutonium materials currently located at the Savannah River Site and for disposal of defense plutonium and defense plutonium materials to be shipped to the Savannah River Site in the future. The plan shall include the following:

(1) A review of each option considered for such disposal.

(2) An identification of the preferred option for such disposal.

(3) With respect to the facilities for such disposal that are required by the Department of Energy's Record of Decision for the Storage and Disposition of Weapons–Usable Fissile Materials Final Programmatic Environmental Impact Statement dated January 14, 1997–

(A) a statement of the cost of construction and operation of such facilities;

(B) a schedule for the expeditious construction of such facilities, including milestones; and

(C) a firm schedule for funding the cost of such facilities.

(4) A specification of the means by which all such defense plutonium and defense plutonium materials will be removed in a timely manner from the Savannah River Site for storage or disposal elsewhere.

(d) PLAN FOR ALTERNATIVE DISPOSITION.–If the Secretary determines not to proceed at the Savannah River Site with construction of the plutonium immobilization plant, or with the mixed oxide fuel fabrication facility, the Secretary shall prepare a plan that identifies a disposition path for all defense plutonium and defense plutonium materials that would otherwise have been disposed of at such plant or such facility, as applicable.

Deadline.

(e) SUBMISSION OF PLANS.–Not later than February 1, 2002, the Secretary shall submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable).

(f) LIMITATION ON PLUTONIUM SHIPMENTS.–If the Secretary does not submit to Congress the plan required by subsection (c) (and the plan prepared under subsection (d), if applicable) by February 1, 2002,

the Secretary shall be prohibited from shipping defense plutonium or defense plutonium materials to the Savannah River Site during the period beginning on February 1, 2002, and ending on the date on which such plans are submitted to Congress.

(g) RULE OF CONSTRUCTION.–Nothing in this section may be construed to prohibit or limit the Secretary from shipping defense plutonium or defense plutonium materials to sites other than the Savannah River Site during the period referred to in subsection (f) or any other period.

(h) ANNUAL REPORT ON FUNDING FOR FISSILE MATERIALS DISPOSITION ACTIVITIES.–The Secretary shall include with the budget justification materials submitted to Congress in support of the Department of Energy budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report setting forth the extent to which amounts requested for the Department for such fiscal year for fissile materials disposition activities will enable the Department to meet commitments for the disposition of surplus defense plutonium and defense plutonium materials located at the Savannah River Site, and for any other fissile materials disposition

G. MISCELLANEOUS DEPARTMENT OF ENERGY NUCLEAR PROVISIONS, ENACTED BY PUBLIC LAW 109–58, THE ENERGY POLICY ACT OF 2005

Public Law 109–58 **119 Stat. 785**

August 8, 2005

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Sec. 628. Decommissioning Pilot Program[1]

(a) PILOT PROGRAM.–The Secretary shall establish a decommissioning pilot program under which the Secretary shall decommission and decontaminate the sodium–cooled fast breeder experimental test–site reactor located in northwest Arkansas, in accordance with the decommissioning activities contained in the report of the Department relating to the reactor, dated August 31, 1998.

(b) AUTHORIZATION OF APPROPRIATIONS.–There is authorized
to be appropriated to the Secretary to carry out this section $16,000,000.

42 USC 16011. **Sec. 634. Demonstration Hydrogen Production at Existing Nuclear Power Plants**[2]

(a) DEMONSTRATION PROJECTS.–The Secretary shall provide for the establishment of 2 projects in geographic areas that are regionally and climatically diverse to demonstrate the commercial production of hydrogen at existing nuclear power plants.

(b) ECONOMIC ANALYSIS.–Prior to making an award under subsection (a), the Secretary shall determine whether the use of existing nuclear power plants is a cost–effective means of producing hydrogen.

(c) AUTHORIZATION OF APPROPRIATIONS.–There are authorized to be appropriated to the Secretary for the purposes of carrying out this section not more than $100,000,000.

42 USC 16012. **Sec. 635. Prohibition on Assumption by United States Government of Liability for Certain Foreign Incidents**[3]

(a) IN GENERAL.–Notwithstanding any other provision of law, no Officer of the United States or of any department, agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government, for nuclear incidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to

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[1] Added by P.L. 109–58, 119 Stat. 785 (2005).
[2] Added by P.L. 109–58, 119 Stat. 790 (2005).
[3] Added by P.L. 109–58, 119 Stat. 790 (2005).

have repeatedly provided support for acts of international terrorism). This section shall not apply to nuclear incidents occurring as a result of missions, carried out under the direction of the Secretary, the Secretary of Defense, or the Secretary of State, that are necessary to safely secure, store, transport, or remove nuclear materials for nuclear safety or nonproliferation purposes.

(b) DEFINITIONS.–The terms used in this section shall have the same meaning as those terms have under section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), unless otherwise expressly provided in this section.

42 USC 16013. **Sec. 636. Authorization of Appropriations** [4]

There are authorized to be appropriated such sums as are necessary to carry out this subtitle and the amendments made by this subtitle.

42 USC 16014. **Sec. 638. Standby Support for Certain Nuclear Plant Delays** [5]

(a) DEFINITIONS.–In this section:

(1) ADVANCED NUCLEAR FACILITY.–The term "advanced nuclear facility" means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Commission (and such design or a substantially similar design of comparable capacity was not approved on or before that date).

(2) COMBINED LICENSE.–The term "combined license" means a combined construction and operating license for an advanced nuclear facility issued by the Commission.

(3) COMMISSION.–The term "Commission" means the Nuclear Regulatory Commission.

(4) SPONSOR.–The term "sponsor" means a person who has applied for or been granted a combined license.

(b) CONTRACT AUTHORITY.–

(1) IN GENERAL.–The Secretary may enter into contracts under this section with sponsors of an advanced nuclear facility that cover a total of 6 reactors, with the 6 reactors consisting of not more than 3 different reactor designs, in accordance with paragraph (2).

(2) REQUIREMENT FOR CONTRACTS.–

(A) DEFINITION OF LOAN COST.–In this paragraph, the term "loan cost" has the meaning given the term "cost of a loan guarantee" under section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)).

(B) ESTABLISHMENT OF ACCOUNTS.–There is established in the Department 2 separate accounts, which shall be known as the–

(i) "Standby Support Program Account"; and

(ii) "Standby Support Grant Account".

(C) REQUIREMENT.–The Secretary shall not enter into a contract under this section unless the Secretary deposits–

(i) in the Standby Support Program Account established under subparagraph (B), funds appropriated to the Secretary in advance of the contract or a combination of appropriated funds and loan guarantee fees that are in an amount sufficient to cover the loan costs described in subsection (d)(5)(A); and

(ii) in the Standby Support Grant Account established under subparagraph (B), funds appropriated to the Secretary in advance of the contract, paid to the Secretary by the sponsor

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[4] Added by P.L. 109–58, 119 Stat. 791 (2005).

[5] Added by P.L. 109–58, 119 Stat. 791 (2005).

of the advanced nuclear facility, or a combination of appropriations and payments that are in an amount sufficient cover the costs described in subparagraphs (B), (C), and (D) of subsection (d)(5).[6]

(c) COVERED DELAYS.–

(1) INCLUSIONS.–Under each contract authorized by this section, the Secretary shall pay the costs specified in subsection (d), using funds appropriated or collected for the covered costs, if full power operation of the advanced nuclear facility is delayed by–

(A) the failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses, and acceptance criteria established under the combined license or the conduct of preoperational hearings by the Commission for the advanced nuclear facility; or

(B) litigation that delays the commencement of full power operations of the advanced nuclear facility.

(2) EXCLUSIONS.–The Secretary may not enter into any contract under this section that would obligate the Secretary to pay any costs resulting from–

(A) the failure of the sponsor to take any action required by law or regulation;

(B) events within the control of the sponsor; or

(C) normal business risks.

(d) COVERED COSTS.–

(1) IN GENERAL.–Subject to paragraphs (2), (3), and (4), the costs that shall be paid by the Secretary pursuant to a contract entered into under this section are the costs that result from a delay covered by the contract.

(2) INITIAL 2 REACTORS.–In the case of the first 2 reactors that receive combined licenses and on which construction is commenced, the Secretary shall pay–

(A) 100 percent of the covered costs of delay; but

(B) not more than $500,000,000 per contract.

(3) SUBSEQUENT 4 REACTORS.–In the case of the next 4 reactors that receive a combined license and on which construction is commenced, the Secretary shall pay–

(A) 50 percent of the covered costs of delay that occur after the initial 180–day period of covered delay; but

(B) not more than $250,000,000 per contract.

(4) CONDITIONS ON PAYMENT OF CERTAIN COVERED COSTS.–

(A) IN GENERAL.–The obligation of the Secretary to pay the covered costs described in subparagraph (B) of paragraph (5) is subject to the Secretary receiving from appropriations or payments from other non–Federal sources amounts sufficient to pay the covered costs.

(B) NON–FEDERAL SOURCES.–The Secretary may receive and accept payments from any non–Federal source, which shall be made available without further appropriation for the payment of the covered costs.

(5) TYPES OF COVERED COSTS.–Subject to paragraphs (2), (3), and (4), the contract entered into under this section for an

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[6] Amended by P.L. 109–58, § 638, 119 Stat. 792 (2005). Note: Congress did not include §§ (C) and (D) in subsection (d)(5) of this Act.

advanced nuclear facility shall include as covered costs those costs that result from a delay during construction and in gaining approval for fuel loading and full–power operation, including–

(A) principal or interest on any debt obligation of an advanced nuclear facility owned by a non–Federal entity; and

(B) the incremental difference between–

(i) the fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for the delay; and

(ii) the contractual price of power from the advanced nuclear facility subject to the delay.

(e) REQUIREMENTS.–Any contract between a sponsor and the Secretary covering an advanced nuclear facility under this section shall require the sponsor to use due diligence to shorten, and to end, the delay covered by the contract.

(f) REPORTS.–For each advanced nuclear facility that is covered by a contract under this section, the Commission shall submit to Congress and the Secretary quarterly reports summarizing the status of licensing actions associated with the advanced nuclear facility.

(g) REGULATIONS.–

(1) IN GENERAL.–Subject to paragraphs (2) and (3), the Secretary shall issue such regulations as are necessary to carry out this section.

Deadline. Public information.

(2) INTERIM FINAL RULEMAKING.–Not later than 270 days after the date of enactment of this Act, the Secretary shall issue for public comment an interim final rule regulating contracts authorized by this section.

Deadline.

(3) NOTICE OF FINAL RULEMAKING.–Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a notice of final rulemaking regulating the contracts.

(h) AUTHORIZATION OF APPROPRIATIONS.–There are authorized to be appropriated such sums as are necessary to carry out this section.

Subtitle C–Next Generation Nuclear Plant Project

42 USC 16021.

Sec. 641. Project Establishment[7]

(a) ESTABLISHMENT.–The Secretary shall establish a project to be known as the "Next Generation Nuclear Plant Project" (referred to in this subtitle as the "Project").

(b) CONTENT.–The Project shall consist of the research, development, design, construction, and operation of a prototype plant, including a nuclear reactor that–

(1) is based on research and development activities supported by the Generation IV Nuclear Energy Systems Initiative under section 942(d); and

(2) shall be used–

(A) to generate electricity;

(B) to produce hydrogen; or

(C) both to generate electricity and to produce hydrogen.

[7] Added by P.L. 109–58, 119 Stat. 794 (2005).

42 USC 16022. **Sec. 642. Project Management**[8]

(a) DEPARTMENTAL MANAGEMENT.–

(1) IN GENERAL.–The Project shall be managed in the Department by the Office of Nuclear Energy, Science, and Technology.

(2) GENERATION IV NUCLEAR ENERGY SYSTEMS PROGRAM.–The Secretary may combine the Project with the Generation IV Nuclear Energy Systems Initiative.

(3) EXISTING DOE PROJECT MANAGEMENT EXPERTISE.–The Secretary may utilize capabilities for review of construction projects for advanced scientific facilities within the Office of Science to track the progress of the Project.

(b) LABORATORY MANAGEMENT.–

(1) LEAD LABORATORY.–The Idaho National Laboratory shall be the lead National Laboratory for the Project and shall collaborate with other National Laboratories, institutions of higher education, other research institutes, industrial researchers, and international researchers to carry out the Project.

(2) INDUSTRIAL PARTNERSHIPS.–

(A) IN GENERAL.–The Idaho National Laboratory shall organize a consortium of appropriate industrial partners that will carry out cost–shared research, development, design, and construction activities, and operate research facilities, on behalf of the Project.

(B) COST–SHARING.–Activities of industrial partners funded by the Project shall be cost–shared in accordance with section 988.

(C) PREFERENCE.–Preference in determining the final structure of the consortium or any partnerships under this subtitle shall be given to a structure (including designating as a lead industrial partner an entity incorporated in the United States) that retains United States technological leadership in the Project while maximizing cost sharing opportunities and minimizing Federal funding responsibilities.

(3) PROTOTYPE PLANT SITING.–The prototype nuclear reactor and associated plant shall be sited at the Idaho National Laboratory in Idaho.

(4) REACTOR TEST CAPABILITIES.–The Project shall use, if appropriate, reactor test capabilities at the Idaho National Laboratory.

(5) OTHER LABORATORY CAPABILITIES.–The Project may use, if appropriate, facilities at other National Laboratories.

42 USC 16023. **Sec. 643. Project Organization**[9]

(a) MAJOR PROJECT ELEMENTS.–The Project shall consist of the following major program elements:

(1) High–temperature hydrogen production technology development and validation.

(2) Energy conversion technology development and validation.

(3) Nuclear fuel development, characterization, and qualification.

(4) Materials selection, development, testing, and qualification.

(5) Reactor and balance–of–plant design, engineering, safety analysis, and qualification.

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[8] Added by P.L. 109–58, 119 Stat. 795 (2005).

[9] Added by P.L. 109–58, 119 Stat. 795 (2005).

(b) PROJECT PHASES.–The Project shall be conducted in the following phases:

(1) FIRST PROJECT PHASE.–A first project phase shall be conducted to–

(A) select and validate the appropriate technology under subsection (a)(1);

(B) carry out enabling research, development, and demonstration activities on technologies and components under paragraphs (2) through (4) of subsection (a);

(C) determine whether it is appropriate to combine electricity generation and hydrogen production in a single prototype nuclear reactor and plant; and

(D) carry out initial design activities for a prototype nuclear reactor and plant, including development of design methods and safety analytical methods and studies under subsection (a)(5).

(2) SECOND PROJECT PHASE.–A second project phase shall be conducted to–

(A) continue appropriate activities under paragraphs (1) through (5) of subsection (a);

(B) develop, through a competitive process, a final design for the prototype nuclear reactor and plant;

(C) apply for licenses to construct and operate the prototype nuclear reactor from the Nuclear Regulatory Commission; and

(D) construct and start up operations of the prototype nuclear reactor and its associated hydrogen or electricity production facilities.

(c) PROJECT REQUIREMENTS.–

(1) IN GENERAL.–The Secretary shall ensure that the Project is structured so as to maximize the technical interchange and transfer of technologies and ideas into the Project from other sources of relevant expertise, including–

(A) the nuclear power industry, including nuclear power plant construction firms, particularly with respect to issues associated with plant design, construction, and operational and safety issues;

(B) the chemical processing industry, particularly with respect to issues relating to–

(i) the use of process energy for production of hydrogen; and

(ii) the integration of technologies developed by the Project into chemical processing environments; and

(C) international efforts in areas related to the Project, particularly with respect to hydrogen production technologies.

(2) INTERNATIONAL COLLABORATION.–

(A) IN GENERAL.–The Secretary shall seek international cooperation, participation, and financial contributions for the Project.

(B) ASSISTANCE FROM INTERNATIONAL PARTNERS.–The Secretary, through the Idaho National Laboratory, may contract for assistance from specialists or facilities from member countries of the Generation IV International Forum, the Russian Federation, or other international partners if the specialists or facilities provide access to cost–effective and relevant skills or test capabilities.

(C) PARTNER NATIONS.–The Project may involve demonstration of selected project objectives in a partner country.

(D) GENERATION IV INTERNATIONAL FORUM.–The Secretary shall ensure that international activities of the Project are coordinated with the Generation IV International Forum.

(3) REVIEW BY NUCLEAR ENERGY RESEARCH ADVISORY COMMITTEE.–

(A) IN GENERAL.–The Nuclear Energy Research Advisory Committee of the Department (referred to in this paragraph as the "NERAC") shall–

(i) review all program plans for the Project and all progress under the Project on an ongoing basis; and

(ii) ensure that important scientific, technical, safety, and program management issues receive attention in the Project and by the Secretary.

(B) ADDITIONAL EXPERTISE.–The NERAC shall supplement the expertise of the NERAC or appoint subpanels to incorporate into the review by the NERAC the relevant sources of expertise described under paragraph (1).

(C) INITIAL REVIEW.–Not later than 180 days after the date of enactment of this Act, the NERAC shall–

(i) review existing program plans for the Project in light of the recommendations of the document entitled "Design Features and Technology Uncertainties for the Next Generation Nuclear Plant," dated June 30, 2004; and

(ii) address any recommendations of the document not incorporated in program plans for the Project.

(D) FIRST PROJECT PHASE REVIEW.–On a determination by the Secretary that the appropriate activities under the first project phase under subsection (b)(1) are nearly complete, the Secretary shall request the NERAC to conduct a comprehensive review of the Project and to report to the Secretary the recommendation of the NERAC concerning whether the Project is ready to proceed to the second project phase under subsection (b)(2).

(E) TRANSMITTAL OF REPORTS TO CONGRESS.–Not later than 60 days after receiving any report from the NERAC related to the Project, the Secretary shall submit to the appropriate committees of the Senate and the House of Representatives a copy of the report, along with any additional views of the Secretary that the Secretary may consider appropriate.

42 USC 16024.

Sec. 644. Nuclear Regulatory Commission [10]

(a) IN GENERAL.–In accordance with section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842), the Nuclear Regulatory Commission shall have licensing and regulatory authority for any reactor authorized under this subtitle.

Deadline.

(b) LICENSING STRATEGY.–Not later than 3 years after the date of enactment of this Act, the Secretary and the Chairman of the Nuclear Regulatory Commission shall jointly submit to the appropriate committees of the Senate and the House of Representatives a licensing strategy for the prototype nuclear reactor, including–

(1) a description of ways in which current licensing requirements relating to light–water reactors need to be adapted for the types of prototype nuclear reactor being considered by the Project;

[10] Added by P.L. 109–58, 119 Stat. 797 (2005).

(2) a description of analytical tools that the Nuclear Regulatory Commission will have to develop to independently verify designs and performance characteristics of components, equipment, systems, or structures associated with the prototype nuclear reactor;

(3) other research or development activities that may be required on the part of the Nuclear Regulatory Commission in order to review a license application for the prototype nuclear reactor; and

(4) an estimate of the budgetary requirements associated with the licensing strategy.

(c) ONGOING INTERACTION.–The Secretary shall seek the active participation of the Nuclear Regulatory Commission throughout the duration of the Project to–

(1) avoid design decisions that will compromise adequate safety margins in the design of the reactor or impair the accessibility of nuclear safety–related components of the prototype reactor for inspection and maintenance;

(2) develop tools to facilitate inspection and maintenance needed for safety purposes; and

(3) develop risk–based criteria for any future commercial development of a similar reactor architectures.

42 USC 16025.

Sec. 645. Project Timelines and Authorization of Appropriations[11]

Deadline.

(a)TARGET DATE TO COMPLETE THE FIRST PROJECT PHASE.–Not later than September 30, 2011, the Secretary shall–

(1) select the technology to be used by the Project for high–temperature hydrogen productions and the initial design parameters for the prototype nuclear plant; or

Reports.

(2) submit to Congress a report establishing an alternative date for making the selection.

(b) DESIGN COMPETITION FOR SECOND PROJECT PHASE.–

(1) IN GENERAL.–The Secretary, acting through the Idaho National Laboratory, shall fund not more than 4 teams for not more than 2 years to develop detailed proposals for competitive evaluation and selection of a single proposal for a final design of the prototype nuclear reactor.

(2) SYSTEMS INTEGRATION.–The Secretary may structure Project activities in the second project phase to use the lead industrial partner of the competitively selected design under paragraph (1) in a systems integration role for final design and construction of the Project.

Deadline.

(c) TARGET DATE TO COMPLETE PROJECT CONSTRUCTION.–Not later than September 30, 2021, the Secretary shall–

(1) complete construction and begin operations of the prototype nuclear reactor and associated energy or hydrogen facilities; or

(2) submit to Congress a report establishing an alternative date for completion.

Reports.

(d) AUTHORIZATION OF APPROPRIATIONS.–There is authorized to be appropriated to the Secretary for research and construction activities under this subtitle (including for transfer to the Nuclear Regulatory Commission for activities under section 644 as appropriate)–

(1) $1,250,000,000 for the period of fiscal years 2006 through 2015; and

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[11] Added by P.L. 109–58, 119 Stat. 798 (2005).

(2) such sums as are necessary for each of fiscal years 2016 through 2021.

42 USC 16042. **Sec. 657. Department of Homeland Security Consultation**[12]

Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

42 USC 16271. **Sec. 951. Nuclear Energy** [13]

(a) IN GENERAL.–The Secretary shall conduct programs of civilian nuclear energy research, development, demonstration, and commercial application, including activities described in this subtitle. Programs under this subtitle shall take into consideration the following objectives:

(1) Enhancing nuclear power's viability as part of the United States energy portfolio.

(2) Providing the technical means to reduce the likelihood of nuclear proliferation.

(3) Maintaining a cadre of nuclear scientists and engineers.

(4) Maintaining National Laboratory and university nuclear programs, including their infrastructure.

(5) Supporting both individual researchers and multidisciplinary teams of researchers to pioneer new approaches in nuclear energy, science, and technology.

(6) Developing, planning, constructing, acquiring, and operating special equipment and facilities for the use of researchers.

(7) Supporting technology transfer and other appropriate activities to assist the nuclear energy industry, and other users of nuclear science and engineering, including activities addressing reliability, availability, productivity, component aging, safety, and security of nuclear power plants.

(8) Reducing the environmental impact of nuclear energy related activities.

(b) AUTHORIZATION OF APPROPRIATIONS FOR CORE PROGRAMS.–There are authorized to be appropriated to the Secretary to carry out nuclear energy research, development, demonstration, and commercial application activities, including activities authorized under this subtitle, other than those described in subsection (c)–

(1) $330,000,000 for fiscal year 2007;

(2) $355,000,000 for fiscal year 2008; and

(3) $495,000,000 for fiscal year 2009.

(c) NUCLEAR INFRASTRUCTURE AND FACILITIES.–There are authorized to be appropriated to the Secretary to carry out activities under section 955–

(1) $135,000,000 for fiscal year 2007;

(2) $140,000,000 for fiscal year 2008; and

(3) $145,000,000 for fiscal year 2009.

(d) ALLOCATIONS.–From amounts authorized under subsection (a), the following sums are authorized:

(1) For activities under section 953–

(A) $150,000,000 for fiscal year 2007;

(B) $155,000,000 for fiscal year 2008; and

(C) $275,000,000 for fiscal year 2009.

(2) For activities under section 954–

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[12] Added by P.L. 109–58, 119 Stat. 814 (2005).

[13] Added by P.L. 109–58, 119 Stat. 884 (2005).

(A) $43,600,000 for fiscal year 2007;
(B) $50,100,000 for fiscal year 2008; and
(C) $56,000,000 for fiscal year 2009.

(3) For activities under section 957, $6,000,000 for each of fiscal years 2007 through 2009.

(e) LIMITATION.–None of the funds authorized under this section may be used to decommission the Fast Flux Test Facility.

42 USC 16272. **Sec. 952. Nuclear Energy Research Programs**[14]

(a) NUCLEAR ENERGY RESEARCH INITIATIVE.–The Secretary shall carry out a Nuclear Energy Research Initiative for research and development related to nuclear energy.

(b) NUCLEAR ENERGY SYSTEMS SUPPORT PROGRAM.–The Secretary shall carry out a Nuclear Energy Systems Support Program to support research and development activities addressing reliability, availability, productivity, component aging, safety, and security of existing nuclear power plants.

(c) NUCLEAR POWER 2010 PROGRAM.–

(1) IN GENERAL.–The Secretary shall carry out a Nuclear Power 2010 Program, consistent with recommendations of the Nuclear Energy Research Advisory Committee of the Department in the report entitled ''A Roadmap to Deploy New Nuclear Power Plants in the United States by 2010'' and dated October 2001.

(2) ADMINISTRATION.–The Program shall include–

(A) use of the expertise and capabilities of industry, institutions of higher education, and National Laboratories in evaluation of advanced nuclear fuel cycles and fuels testing;

(B) consideration of a variety of reactor designs suitable for both developed and developing nations;

(C) participation of international collaborators in research, development, and design efforts, as appropriate; and

(D) encouragement for participation by institutions of higher education and industry.

(d) GENERATION IV NUCLEAR ENERGY SYSTEMS INITIATIVE.–

(1) IN GENERAL.–The Secretary shall carry out a Generation IV Nuclear Energy Systems Initiative to develop an overall technology plan for and to support research and development necessary to make an informed technical decision about the most promising candidates for eventual commercial application.

(2) ADMINISTRATION.–In conducting the Initiative, the Secretary shall examine advanced proliferation–resistant and passively safe reactor designs, including designs that–

(A) are economically competitive with other electric power generation plants;

(B) have higher efficiency, lower cost, and improved safety compared to reactors in operation on the date of enactment of this Act;

(C) use fuels that are proliferation resistant and have substantially reduced production of high–level waste per unit of output; and

(D) use improved instrumentation.

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[14] Added by P.L. 109–58, 119 Stat. 885 (2005).

(e) REACTOR PRODUCTION OF HYDROGEN.–The Secretary shall carry out research to examine designs for high–temperature reactors capable of producing large–scale quantities of hydrogen.

42 USC 16273. **Sec. 953. Advanced Fuel Cycle Initiative** [15]

(a) IN GENERAL.–The Secretary, acting through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct an advanced fuel recycling technology research, development, and demonstration program (referred to in this section as the ''program'') to evaluate proliferation–resistant fuel recycling and transmutation technologies that minimize environmental and public health and safety impacts as an alternative to aqueous reprocessing technologies deployed as of the date of enactment of this Act in support of evaluation of alternative national strategies for spent nuclear fuel and the Generation IV advanced reactor concepts.

(b) ANNUAL REVIEW.–The program shall be subject to annual review by the Nuclear Energy Research Advisory Committee of the Department or other independent entity, as appropriate.

(c) INTERNATIONAL COOPERATION.–In carrying out the program, the Secretary is encouraged to seek opportunities to enhance the progress of the program through international cooperation.

(d) REPORTS.–The Secretary shall submit, as part of the annual budget submission of the Department, a report on the activities of the program.

42 USC 16274. **Sec. 954. University Nuclear Science and Engineering Support** [16]

(a) IN GENERAL.–The Secretary shall conduct a program to invest in human resources and infrastructure in the nuclear sciences and related fields, including health physics, nuclear engineering, and radiochemistry, consistent with missions of the Department related to civilian nuclear research, development, demonstration, and commercial application.

(b) REQUIREMENTS.–In carrying out the program under this section, the Secretary shall–

(1) conduct a graduate and undergraduate fellowship program to attract new and talented students, which may include fellowships for students to spend time at National Laboratories in the areas of nuclear science, engineering, and health physics with a member of the National Laboratory staff acting as a mentor;

(2) conduct a junior faculty research initiation grant program to assist universities in recruiting and retaining new faculty in the nuclear sciences and engineering by awarding grants to junior faculty for research on issues related to nuclear energy engineering and science;

(3) support fundamental nuclear sciences, engineering, and health physics research through a nuclear engineering education and research program;

(4) encourage collaborative nuclear research among industry, National Laboratories, and universities; and

(5) support communication and outreach related to nuclear science, engineering, and health physics.

(c) UNIVERSITY–NATIONAL LABORATORY INTERACTIONS. – The Secretary shall conduct–

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[15] Added by P.L. 109–58, 119 Stat. 886 (2005).
[16] Added by P.L. 109–58, 119 Stat. 886 (2005).

(1) a fellowship program for professors at universities to spend sabbaticals at National Laboratories in the areas of nuclear science and technology; and

(2) a visiting scientist program in which National Laboratory staff can spend time in academic nuclear science and engineering departments.

(d) STRENGTHENING UNIVERSITY RESEARCH AND TRAINING REACTORS AND ASSOCIATED INFRASTRUCTURE.–In carrying out the program under this section, the Secretary may support–

(1) converting research reactors from high–enrichment fuels to low–enrichment fuels and upgrading operational instrumentation;

(2) consortia of universities to broaden access to university research reactors;

(3) student training programs, in collaboration with the United States nuclear industry, in relicensing and upgrading reactors, including through the provision of technical assistance; and

(4) reactor improvements as part of a taking into consideration effort that emphasizes research, training, and education, including through the Innovations in Nuclear Infrastructure and Education Program or any similar program.

(e) OPERATIONS AND MAINTENANCE.–Funding for a project provided under this section may be used for a portion of the operating and maintenance costs of a research reactor at a university used in the project.

(f) DEFINITION.–In this section, the term ''junior faculty'' means a faculty member who was awarded a doctorate less than 10 years before receipt of an award from the grant program described in subsection (b)(2).

42 USC 16275.

Sec. 955. Department of Energy Civilian Nuclear Infrastructure and Facilities [17]

(a) IN GENERAL.–The Secretary shall operate and maintain infrastructure and facilities to support the nuclear energy research, development, demonstration, and commercial application programs, including radiological facilities management, isotope production, and facilities management.

(b) DUTIES.–In carrying out this section, the Secretary shall–

(1) develop an inventory of nuclear science and engineering facilities, equipment, expertise, and other assets at all of the National Laboratories;

(2) develop a prioritized list of nuclear science and engineering plant and equipment improvements needed at each of the National Laboratories;

(3) consider the available facilities and expertise at all National Laboratories and emphasize investments which complement rather than duplicate capabilities; and

(4) develop a timeline and a proposed budget for the completion of deferred maintenance on plant and equipment, with the goal of ensuring that Department programs under this subtitle will be generally recognized to be among the best in the world.

(c) PLAN.–The Secretary shall develop a comprehensive plan for the facilities at the Idaho National Laboratory, especially taking into account

[17] Added by P.L. 109–58, 119 Stat. 887 (2005).

the resources available at other National Laboratories. In developing the plan, the Secretary shall–

(1) evaluate the facilities planning processes utilized by other physical science and engineering research and development institutions, both in the United States and abroad, that are generally recognized as being among the best in the world, and consider how those processes might be adapted toward developing such facilities plan;

(2) avoid duplicating, moving, or transferring nuclear science and engineering facilities, equipment, expertise, and other assets that currently exist at other National Laboratories;

(3) consider the establishment of a national transuranic analytic chemistry laboratory as a user facility at the Idaho National Laboratory;

(4) include a plan to develop, if feasible, the Advanced Test Reactor and Test Reactor Area into a user facility that is more readily accessible to academic and industrial researchers;

(5) consider the establishment of a fast neutron source as a user facility;

(6) consider the establishment of new hot cells and the configuration of hot cells most likely to advance research, development, demonstration, and commercial application in nuclear science and engineering, especially in the context of the condition and availability of these facilities elsewhere in the National Laboratories; and

(7) include a timeline and a proposed budget for the completion of deferred maintenance on plant and equipment.

Deadline.

(d) TRANSMITTAL TO CONGRESS.–Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit the plan under subsection (c) to Congress.

42 USC 16276.

Sec. 956. Security of Nuclear Facilities[18]

The Secretary, acting through the Director of the Office of Nuclear Energy, Science and Technology, shall conduct a research and development program on cost–effective technologies for increasing–

(1) the safety of nuclear facilities from natural phenomena; and

(2) the security of nuclear facilities from deliberate attacks.

42 USC 16277.

Sec. 957. Alternatives to Industrial Radioactive Sources[19]

(a) SURVEY.–

Deadline.

(1) IN GENERAL.–Not later than August 1, 2006, the Secretary shall submit to Congress the results of a survey of industrial applications of large radioactive sources.

(2) ADMINISTRATION.–The survey shall–

(A) consider well–logging sources as one class of industrial sources;

(B) include information on current domestic and international Department, Department of Defense, State Department, and commercial programs to manage and dispose of radioactive sources; and

(C) analyze available disposal options for currently deployed or future sources and, if deficiencies are noted for either deployed or future sources, recommend legislative options that Congress may consider to remedy identified deficiencies.

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[18] Added by P.L. 109–58, 119 Stat. 888 (2005).

[19] Added by P.L. 109–58, 119 Stat. 888 (2005).

(b) PLAN.–

(1) IN GENERAL.–In conjunction with the survey conducted under subsection (a), the Secretary shall establish a research and development program to develop alternatives to sources described in subsection (a) that reduce safety, environmental, or proliferation risks to either workers using the sources or the public.

(2) ACCELERATORS.–Miniaturized particle accelerators for well–logging or other industrial applications and portable accelerators for production of short–lived radioactive materials at an industrial site shall be considered as part of the research and development efforts.

(3) REPORT.–Not later than August 1, 2006, the Secretary shall submit to Congress a report describing the details of the program plan.

H. EXECUTIVE ORDER 12656–ASSIGNMENT OF EMERGENCY PREPAREDNESS RESPONSIBILITIES

November 18, 1988, 53 F.R. 47491

WHEREAS our national security is dependent upon our ability to assure continuity of government, at every level, in any national security emergency situation that might confront the Nation; and

WHEREAS effective national preparedness planning to meet such an emergency, including a massive nuclear attack, is essential to our national survival; and

WHEREAS effective national preparedness planning requires the identification of functions that would have to be performed during such an emergency, the assignment of responsibility for developing plans for performing these functions, and the assignment of responsibility for developing the capability to implement those plans; and

WHEREAS the Congress has directed the development of such national security emergency preparedness plans and has provided funds for the accomplishment thereof;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to Reorganization Plan No. 1 of 1958 (72 Stat. 1799), the National Security Act of 1947, as amended, the Defense Production Act of 1950, as amended, and the Federal Civil Defense Act, as amended, it is hereby ordered that the responsibilities of the Federal departments and agencies in national security emergencies shall be as follows:

Part 1–Preamble

Section 101. National Security Emergency Preparedness Policy

(a) The policy of the United States is to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. A national security emergency is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States. Policy for national security emergency preparedness shall be established by the President. Pursuant to the President's direction, the National Security Council shall be responsible for developing and administering such policy, except that the Homeland Security Council shall be responsible for administering such policy with respect to terrorist threats and attacks within the United States.[1] All national security emergency preparedness activities shall be consistent with the Constitution and laws of the United States and with preservation of the constitutional government of the United States.

(b) Effective national security emergency preparedness planning requires: identification of functions that would have to be performed during such an emergency; development of plans for performing these functions; and development of the capability to execute those plans.

Section 102. Purpose

(a) The purpose of this Order is to assign national security emergency preparedness responsibilities to Federal departments and agencies. These assignments are based, whenever possible, on extensions of the regular missions of the departments and agencies.

(b) This Order does not constitute authority to implement the plans prepared pursuant to this Order. Plans so developed may be executed only in the event that authority for such execution is authorized by law.

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[1] Executive Order 13228 (2001) amended §§ 101(a), 104(a), 104(b), 104(c), 201(7), 206, and 208 by establishing Homeland Security Council duties.

Section 103. Scope

(a) This Order addresses national security emergency preparedness functions and activities. As used in this Order, preparedness functions and activities include, as appropriate, policies, plans, procedure, and readiness measures that enhance the ability of the United States Government to mobilize for, respond to, and recover from a national security emergency.

(b) This Order does not apply to those natural disasters, technological emergencies, or other emergencies, the alleviation of which is normally the responsibility of individuals, the private sector, volunteer organizations, State and local governments, and Federal departments and agencies unless such situations also constitute a national security emergency.

(c) This Order does not require the provision of information concerning, or evaluation of, military policies, plans, programs, or states of military readiness.

(d) This Order does not apply to national security emergency preparedness telecommunications functions and responsibilities that are otherwise assigned by Executive Order 12472.

Section 104. Management of National Security Emergency

(a) The National Security Council is the principal forum for consideration of national security emergency preparedness policy, except that the Homeland Security Council is the principal forum for consideration of policy relating to terrorist threats and attacks within the United States.

(b) The National Security Council shall arrange for Executive branch liaison with, and assistance to, the Congress and the Federal judiciary on national security–emergency preparedness matters.

(c) The Secretary of Homeland Security[2] shall serve as an advisor to the National Security Council and the Homeland Security Council on issues of national security emergency preparedness, including mobilization preparedness, civil defense, continuity of government, technological disasters, and other issues, as appropriate. Pursuant to such procedures for the organization and management of the National Security Council and Homeland Security Council processes as the President may establish, the Secretary of Homeland Security also shall assist in the implementation of and management of those processes as the President may establish. The Secretary of Homeland Security also shall assist in the implementation of national security emergency preparedness policy by coordinating with the other Federal departments and agencies and with State and local governments, and by providing periodic reports to the National Security Council and the Homeland Security Council on implementation of national security emergency preparedness policy.

(d) National security emergency preparedness functions that are shared by more than one agency shall be coordinated by the head of the Federal department or agency having primary responsibility and shall be supported by the heads of other departments and agencies having related responsibilities.

(e) There shall be a national security emergency exercise program that shall be supported by the heads of all appropriate Federal departments and agencies.

(f) Plans and procedure will be designed and developed to provide maximum flexibility to the President for his implementation of emergency actions.

Section 105. Interagency Coordination

(a) All appropriate Cabinet members and agency heads shall be consulted regarding national security emergency preparedness programs and policy issues. Each department and agency shall support interagency coordination to improve preparedness and response to a national security emergency and shall develop and maintain decentralized capabilities wherever feasible and appropriate.

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[2] Executive Order 13286 (2003) amended §§ 104(c), 201(15), and 701(5) by striking out "the Director of the Federal Emergency Management Agency" and replacing it with "the Secretary of Homeland Security."

(b) Each Federal department and agency shall work within the framework established by, and cooperate with those organizations assigned responsibility in. Executive Order No. 12472, to ensure adequate national security emergency preparedness telecommunications in support of the functions and activities addressed by this Order.

Part 2–General Provisions

Section 201. General

The head of each Federal department and agency. as appropriate. shall:

(1) Be prepared to respond adequately to all national security emergencies, including those that are international in scope. and those that may occur within any region of the Nation;

(2) Consider national security emergency preparedness factors in the conduct of his or her regular functions, particularly those functions essential in time of emergency. Emergency plans and programs, and an appropriate state of readiness, including organizational infrastructure, shall be developed as an integral part of the continuing activities of each Federal department and agency;

(3) Appoint a senior policy official as Emergency Coordinator, responsible for developing and maintaining a multi–year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements;

(4) Design preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(a) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies:

(b) Identification of actions that could be taken in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the lead times associated with full emergency action implementation;

(5) Base national security emergency preparedness measures on the use of existing authorities, organizations, resources, and systems to the maximum extent practicable;

(6) Identify areas where additional legal authorities may be needed to assist management and, consistent with applicable Executive orders, take appropriate measures toward acquiring those authorities;

(7) Make policy recommendations to the National Security Council and the Homeland Security Council regarding national security emergency preparedness activities and functions of the Federal Government;

(8) Coordinate with State and local government agencies and other organizations, including private sector organizations, when appropriate. Federal plans should include appropriate involvement of and reliance upon private sector organizations in the response to national security emergencies;

(9) Assist State, local, and private sector entities in developing plans for mitigating the effects of national security emergencies and for providing services that are essential to a national response;

(10) Cooperate, to the extent appropriate, in compiling, evaluating, and exchanging relevant data related to all aspects of national security emergency preparedness;

(11) Develop programs regarding congressional relations and public information that could be used during national security emergencies;

(12) Ensure a capability to provide, during a national security emergency, information concerning Acts of Congress, presidential proclamations, Executive orders, regulations, and notices of other actions to the Archivist of the United States, for

publication in the Federal Register, or to each agency designated to maintain the Federal Register in an emergency;

(13) Develop and conduct training and education programs that incorporate emergency preparedness and civil defense information necessary to ensure an effective national response;

(14) Ensure that plans consider the consequences for essential services provided by State and local governments, and by the private sector, if the flow of Federal funds is disrupted;

(15) Consult and coordinate with the Secretary of Homeland Security Agency to ensure that those activities and plans are consistent with current Presidential guidelines and policies.[3]

Section 202. Continuity of Government

The head of each Federal department and agency shall ensure the continuity of essential functions in any national security emergency by providing for: succession to Office and emergency delegation of authority in accordance with applicable law; safekeeping of essential resources, facilities, and records; and establishment of emergency operating capabilities.

Section 203. Resource Management

The head of each Federal department and agency, as appropriate within assigned areas of responsibility, shall:

(1) Develop plans and programs to mobilize personnel (including reservist programs), equipment, facilities, and other resources;

(2) Assess essential emergency requirements and plan for the possible use of alternative resources to meet essential demands during and following national security emergencies;

(3) Prepare plans and procedures to share between and among the responsible agencies resources such an energy, equipment, food, land, materials, minerals, services, supplies, transportation, water, and workforce needed to carry out assigned responsibilities and other essential functions, and cooperate with other agencies in developing programs to ensure availability of such resources in a national security emergency;

(4) Develop plans to set priorities and allocate resources among civilian and military claimants;

(5) Identify occupations and skills for which there may be a critical need in the event of a national security emergency.

Section 204. Protection of Essential Resources and Facilities

The head of each Federal department and agency, within assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies.

Section 205. Federal Benefit, Insurance, and Loan Programs

The head of each Federal department and agency that administers a loan, insurance, or benefit program that relies upon the Federal Government payment system shall

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[3] Executive Order 13286 (2003) amended § 201(15) by striking out "consistent with current National Security Council guidelines and policies" in the last sentence.

coordinate with the Secretary of the Treasury in developing plans for the continuation or restoration, to the extent feasible, of such programs in national security emergencies.

Section 206. Research

The Director of the Office of Science and Technology Policy and the heads of Federal departments and agencies having significant research and development programs shall advise the National Security Council and the Homeland Security Council of scientific and technological developments that should be considered in national security emergency preparedness planning.

Section 207. Redelegation

The head of each Federal department and agency is hereby authorized, to the extent otherwise permitted by law, to redelegate the functions assigned by this Order, and to authorize successive redelegations to organizations, Officers, or employees within that department or agency.

Section 208. Transfer of Functions

Recommendations for interagency transfer of any emergency preparedness function assigned under this Order or for assignment of any new emergency preparedness function shall be coordinated with all affected Federal departments and agencies before submission to the National Security Council or the Homeland Security Council.

Section 209. Retention of Existing Authority

Nothing in this Order shall be deemed to derogate from assignments of functions to any Federal department or agency or Officer thereof made by law.

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Part 7–Department of Energy

Section 701. Lead Responsibilities

In addition to the applicable responsibilities covered in Parts 1 and 2, the Secretary of Energy shall:

(1) Conduct national security emergency preparedness planning, including capabilities development, and administer operational programs for all energy, resources, including:

(a) Providing information, in cooperation with Federal, State, and energy industry officials, on energy supply and demand conditions and on the requirements for and the availability of materials and services critical to energy supply systems;

(b) In coordination with appropriate departments and agencies and in consultation with the energy industry, develop implementation plans and operational systems for priorities and allocation of all energy resource requirements for national defense and essential civilian needs to assure national security emergency preparedness;

(c) Developing, in consultation with the Board of Directors of the Tennessee Valley Authority, plans necessary for the integration of its power system into the national supply system;

(2) Identify energy facilities essential to the mobilization, deployment, and sustainment of resources to support the national security and national welfare, and develop energy supply and demand strategies to ensure continued provision of minimum essential services in national security emergencies;

(3) In coordination with the Secretary of Defense, ensure continuity of nuclear weapons production consistent with national security requirements;

(4) Assure the security of nuclear materials, nuclear weapons, or devices in the custody of the Department of Energy, as well as the security of all other Department of Energy programs and facilities;

(5) In consultation with the Secretaries of State and Defense and the Secretary of Homeland Security, conduct appropriate international liaison activities pertaining to matters within the jurisdiction of the Department of Energy;

(6) In consultation with the Secretaries of State,[4] Defense, and Homeland Security[5], the Members of the Nuclear Regulatory Commission, and others, as required, develop plans and capabilities for identification, analysis, damage assessment, and mitigation of hazards from nuclear weapons, materials, and devices;

(7) Coordinate with the Secretary of Transportation in the planning and management of transportation resources involved in the bulk movement of energy;

(8) At the request of or with the concurrence of the Nuclear Regulatory Commission and in consultation with the Secretary of Defense, recapture special nuclear materials from Nuclear Regulatory Commission licensees where necessary to assure the use, preservation, or safeguarding of such material for the common defense and security;

(9) Develop national security emergency operational procedures for the control, utilization, acquisition, leasing, assignment, and priority of occupancy of real property within the jurisdiction of the Department of Energy;

(10) Manage all emergency planning and response activities pertaining to Department of Energy nuclear facilities.

Section 702. Support Responsibilities

The Secretary of Energy shall:

(1) Provide advice and assistance, in coordination with appropriate agencies, to Federal, State, local officials and private sector organizations to assess the radiological impact associated with national security emergencies;

(2) Coordinate with the Secretaries of Defense and the Interior regarding the operation of hydroelectric projects to assure maximum energy output;

(3) Support the Secretary of Housing and Urban Development and the heads of other agencies, as appropriate, in the development of plans to restore community facilities;

(4) Coordinate with the Secretary of Agriculture regarding the emergency preparedness of the rural electric supply systems throughout the Nation and the assignment of emergency preparedness responsibilities to the Rural Electrification Administration.

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Part 21–Nuclear Regulatory Commission

Section 2101. Lead Responsibilities

In addition to the applicable responsibilities covered in Parts 1 and 2, the Members of the Nuclear Regulatory Commission shall:

(1) Promote the development and maintenance of national security emergency preparedness programs through security and safeguards programs by licensed facilities and activities;

(2) Develop plans to suspend any licenses granted by the Commission; to order the operations of any facility licensed under section 103 or 104; Atomic Energy Act of 1954, as amended (42 U.S.C. 2133 or 2134); to order the entry into any plant or facility in order to recapture special nuclear material as determined under Subsection (3) below; and operate such facilities;

(3) Recapture or authorize recapture of special nuclear materials from licensees where necessary to assure the use, preservation, or safeguarding of such materials for the common defense and security, as determined by the Commission or as requested by the Secretary of Energy.

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[4] Executive Order 13286 (2003) struck out "and" and inserted a comma after "state."

[5] Executive Order 13286 (2003) inserted "Homeland Security" and struck out "the Director of the Federal Emergency Management Agency."

Section 2102. Support Responsibilities
The Members of the Nuclear Regulatory Commission shall:

(1) Assist the Secretary of Energy in assessing damage to Commission–licensed facilities, identifying useable facilities, and estimating the time and actions necessary to restart inoperative facilities;

(2) Provide advice and technical assistance to Federal, State, and local officials and private sector organizations regarding radiation hazards and protective actions in national security emergencies.

* * * *

Part 29–General

Section 2901.

Executive Order Nos. 10421 and 11490, as amended, are hereby revoked. This Order shall be effective immediately.

Ronald Reagan
The White House,
November 18, 1988

I. EXECUTIVE ORDER 12657–DEPARTMENT OF HOMELAND SECURITY ASSISTANCE IN EMERGENCY PREPAREDNESS PLANNING AT COMMERCIAL NUCLEAR POWER PLANTS[1]

Executive Order 12657 of November 18, 1988

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 225 *et seq*.), the Disaster Relief Act of 1974, as amended (42 U.S.C. 512 *et seq*.), the Atomic Energy Act of 1954, as amended (42 U.S.C. 201 *et seq*.), Reorganization Plan No. 1 of 1958, Reorganization Plan No. 1 of 1973, and section 301 of Title 3 of the United States Code, and in order to ensure that plans and procedures are in place to respond to radiological emergencies at commercial nuclear power plants in operation or under construction, it is hereby ordered as follows:

Section 1. Scope.

(a) This Order applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant radiological emergency preparedness plans that are sufficient to satisfy Nuclear Regulatory Commission ("NRC") licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans.

(b) In order to request the assistance of the Department of Homeland Security ("DHS") provided for in this Order, an affected nuclear power plant applicant or licensee ("licensee") shall certify in writing to FEMA that the situation described in Subsection (a) exists.

Section 2. General Applicable Principles and Directives

(a) Subject to the principles articulated in this Section, the Secretary of Homeland Security is hereby authorized and directed to take the actions specified in sections 3 through 6 of this Order.

(b) In carrying out any of its responsibilities under this Order, DHS:

(1) shall work actively with the licensee, and, before relying upon its resources or those of any other Department or agency within the Executive Branch, shall make maximum feasible use of the licensee's resources;

(2) shall take care not to supplant State and local resources. DHS shall substitute its own resources for those of the State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

(3) is authorized, to the extent permitted by law, to enter into interagency Memoranda of Understanding providing for utilization of the resources of other Executive branch Departments and agencies and for delegation to other Executive branch Departments and agencies of any of the functions and duties assigned to DHS under this Order; however, any such Memorandum of Understanding shall be subject to approval by the Director of the Office of Management and Budget ("OMB") and published in final form in the Federal Register, and

(4) shall assume for purposes of sections 3 and 4 of this Order that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act generally in conformity with the licensee's radiological emergency preparedness plan.

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[1] Executive Order 13286 amends this Executive Order by striking out some of the references to the Federal Emergency Management Agency and its Director and replacing them with Department of Homeland Security and its Secretary.

(c) The Director of OMB shall resolve any issue concerning the obligation of Federal funds arising from the implementation of this Order. In resolving issues under this Subsection, the Director of OMB shall ensure:

(1) that DHS has utilized to the maximum extent possible the resources of the licensee and State and local governments before it relies upon its appropriated and lawfully available resources or those of any Department or agency in the Executive branch;

(2) that DHS shall use its existing resources to coordinate and manage, rather than duplicate, other available resources;

(3) that implementation of this Order is accomplished with an economy of resources; and

(4) that full reimbursement to the Federal Government is provided, to the extent permitted by law.

Section 3. FEMA Participation in Emergency Preparedness Planning

(a) DHS assistance in emergency preparedness planning shall include advice, technical assistance, and arrangements for facilities and resources as needed to satisfy the emergency planning requirements under the Atomic Energy Act of 1954, as amended, and any other Federal legislation or regulations pertaining to issuance or retention of a construction permit or an operating license for a nuclear power plant.

(b) DHS shall make all necessary plans and arrangements to ensure that the Federal Government is prepared to assume any and all functions and undertakings necessary to provide adequate protection to the public in cases within the scope of this Order. In making such plans and arrangements,

(1) DHS shall focus planning of Federal response activities to ensure that:

(A) adequate resources and arrangements will exist, as of the time when an initial response is needed, given the absence or inadequacy of advance State and local commitments; and

(B) attention has been given to coordinating (including turning over) response functions when State and local governments do exercise their authority, with specific attention to the areas where prior State and local participation has been insufficient or absent;

(2) DHS planning for Federal participation in responding to a radiological emergency within the scope of this Order shall include, but not be limited to, arrangements for using existing Federal resources to provide prompt notification of the emergency to the general public; to assist in any necessary evacuation; to provide reception centers or shelters and related facilities and services for evacuees; to provide emergency medical services at Federal hospitals, including those operated by the military services and by the Veteran's Administration; and to ensure the creation and maintenance of channels of communication from commercial nuclear power plant licensees or applicants to State and local governments and to surrounding members of the public.

Section 4. Evaluation of Plans

(a) DHS shall consider and evaluate all plans developed under the authority of this Order as though drafted and submitted by a State or local government.

(b) DHS shall take all actions necessary to carry out the evaluation referred to in the preceding Subsection and to permit the NRC to conduct its evaluation of radiological emergency preparedness plans including, but not limited to, planning, participation in, and evaluating exercises, drills, and tests, on a timely basis, as necessary to satisfy NRC requirements for demonstrations of off–site radiological emergency preparedness.

Section 5. Response to a Radiological Emergency

(a) In the event of an actual radiological emergency or disaster, DHS shall take all steps necessary to ensure the implementation of the plans developed under this Order and shall coordinate the actions of other Federal agencies to achieve the maximum effectiveness of Federal efforts in responding to the emergency.

(b) DHS shall coordinate Federal response activities to ensure that adequate resources are directed, when an initial response is needed, to activities hindered by the absence or inadequacy of advance State and local commitments. DHS shall also coordinate with State and local governmental authorities and turn over response functions as appropriate when State and local governments do exercise their authority.

(c) DHS shall assume any necessary command–and–control function, or delegate such function to another Federal agency, in the event that no competent State and local authority is available to perform such function.

(d) In any instance in which Federal personnel may be called upon to fill a command–and–control function during a radiological emergency, in addition to any other powers it may have, DHS or its designee is authorized to accept volunteer assistance from utility employees and other nongovernmental personnel for any purpose necessary to implement the emergency response plan and facilitate off–site emergency response.

Section 6. Implementation of Order

(a) DHS shall issue interim and final directives and procedures implementing this Order as expeditiously as is feasible and in any event shall issue interim directives and procedures not more than 90 days following the effective date of this Order and shall issue final directives and procedures not more than 180 days following the effective date of this order.

(b) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary revisions of all DHS regulations, directives, and guidance to conform them to the terms and policies of this Order.

(c) Immediately upon the effective date of this Order, DHS shall review, and initiate necessary renegotiations of, all interagency agreements to which DHS is a party, so as to conform them to the terms and policies of this Order. This directive shall include, but not be limited to, the Federal Radiological Emergency Response Plan (50 Fed. Reg. 46542 (November 8, 1985)).

(d) To the extent permitted by law, DHS is directed to obtain full reimbursement, either jointly or severally, for services performed by DHS or other Federal agencies pursuant to this Order from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

Section 7. Amendments

This Executive Order amends Executive Order Nos. 11490 (34 Fed. Reg. 17567 (October 28, 1969)), 12148 (44 Fed. Reg. 43239 (July 20, 1979)), and 12241 (45 Fed. Reg. 64879 (September 29, 1980)), and the same are hereby superseded to the extent that they are inconsistent with this Order.

Ronald Reagan
The White House
November 18, 1988

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