

Please note: The compilations of law provided at this site are unofficial. They have been prepared by the House Office of Legislative Counsel for the use and convenience of the House Committee on Energy and Commerce. The official compilation of Federal law is the United States Code, and rules of evidence regarding the Code have been established by statute.

107TH CONGRESS }
1st Session

COMMITTEE PRINT

{ COMMITTEE
PRINT 107-C

COMPILATION OF SELECTED ENERGY-RELATED LEGISLATION

ORGANIZATION AND MISCELLANEOUS LAWS

As Amended Through December 31, 2000

INCLUDING

FEDERAL ENERGY ADMINISTRATION ACT OF 1974
ENERGY REORGANIZATION ACT OF 1974
DEPARTMENT OF ENERGY ORGANIZATION ACT
FEDERAL NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT ACT OF 1974
OUTER CONTINENTAL SHELF LANDS ACT
TITLE XVI OF THE ENERGY POLICY ACT OF 1992—
GLOBAL CLIMATE CHANGE
TITLE XXX OF THE ENERGY POLICY ACT OF 1992—
MISCELLANEOUS
INTERNATIONAL ENERGY AGREEMENT
NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
TITLE 5—ADMINISTRATIVE PROCEDURE AND JUDICIAL
REVIEW
FEDERAL ADVISORY COMMITTEE ACT
PAPERWORK REDUCTION ACT

PREPARED FOR THE USE OF THE
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES



MARCH 2001

107TH CONGRESS }
1st Session

COMMITTEE PRINT

{ COMMITTEE
PRINT 107-C

COMPILATION OF SELECTED ENERGY-RELATED LEGISLATION

ORGANIZATION AND MISCELLANEOUS LAWS

As Amended Through December 31, 2000

INCLUDING

FEDERAL ENERGY ADMINISTRATION ACT OF 1974
ENERGY REORGANIZATION ACT OF 1974
DEPARTMENT OF ENERGY ORGANIZATION ACT
FEDERAL NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT ACT OF 1974
OUTER CONTINENTAL SHELF LANDS ACT
TITLE XVI OF THE ENERGY POLICY ACT OF 1992—GLOBAL CLIMATE CHANGE
TITLE XXX OF THE ENERGY POLICY ACT OF 1992—MISCELLANEOUS
INTERNATIONAL ENERGY AGREEMENT
NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
TITLE 5—ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW
FEDERAL ADVISORY COMMITTEE ACT
PAPERWORK REDUCTION ACT

PREPARED FOR THE USE OF THE

COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES



MARCH 2001

U.S. GOVERNMENT PRINTING OFFICE

70-831

WASHINGTON : 2001

COMMITTEE ON ENERGY AND COMMERCE

W.J. "BILLY" TAUZIN, Louisiana, *Chairman*

| | |
|---------------------------------------|---------------------------------|
| MICHAEL BILIRAKIS, Florida | JOHN D. DINGELL, Michigan |
| JOE BARTON, Texas | HENRY A. WAXMAN, California |
| FRED UPTON, Michigan | EDWARD J. MARKEY, Massachusetts |
| CLIFF STEARNS, Florida | RALPH M. HALL, Texas |
| PAUL E. GILLMOR, Ohio | RICK BOUCHER, Virginia |
| JAMES C. GREENWOOD, Pennsylvania | EDOLPHUS TOWNS, New York |
| CHRISTOPHER COX, California | FRANK PALLONE, Jr., New Jersey |
| NATHAN DEAL, Georgia | SHERROD BROWN, Ohio |
| STEVE LARGENT, Oklahoma | BART GORDON, Tennessee |
| RICHARD BURR, North Carolina | PETER DEUTSCH, Florida |
| ED WHITFIELD, Kentucky | BOBBY L. RUSH, Illinois |
| GREG GANSKE, Iowa | ANNA G. ESHOO, California |
| CHARLIE NORWOOD, Georgia | BART STUPAK, Michigan |
| BARBARA CUBIN, Wyoming | ELIOT L. ENGEL, New York |
| JOHN SHIMKUS, Illinois | TOM SAWYER, Ohio |
| HEATHER WILSON, New Mexico | ALBERT R. WYNN, Maryland |
| JOHN B. SHADEGG, Arizona | GENE GREEN, Texas |
| CHARLES "CHIP" PICKERING, Mississippi | KAREN McCARTHY, Missouri |
| VITO FOSSELLA, New York | TED STRICKLAND, Ohio |
| ROY BLUNT, Missouri | DIANA DEGETTE, Colorado |
| TOM DAVIS, Virginia | THOMAS M. BARRETT, Wisconsin |
| ED BRYANT, Tennessee | BILL LUTHER, Minnesota |
| ROBERT L. EHRLICH, Jr., Maryland | LOIS CAPPS, California |
| STEVE BUYER, Indiana | MICHAEL F. DOYLE, Pennsylvania |
| GEORGE RADANOVICH, California | CHRISTOPHER JOHN, Louisiana |
| CHARLES F. BASS, New Hampshire | JANE HARMAN, California |
| JOSEPH R. PITTS, Pennsylvania | |
| MARY BONO, California | |
| GREG WALDEN, Oregon | |
| LEE TERRY, Nebraska | |

DAVID V. MARVENTANO, *Staff Director*
JAMES D. BARNETTE, *General Counsel*
REID P.F. STUNTZ, *Minority Staff Director and Chief Counsel*

CONTENTS

PART A—ADMINISTRATION AND ORGANIZATION

| | Page |
|---|------|
| Federal Energy Administration Act of 1974 | 3 |
| Energy Reorganization Act of 1974 | 33 |
| Department of Energy Organization Act | 55 |

PART B—MISCELLANEOUS LAWS

| | |
|--|-----|
| Federal Nonnuclear Energy Research and Development Act of 1974 | 111 |
| Outer Continental Shelf Lands Act | 149 |
| Title XVI of the Energy Policy Act of 1992—Global Climate Change | 207 |
| Title XXX of the Energy Policy Act of 1992—Miscellaneous | 219 |

APPENDIX

| | |
|--|-----|
| International Energy Agreement | 229 |
| National Environmental Policy Act of 1969 | 261 |
| Title 5—Administrative Procedure and Judicial Review | 271 |
| Section 1905 of title 18, United States Code | 339 |
| Federal Advisory Committee Act | 343 |
| Paperwork Reduction Act | 355 |

PART A—ADMINISTRATION AND ORGANIZATION

FEDERAL ENERGY ADMINISTRATION ACT OF 1974

FEDERAL ENERGY ADMINISTRATION ACT OF 1974

Public Law 93–275

AN ACT To reorganize and consolidate certain functions of the Federal Government in a new Federal Energy Administration in order to promote more efficient management of such functions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART A—FEDERAL ENERGY ADMINISTRATION

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Energy Administration Act of 1974”.

[15 U.S.C. 761 note]

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby declares that the general welfare and the common defense and security require positive and effective action to conserve scarce energy supplies, to insure fair and efficient distribution of, and the maintenance of fair and reasonable consumer prices for, such supplies, to promote the expansion of readily usable energy sources, and to assist in developing policies and plans to meet the energy needs of the Nation.

(b) The Congress finds that to help achieve these objectives, and to assure a coordinated and effective approach to overcoming energy shortages, it is necessary to reorganize certain agencies and functions of the executive branch and to establish a Federal Energy Administration.

(c) The sole purpose of this Act is to create an administration in the executive branch, called the Federal Energy Administration, to vest in the Administration certain functions as provided in this Act, and to transfer to such Administration certain executive branch functions authorized by other laws, where such transfer is necessary on an interim basis to deal with the Nation’s energy shortages.

[15 U.S.C. 761]

ESTABLISHMENT

SEC. 3. There is hereby established an independent agency in the executive branch to be known as the Federal Energy Administration (hereinafter in this Act referred to as the “Administration”).

[15 U.S.C. 762]

[SEC. 4. Repealed by section 709(a)(1) of Public Law 95–91, 91 Stat. 607.]

FUNCTIONS AND PURPOSES OF THE FEDERAL ENERGY
ADMINISTRATION

SEC. 5. (a) Subject to the provisions and procedures set forth in this Act, the Administrator shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy as are appropriate in connection with only those authorities or functions—

(1) specifically transferred to or vested in him by or pursuant to this Act;

(2) delegated to him by the President pursuant to specific authority vested in the President by law; and

(3) otherwise specifically vested in the Administrator by the Congress.

(b) To the extent authorized by subsection (a) of this section, the Administrator shall—

(1) advise the President and the Congress with respect to the establishment of a comprehensive national energy policy in relation to the energy matters for which the Administration has responsibility, and, in coordination with the Secretary of State, the integration of domestic and foreign policies relating to energy resource management;

(2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public;

(3) develop effective arrangements for the participation of State and local governments in the resolution of energy problems;

(4) develop plans and programs for dealing with energy production shortages;

(5) promote stability in energy prices to the consumer, promote free and open competition in all aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise;

(6) assure that energy programs are designed and implemented in a fair and efficient manner so as to minimize hardship and inequity while assuring that the priority needs of the Nation are met;

(7) develop and oversee the implementation of equitable voluntary and mandatory energy conservation programs and promote efficiencies in the use of energy resources;

(8) develop and recommend policies on the import and export of energy resources;

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data;

(10) work with business, labor, consumer and other interests and obtain their cooperation;

(11) in administering any pricing authority, provide by rule, for equitable allocation of all component costs of producing propane gas. Such rules may require that (a) only those costs directly related to the production of propane may be allo-

cated by any producer to such gas for purposes of establishing any price for propane, and (b) prices for propane shall be based on the prices for propane in effect on May 15, 1973. The Administrator shall not allow costs attributable to changes in ownership and movement of propane gas where, in the opinion of the Administrator, such changes in ownership and movement occur primarily for the purpose of establishing a higher price; and

(12) perform such other functions as may be prescribed by law.

(c)(1) The Administrator shall not exercise the discretion delegated to him by the President, pursuant to section 5(b) of the Emergency Petroleum Allocation Act of 1973, to submit to the Congress as one energy action any amendment to the regulation under section 4(a) of such Act, pursuant to section 12 of such Act, which amendment exempts any oil, refined petroleum product, or refined product category from both the allocation and pricing provisions of the regulation under section 4 of such Act.

(2) Nothing in this subsection shall prevent the Administrator from concurrently submitting an energy action relating to price together with an energy action relating to allocation of the same oil, refined petroleum product, or refined product category.

[15 U.S.C. 764]

TRANSFERS

SEC. 6. (a) There are hereby transferred to and vested in the Administrator all functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department—

(1) as relate to or are utilized by the Office of Petroleum Allocation;

(2) as relate to or are utilized by the Office of Energy Conservation;

(3) as relate to or are utilized by the Office of Energy Data and Analysis; and

(4) as relate to or are utilized by the Office of Oil and Gas.

(b) There are hereby transferred to and vested in the Administrator all functions of the Chairman of the Cost of Living Council, the Executive Director of the Cost of Living Council, and the Cost of Living Council, and officers and components thereof, as relate to or are utilized by the Energy Division of the Cost of Living Council.

[15 U.S.C. 765]

ADMINISTRATIVE PROVISIONS

SEC. 7. (a) The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided*, That:

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the

environment. Such comments shall be published together with publication of notice of the proposed action.

(2) The review required by paragraph (1) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires making effective the action proposed to be taken at a date earlier than would permit the Administrator of the Environmental Protection Agency the five working days opportunity for prior comment required by paragraph (1). Notice of any such waiver shall be given to the Administrator of the Environmental Protection Agency and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as the Administrator determines will apprise such agency and the public of the reasons for such waiver.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

(b) Any officer or agency authorized to issue any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code, pursuant to this Act shall provide for the making of such adjustments, consistent with the other purposes of this Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. Such officer or agency shall, within ninety days after the date of the enactment of the Federal Energy Administration Act Amendments of 1976, establish criteria and guidelines by which such special hardship, inequity, or unfair distribution of burdens shall be evaluated. Such officer or agency shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition. If any person is aggrieved or adversely affected by a denial of a request for adjustment under the preceding sentences, he may request a review of such denial by the agency and may obtain judicial review in accordance with subsection (c) when such a denial becomes final. The agency shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial, and where deemed advisable by the agency, for considering other requests for action under this paragraph, except that no review of a denial under this subparagraph shall be controlled by the same officer denying the adjustment pursuant to this subparagraph.

(c) Judicial review of administrative rulemaking of general and national applicability done under this Act, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days

from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of general, but less than national, applicability done under this Act, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(1)¹ Effective beginning July 1, 1977, amounts authorized to be appropriated under this Act or any other Act shall not be available for the payment of salaries and other expenses with respect to any office of regional counsel of the Administration unless such office is under the direct supervision and control of the General Counsel of the Administration.

[15 U.S.C. 766]

TRANSITIONAL AND SAVINGS PROVISIONS

SEC. 8. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act, and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) This Act shall not affect any proceeding pending, at the time this Act takes effect, before any department or agency (or component thereof) regarding functions which are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals (except as provided in section 7(i)(2) of this Act) shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions, and to the same extent, that such proceeding could have been discontinued if this Act had not been enacted.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect, as if this Act had not been enacted.

¹ Public Law 95-70 added "(1)". Should be "(d)".

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Administrator, or any other official, then such suit shall be continued as if this Act had not been enacted, with the Administrator, or other official as the case may be, substituted.

(f) Final orders and actions, of any official or component in the performance of functions transferred by this Act shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this Act. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred or delegated by this Act shall apply to the performance of those functions by the Administrator, or any officer or component of the Administration. In the event of any inconsistency between the provisions of this subsection and section 7, the provisions of section 7 shall govern.

(g) With respect to any function transferred by this Act and performed after the effective date of this Act, reference in any other law to any department or agency or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, Administrator, or other office or officers in which this Act vests such functions.

(h) Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegations of functions.

(i) Any reference in this Act to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

[15 U.S.C. 767]

[SEC. 9. Repealed by section 709(a)(1) of Public Law 95-91, 91 Stat. 607.]

DEFINITIONS

SEC. 10. As used in this Act—

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

[15 U.S.C. 769]

APPOINTMENTS

SEC. 11. (a) Funds available to any department or agency (or any official or component thereof), and lawfully authorized for any of the specific functions which are transferred to the Administrator by this Act, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this Act until such times as funds for that purpose are otherwise available.

(b) In the event that any officer required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this Act, or any officer who was performing essentially the same functions immediately prior to the effective date of this Act, to act in such office until the office is filled as provided in this Act: *Provided*, That any officer acting pursuant to the provisions of this subsection may act no longer than a period of thirty days unless during such period his appointment as such an officer is submitted to the Senate for its advice and consent.

(c) Transfer of nontemporary personnel pursuant to this Act shall not cause any such employee to be separated or reduced in grade or compensation, except for cause, for one year after such transfer.

(d) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 of the United States Code, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position.

[15 U.S.C. 770]

ACCESS TO INFORMATION BY THE COMPTROLLER GENERAL

SEC. 12. (a) For the duration of this Act, the Comptroller General of the United States shall monitor and evaluate the operations of the Administration including its reporting activities. The Comptroller General shall (1) conduct studies of existing statutes and regulations governing the Administration's programs; (2) review the policies and practices of the Administration; (3) review and evaluate the procedures followed by the Administrator in gathering, analyzing, and interpreting energy statistics, data, and information related to the management and conservation of energy, in-

cluding but not limited to data related to energy costs, supply, demand, industry structure, and environmental impacts; and (4) evaluate particular projects or programs. The Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this Act and shall report to the Congress at such times as he deems appropriate with respect to the Administration's programs, including his recommendations for modifications in existing laws, regulations, procedures, and practices.

(b) The Comptroller General or any of his authorized representatives in carrying out his responsibilities under this section may request access to any books, documents, papers, statistics data, records, and information of any person owning or operating facilities or business premises who is engaged in any phase of energy supply or major energy consumption, where such material relates to the purposes of this Act, including but not limited to energy costs, demand, and supply, industry structure, and environmental impacts. The Comptroller General may request such person to submit in writing such energy information as the Comptroller General may prescribe.

(c) The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any recipients of Federal funds or assistance under contracts, leases, cooperative agreements, or other transactions entered into pursuant to subsection (d) or (g) of section 7 of this Act which in the opinion of the Comptroller General may be related or pertinent to such contracts, leases, cooperative agreements, or similar transactions.

(d) To assist in carrying out his responsibilities under this section, the Comptroller General may, with the concurrence of a duly established committee of Congress having legislative or investigative jurisdiction over the subject matter and upon the adoption of a resolution by such a committee which sets forth specifically the scope and necessity therefor, and the specific identity of those persons from whom information is sought, sign and issue subpoenas requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section.

(e) In case of disobedience to a subpoena issued under subsection (d) of this section, the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpoena issued by the Comptroller General, issue an order requiring such person to produce the books, documents, papers, statistics, data, records, or information; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(f) Reports submitted by the Comptroller General to the Congress pursuant to this section shall be available to the public at

reasonable cost and upon identifiable request. The Comptroller General may not disclose to the public any information which concerns or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, except that such information shall be disclosed by the Comptroller General or the Administrator, in a manner designed to preserve its confidentiality—

- (1) to other Federal Government departments, agencies, and officials for official use upon request;
- (2) to committees of Congress upon request; and
- (3) to a court in any judicial proceeding under court order.

[15 U.S.C. 771]

INFORMATION-GATHERING POWER

SEC. 13. (a) The Administrator shall collect, assemble, evaluate, and analyze energy information by categorical groupings, established by the Administrator, of sufficient comprehensiveness and particularity to permit fully informed monitoring and policy guidance with respect to the exercise of his functions under this Act.

(b) All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the Administrator such information and periodic reports, records, documents, and other data, relating to the purposes of this Act, including full identification of all data and projections as to source, time, and methodology of development, as the Administrator may prescribe by regulation or order as necessary or appropriate for the proper exercise of functions under this Act.

(c) The Administrator may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under this Act. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe.

(d) The Administrator, to verify the accuracy of information he has received or otherwise to obtain information necessary to perform his functions under this Act, is authorized to conduct investigations, and in connection therewith, to conduct, at reasonable times and in a reasonable manner, physical inspections at energy facilities and business premises, to inventory and sample any stock of fuels or energy sources therein, to inspect and copy records, reports, and documents from which energy information has been or is being compiled, and to question such persons as he may deem necessary.

(e)(1) The Administrator, or any of his duly authorized agents, shall have the power to require by subpoena the attendance and testimony of witnesses, and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Administrator is authorized to obtain pursuant to this section.

(2) Any appropriate United States district court may, in case of contumacy or refusal to obey a subpoena issued pursuant to this section, issue an order requiring the party to whom such subpoena is directed to appear before the Administration and to give testimony touching on the matter in question, or to produce any matter described in paragraph (1) of this subsection, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(f) The Administrator shall collect from departments, agencies and instrumentalities of the executive branch of the Government (including independent agencies), and each such department, agency, and instrumentality is authorized and directed to furnish, upon his request, information concerning energy resources on lands owned by the Government of the United States. Such information shall include, but not be limited to quantities of reserves, current or proposed leasing agreements, environmental considerations, and economic impact analyses.

(g) With respect to any person who is subject to any rule, regulation, or order promulgated by the Administrator or to any provision of law the administration of which is vested in or transferred or delegated to the Administrator, the Administrator may require, by rule, the keeping of such accounts or records as he determines are necessary or appropriate for determining compliance with such rule, regulation, order, or any applicable provision of law.

(h) In exercising his authority under this Act and any other provision of law relating to the collection of energy information, the Administrator shall take into account the size of businesses required to submit reports with the Administrator so as to avoid, to the greatest extent practicable, overly burdensome reporting requirements on small marketers and distributors of petroleum products and other small business concerns required to submit reports to the Administrator.

(i) Any failure to make information available to the Administrator under subsection (b), any failure to comply with any general or special order under subsection (c), or any failure to allow the Administrator to act under subsection (d) shall be subject to the same penalties as any violation of section 11 of the Energy Supply and Environmental Coordination Act of 1974 or any rule, regulation, or order issued under such section.

[15 U.S.C. 772]

PUBLIC DISCLOSURE OF INFORMATION

SEC. 14. (a) The Administrator shall make public, on a continuing basis, any statistical and economic analyses, data, information, and whatever reports and summaries are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts.

(b) Subject to the provisions of this Act, section 552 of title 5, United States Code, shall apply to public disclosure of information by the Administrator: *Provided*, That notwithstanding said section, the provisions of section 1905 of title 18, United States Code, or any other provision of law, (1) all matters reported to, or otherwise

obtained by, any person exercising authority under this Act containing trade secrets or other matter referred to in section 1905 of title 18, United States Code, may be disclosed to other persons authorized to perform functions under this Act solely to carry out the purposes of the Act, or when relevant in any proceeding under this Act; and (2) the Administrator shall disclose to the public, at a reasonable cost, and upon a request which reasonably describes the matter sought, any matter of the type which could not be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 by a business enterprise exclusively engaged in the manufacture or sale of a single product, unless such matter concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a business enterprise.

(c) To protect and assure privacy of individuals and confidentiality of personal information, the Administrator is directed to establish guidelines and procedures for handling any information which the Administration obtains pertaining to individuals. He shall provide to the extent practicable, in such guidelines and procedures a method for allowing any such individual to gain access to such information pertaining to himself.

[15 U.S.C. 773]

REPORTS AND RECOMMENDATIONS

SEC. 15. (a) Not later than one year after the effective date of this Act, the Administrator shall submit a report to the President and Congress which will provide a complete and independent analysis of actual oil and gas reserves and resources in the United States and its Outer Continental Shelf, as well as of the existing productive capacity and the extent to which such capacity could be increased for crude oil and each major petroleum product each year for the next ten years through full utilization of available technology and capacity. The report shall also contain the Administration's recommendations for improving the utilization and effectiveness of Federal energy data and its manner of collection. The data collection and analysis portion of this report shall be prepared by the Federal Trade Commission for the Administration. Unless specifically prohibited by law, all Federal agencies shall make available estimates, statistics, data and other information in their files which, in the judgment of the Commission or Administration, are necessary for the purposes of this subsection.

(b) The Administrator shall prepare and submit directly to the Congress and the President every year after the date of enactment of this Act a report which shall include—

(1) a review and analysis of the major actions taken by the Administrator;

(2) an analysis of the impact these actions have had on the Nation's civilian requirements for energy supplies for materials and commodities;

(3) a projection of the energy supply for the midterm and long term for each of the major types of fuel and the potential size and impact of any anticipated shortages, including recommendations for measures to—

- (A) minimize deficiencies of energy supplies in relation to needs;
 - (B) maintain the health and safety of citizens;
 - (C) maintain production and employment at the highest feasible level;
 - (D) equitably share the burden of shortages among individuals and business firms; and
 - (E) minimize any distortion of voluntary choices of individuals and firms;
- (4) a summary listing of all recipients of funds and the amount thereof within the preceding period;
 - (5) a summary listing of information-gathering activities conducted under section 13 of this Act; and
 - (6) an analysis of the energy needs of the United States and the methods by which such needs can be met, including both tax and nontax proposals and energy conservation strategies.

In the first annual report submitted after the date of enactment of the Energy Conservation and Production Act, the Administrator shall include in such report with respect to the analysis referred to in paragraph (6) a specific discussion of the utility and relative benefits of employing a Btu tax as a means for obtaining national energy goals.

(c) Not later than thirty days after the effective date of this Act, the Administrator shall issue preliminary summer guidelines for citizen fuel use.

(d) The Administrator shall provide interim reports to the Congress from time to time and when requested by committees of Congress.

(e) The analysis referred to in subsection (b)(6) shall include, for each of the next five fiscal years following the year in which the annual report is submitted and for the tenth fiscal year following such year—

- (1) the effect of various conservation programs on such energy needs;
- (2) the alternate methods of meeting the energy needs identified in such annual report and of—
 - (A) the relative capital and other economic costs of each such method;
 - (B) the relative environmental, national security, and balance-of-trade risks of each such method;
 - (C) the other relevant advantages and disadvantages of each such method; and
- (3) recommendations for the best method or methods of meeting the energy needs identified in such annual report and for legislation needed to meet those needs.

Notwithstanding the termination of this Act, the President shall designate an appropriate Federal agency to conduct the analysis specified in subsection (b)(6).

[15 U.S.C. 774]

SEX DISCRIMINATION

SEC. 16. No individual shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to

discrimination under any program or activity carried on or receiving Federal assistance under this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or remove any other legal remedies available to any individual alleging discrimination.

[15 U.S.C. 775]

【SEC. 17. Repealed by Pub. Law 105–28; 111 Stat. 245.】

ECONOMIC ANALYSIS OF PROPOSED ACTIONS

SEC. 18. (a) In carrying out the provisions of this Act, the Administrator shall, to the greatest extent practicable, insure that the potential economic impacts of proposed regulatory and other actions are evaluated and considered, including but not limited to an analysis of the effect of such actions on—

- (1) the fiscal integrity of State and local governments;
- (2) vital industrial sectors of the economy;
- (3) employment, by industrial and trade sectors, as well as on a national, regional, State, and local basis;
- (4) the economic vitality of regional, State, and local areas;
- (5) the availability and price of consumer goods and services;
- (6) the gross national product;
- (7) low and middle income families as defined by the Bureau of Labor Statistics;
- (8) competition in all sectors of industry; and
- (9) small business.

(b) The Administrator shall develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry.

(c) Such analyses shall, wherever possible, be made explicit, and to the extent possible, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses, and all Federal agencies are authorized and directed to cooperate with the Administrator in preparing such analyses: *Provided*, That the Administrator's actions pursuant to this section shall not create any right of review or cause of action except as would otherwise exist under other provisions of law.

(d) The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with an annual report on the impact of the energy shortage and the Administrator's actions on employment and the economy. Such report shall contain recommendations as to whether additional Federal programs of employment and economic assistance should be put into effect to minimize the impact of the energy shortage and any actions taken.

(e) The Administrator shall formulate and implement regulatory and other actions in a manner (1) which does not unduly discriminate against any industry or any region of the United States;

and (2) designed to insure that, to the greatest extent possible, the costs and burdens of meeting energy shortages shall be borne equally by every sector and segment of the country and of the economy.

[15 U.S.C. 777]

MANAGEMENT OVERSIGHT REVIEW

SEC. 19. The Administrator may, for a period not to exceed thirty days in any one calendar year, provide for the exercise or performance of a management oversight review with respect to the conduct of any Federal or State (with consent of the Governor) energy program conducted pursuant to this Act. Such review may be conducted by contract or by any Federal department or agency. A written report shall be submitted to the Administrator concerning the findings of the review.

[15 U.S.C. 778]

COORDINATION WITH, AND TECHNICAL ASSISTANCE TO, STATE GOVERNMENTS

SEC. 20. (a) The Administrator shall—

(1) coordinate Federal energy programs and policies with such programs and policies of State governments by providing—

(A) within sixty days of the effective date of this Act, the Congress and State governments with a report on the manner in which he has organized the Administration based upon the functions delegated by the President or assigned to the Administrator by this Act or under the authority of other Acts; and

(B) within one hundred and twenty days of the effective date of this Act, the public, State governments, and all Members of the Congress with a report in nontechnical language which—

(i) describes the functions performed by the Administration;

(ii) sets forth in detail the organization of the Administration, the location of its offices (including regional, State, and local offices), the names and phone numbers of Administration officials, and other appropriate information concerning the operation of the Administration;

(iii) delineates the role that State, and Federal governments will or may perform in achieving the purposes of this Act; and

(iv) provides the public with a clear understanding of their duties and obligations, rights, and responsibilities under any of the programs or functions of the Administration;

(2) before promulgating any rules, regulations, or policies, and before establishing any programs under the authority of this Act, provide, where practicable, a reasonable period in which State governments may provide written comments if such rules, regulations, policies, or programs substantially affect the authority or responsibility of such State governments;

(3) provide, in accordance with the provisions of this Act, upon request, to State governments all relevant information he possesses concerning the status and impact of energy shortages, the extent and location of available supplies and shortages of crude oil, petroleum products, natural gas, and coal, within the distribution area serving that particular State government; and

(4) provide for a central clearinghouse for Federal agencies and State governments seeking energy information and assistance from the Federal Government.

(b) Pursuant to his responsibility under this section, the Administrator shall—

(1) provide technical assistance—including advice and consultation relating to State programs, and, where necessary, the use of task forces of public officials and private persons assigned to work with State governments—to assist State governments in dealing with energy problems and shortages and their impact and in the development of plans, programs, and policies to meet the problems and shortages so identified;

(2) convene conferences of State and Federal officials, and such other persons as the Administrator designates, to promote the purposes of this Act, and the Administrator is authorized to pay reasonable expenses incurred in the participation of individuals in such conferences;

(3) draft and make available to State governments model legislation with respect to State energy programs and policies; and

(4) promote the promulgation of uniform criteria, procedures, and forms for grant or contract applications for energy proposals submitted by State governments.

[15 U.S.C. 779]

OFFICE OF PRIVATE GRIEVANCES AND REDRESS

SEC. 21. (a) The Administrator shall establish and maintain an Office of Private Grievances and Redress, headed by a director, to receive and evaluate petitions filed in accordance with subsection (b) of this section, and to make recommendations to the Administrator for appropriate action.

(b) Any person, adversely affected by any order, rule, or regulation issued by the Administrator in carrying out the functions assigned to him under this Act, may petition the Administrator for special redress, relief, or other extraordinary assistance, apart from, or in addition to, any right or privilege to seek redress of grievances provided in section 7.

(c) The Administrator shall submit to the Secretary for inclusion in the annual report required by section 657 of the Department of Energy Organization Act a statement on the nature and number of the grievances which have been filed, and the action taken and relief provided, pursuant to this section; and he shall make recommendations to the Congress from time to time concerning legislative or administrative actions which may be taken to better assist persons adversely affected by the energy shortages

and to distribute more equitably the burdens resulting from any measures adopted, or actions taken, by him.

[15 U.S.C. 780]

COMPREHENSIVE ENERGY PLAN

SEC. 22. (a) Pursuant and subject to the provisions and procedures set forth in this Act, the Administrator shall, within six months from the date of the enactment of this Act, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this Act. Such plan shall be accompanied by full analytical justification for the actions proposed therein. Such analysis shall include, but not be limited to—

(1) estimates of the energy savings of each action and of the program as a whole;

(2) estimates of any windfall losses and gains to be experienced by corporations, industries, and citizens grouped by socioeconomic class;

(3) estimates of the impact on supplies and consumption of energy forms consequent to such price changes as are or may be proposed; and

(4) a description of alternative actions which the Administrator has considered together with a rationale in explanation of the rejection of any such alternatives in preference to the measures actually proposed.

(b) The Administrator may, from time to time, modify or otherwise alter any such plan, except that, upon request of an appropriate committee of the Congress, the Administrator shall supply analytical justifications for any such alterations.

(c) The Administrator shall be responsible for monitoring any such plans as are implemented with respect to their effectiveness in achieving the anticipated benefits.

[15 U.S.C. 781]

PETROCHEMICAL REPORT

SEC. 23. (a) Within ninety days after he has entered upon the office of Administrator or has been designated by the President to act in such office, the Administrator, or acting Administrator, as the case may be, with the assistance of the Department of Commerce, the Cost of Living Council, and the United States Tariff Commission shall, by written report, inform the Congress as to the—

(1) effect of current petrochemical prices upon the current level of petrochemical exports, and export levels expected for 1975;

(2) effect of current and expected 1975 petrochemical export levels upon domestic petrochemical raw materials and products available to petrochemical producers, converters, and fabricators currently and in 1975;

(3) current contribution of petrochemical imports to domestic supplies and the expected contribution in 1975;

(4) anticipated economic effects of current and expected 1975 levels of domestic supplies of petrochemicals upon domes-

tic producers, converters, and fabricators of petrochemical raw materials and products; and

(5) exact nature, extent, and sources of data and other information available to the Federal Government regarding the matters set forth in paragraphs (1) through (4) of this subsection, including the exact nature, extent, and sources of such data and information utilized in connection with the report required by this subsection.

(b) As used in this section, the term "petrochemical" includes organic chemicals, cyclic intermediates, plastics and resins, synthetic fibers, elastomers, organic dyes, organic pigments, detergents, surface active agents, carbon black and ammonia.

[15 U.S.C. 782]

HYDROELECTRIC GENERATING FACILITIES

SEC. 24. Within ninety days of the effective date of this Act, the Administrator of the Federal Energy Administration, in consultation with the Secretary of the Interior and the Secretary of the Army, shall—

(1) transmit to the Congress—

(A) a list of hydroelectric generating facilities and electric power transmission facilities which have been authorized for construction by the Congress and which are not yet completed, and

(B) a list of opportunities to increase the capacity of existing hydroelectric generating facilities, and

(2) provide, for such facility which is listed—

(A) a construction schedule and cost estimates for an expedited construction program which would make the facility available for service at the earliest practicable date, and

(B) a statement of the accomplishments which could be provided by the expedited completion of each facility and a statement of any funds which have been appropriated but not yet obligated.

[15 U.S.C. 783]

INFORMATION CONCERNING TRANSACTION, SALE, EXCHANGE OR SHIPMENT INVOLVING THE EXPORT FROM THE UNITED STATES TO A FOREIGN NATION OF COAL AND ANY REFINED PETROLEUM PRODUCT

SEC. 25. (a) The Administrator is authorized and directed to establish and maintain a file which shall contain information concerning every transaction, sale, exchange or shipment involving the export from the United States to a foreign nation of coal, crude oil, residual oil or any refined petroleum product. Information to be included in the file shall be current and shall include, but shall not be limited to, the name of the exporter (including the name or names of the holders of any beneficial interests), the volume and type of product involved in the export transaction, the manner of shipment and identification of the vessel or carrier, the destination, the name of the purchaser if a sale, exchange or other transaction is involved, and a statement of reasons justifying the export.

(b) Upon request of any committee of Congress or the head of any Federal agency, the Administrator shall promptly provide any

information maintained in the file and a report thereon to such committee, or agency head, except where the President finds such disclosure to be detrimental to national security.

(c) Notwithstanding any other provision of law, any Federal agency which collects or has information relevant to the functions required by this section shall make such information available to the Administrator.

(d) The Administrator shall not be required to collect independently information described in subsection (a) if he can secure the information described in subsection (a) from other Federal agencies and the information secured from such agencies is available to the Congress pursuant to a request under subsection (b).

[15 U.S.C. 784]

FOREIGN OWNERSHIP

SEC. 26. The Administrator shall conduct a comprehensive review of foreign ownership of, influence on, and control of domestic energy sources and supplies. Such review shall draw upon existing information, where available, and any independent investigation necessary by the Administration. The Administrator shall, on or before the expiration of the one hundred and eighty day period following the effective date of this Act, report to the Congress in sufficient detail so as to apprise the Congress as to the extent and forms of such foreign ownership of, influence on, and control of domestic energy sources and supplies, and shall thereafter continue to monitor such ownership, influence and control.

[15 U.S.C. 785]

SEPARABILITY

SEC. 27. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

[15 U.S.C. 761 note]

AUTHORIZATION OF APPROPRIATIONS

SEC. 29. (a) There are authorized to be appropriated to the Federal Energy Administration the following sums:

(1) subject to the restrictions specified in subsection (b), to carry out the functions identified as assigned to Executive Direction and Administration of the Federal Energy Administration as of January 1, 1977—

(A) for the fiscal year ending September 30, 1977, not to exceed \$35,627,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed \$41,017,000.

(2) to carry out the functions identified as assigned to the Office of Energy Information and Analysis as of January 1, 1977—

(A) for the fiscal year ending September 30, 1977, not to exceed \$34,971,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed \$43,544,000.

(3) to carry out the functions identified as assigned to the Office of Regulatory Programs as of January 1, 1977—

(A) for the fiscal year ending September 30, 1977, not to exceed \$62,459,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed \$62,459,000.

(4) to carry out the functions identified as assigned to the Office of Conservation and Environment as of January 1, 1977 (other than functions described in part A and part D of title IV of the Energy Conservation and Production Act, parts B and C of title III of the Energy Policy and Conservation Act and, for the fiscal year ending September 30, 1977, functions described in title II of the Energy Conservation and Production Act and in paragraph (7) of this subsection)—

(A) for the fiscal year ending September 30, 1977, not to exceed \$38,603,000.

(B) for the fiscal year ending September 30, 1978, not to exceed \$46,908,000.

(5) to carry out the functions identified as assigned to the Office of Energy Resource Development as of January 1, 1977—

(A) for the fiscal year ending September 30, 1977, not to exceed \$16,934,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed \$26,017,000.

(6) to carry out the functions identified as assigned to the Office of International Energy Affairs as of January 1, 1977—

(A) for the fiscal year ending September 30, 1977, not to exceed \$1,921,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed \$1,846,000.

(7) subject to the restriction specified in subsection (c), to carry out a program to develop the policies, plans, implementation strategies, and program definitions for promoting accelerated utilization and widespread commercialization of solar energy and to provide overall coordination of Federal solar energy commercialization activities, for the fiscal year ending September 30, 1977, not to exceed \$2,500,000.

(8) for the purpose of permitting public use of the Project Independence Evaluation System pursuant to section 31 of this Act, not to exceed the aggregate amount of the fees estimated to be charged for such use.

(b) The following restrictions shall apply to the authorization of appropriations specified in paragraph (1) of subsection (a)—

(1) amounts to carry out the functions identified as assigned to the Office of Communication and Public Affairs as of January 1, 1977, shall not exceed \$2,112,000 for the fiscal year ending September 30, 1977; and

(2) no amounts authorized to be appropriated in such paragraph may be used to carry out the functions identified as assigned to the Office of Nuclear Affairs as of January 1, 1976.

(c) No amounts authorized to be appropriated in paragraphs (5) (B) and (7) of subsection (a) may be used to carry out solar energy research, development, or demonstration activities.

(d) Subject to the provisions of any other law enacted after the date of the enactment of this subsection, if any function for which funds are authorized to be appropriated by this section is transferred by or pursuant to any such provision of law to any department, agency, or office, the unexpended balances of appropriations, authorizations, allocations, and other funds, held, used, arising from, available to, or to be made available in connection with such function shall be transferred to such department, agency, or office, but shall continue to be subject to any restriction to which they were subject before such transfer.

[15 U.S.C. 761 note]

PROJECT INDEPENDENCE EVALUATION SYSTEM DOCUMENTATION AND ACCESS

SEC. 31. The Administrator of the Federal Energy Administration shall—

(1) submit to the Congress, not later than September 1, 1976, full and complete structural and parametric documentation, and not later than January 1, 1977, operating documentation, of the Project Independence Evaluation System computer model;

(2) provide access to such model to representatives of committees of the Congress in an expeditious manner; and

(3) permit the use of such model on the computer system maintained by the Federal Energy Administration by any member of the public upon such reasonable terms and conditions as the Administrator shall, by rule, prescribe. Such rules shall provide that any member of the public who uses such model may be charged a fair and reasonable fee, as determined by the Administrator, for using such model.

[15 U.S.C. 787]

USE OF COMMERCIAL STANDARDS

SEC. 32. (a) If any proposed rule by the Administrator contains any commercial standards, or specifically authorizes or requires the use of any such standards, then any general notice of the proposed rulemaking shall—

(1) identify, by name, the organization which promulgated such standards; and

(2) state whether or not, in the judgment of the Administrator, such organization complied with the requirements of subsection (b) in the promulgation of such standards.

(b) An organization complies with the requirements of this subsection in promulgating any commercial standards if—

(1) it gives interested persons adequate notice of the proposed promulgation of the standards and an opportunity to participate in the promulgation process through the presentation of their views in hearings or meetings which are open to the public;

(2) the membership of the organization at the time of the promulgation of the standards is sufficiently balanced so as to allow for the effective representation of all interested persons;

(3) before promulgating such standards, it makes available to the public any records of proceedings of the organization,

and any documents, letters, memorandums, and materials, relating to such standards; and

(4) it has procedures allowing interested persons to—

(A) obtain a reconsideration of any action taken by the organization relating to the promulgation of such standards, and

(B) obtain a review of the standards (including a review of the basis or adequacy of such standards).

(c) The Administrator shall not incorporate within any rule, nor prescribe any rule specifically authorizing or requiring the use of, any commercial standards unless he has consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of such standards on competition and neither such individual recommends against such incorporation or use.

(d) The foregoing provisions of this section shall not apply with respect to rules prescribed by the Administrator which relate to the procurement activities of the Administration.

(e) Not later than 90 days after the date of the enactment of this section, the Administrator shall prescribe, by rule, guidelines or criteria which set forth the extent to which, and the terms and conditions under which, employees of the Administration may participate in their official capacity in the activities of any organization (which is not a Federal entity) which relate to the promulgation of commercial standards. Such guidelines and criteria may allow for such participation if it is in the public interest and relates to the purposes of this Act, but in no event may such employees who are participating in their official capacity be allowed under such guidelines or criteria to vote on any matter relating to commercial standards.

(f) As used in this section, the term “commercial standards” means—

(1) specifications of materials;

(2) methods of testing;

(3) criteria for adequate performance or operation;

(4) model codes;

(5) classification of components;

(6) delineation of procedures or definition of terms;

(7) measurement of quantity or quality for evaluating or referring to materials, products, systems, services, or practices; or

(8) similar rules, procedures, requirements, or standards; which are promulgated by any organization which is not a Federal entity. For purposes of the preceding sentence, any revision by any such organization of any such rule, procedure, requirements, or standard shall be considered to be the same as the promulgation of such standard.

[15 U.S.C. 788]

PART B—OFFICE OF ENERGY INFORMATION AND ANALYSIS

ESTABLISHMENT OF OFFICE OF ENERGY INFORMATION AND ANALYSIS

SEC. 51. (a)(1) There is established within the Federal Energy Administration an Office of Energy Information and Analysis (hereinafter in this Act referred to as the “Office”) which shall be headed

by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(b) The Administrator shall delegate (which delegation may be on a nonexclusive basis as the Administrator may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the authority vested in him under section 11 of the Energy Supply and Environmental Coordination Act of 1974 and section 13 of this Act and the Director may act in the name of the Administrator under section 12 of the Energy Supply and Environmental Coordination Act of 1974 and section 13 of this Act for the purpose of obtaining enforcement of the authorities delegated to him.

(c) As used in this Act the term "energy information" shall have the meaning described in section 11 of the Energy Supply and Environmental Coordination Act of 1974.

[15 U.S.C. 790]

NATIONAL ENERGY INFORMATION SYSTEM

SEC. 52. (a) It shall be the duty of the Director to establish a National Energy Information System (hereinafter referred to in this Act as the "System"), which shall be operated and maintained by the Office. The System shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate to meet adequately the needs of—

(1) the Federal Energy Administration in carrying out its lawful functions;

(2) the Congress;

(3) other officers and employees of the United States in whom have been vested, or to whom have been delegated, energy-related policy decisionmaking responsibilities; and

(4) the States to the extent required by the Natural Gas Act and the Federal Power Act.

(b) At a minimum, the System shall contain such energy information as is necessary to carry out the Administration's statistical and forecasting activities, and shall include, at the earliest date and to the maximum extent practical subject to the resources available and the Director's ordering of those resources to meet the responsibilities of his Office, such energy information as is required to define and permit analysis of—

(1) the institutional structure of the energy supply system including patterns of ownership and control of mineral fuel and nonmineral energy resources and the production, distribution, and marketing of mineral fuels and electricity;

(2) the consumption of mineral fuels, nonmineral energy resources, and electricity by such classes, sectors, and regions as may be appropriate for the purposes of this Act;

(3) the sensitivity of energy resource reserves, exploration, development, production, transportation, and consumption to

economic factors, environmental constraints, technological improvements, and substitutability of alternate energy sources;

(4) the comparability of energy information and statistics that are supplied by different sources;

(5) industrial, labor, and regional impacts of changes in patterns of energy supply and consumption;

(6) international aspects, economic and otherwise, of the evolving energy situation; and

(7) long-term relationships between energy supply and consumption in the United States and world communities.

[15 U.S.C. 790a]

ADMINISTRATIVE PROVISIONS

SEC. 53. (a) The Director of the Office shall receive compensation at the rate now or hereafter prescribed for offices and positions at level IV of the Executive Schedule as specified in section 5315 of title 5, United States Code.

(b) To carry out the functions of the Office, the Director, on behalf of the Administrator, is authorized to appoint and fix the compensation of such professionally qualified employees as he deems necessary, including up to ten of the employees in grade GS-16, GS-17, or GS-18 authorized by section 7 of this Act.

(c) The functions and powers of the Office shall be vested in or delegated to the Director, who may from time to time, and to the extent permitted by law, consistent with the purposes of this Act, delegate such of his functions as he deems appropriate. Such delegation may be made, upon request, to any officer or agency of the Federal Government.

(d)(1) The Director shall be available to the Congress to provide testimony on such subjects under his authority and responsibility as the Congress may request, including but not limited to energy information and analyses thereof.

(2) Any request for appropriations for the Federal Energy Administration submitted to the Congress shall identify the portion of such request intended for the support of the Office, and a statement of the differences, if any, between the amounts requested and the Director's assessment of the budgetary needs of the Office.

[15 U.S.C. 790b]

ANALYTICAL CAPABILITY

SEC. 54. (a) The Director shall establish and maintain the scientific, engineering, statistical, or other technical capability to perform analysis of energy information to—

(1) verify the accuracy of items of energy information submitted to the Director; and

(2) insure the coordination and comparability of the energy information in possession of the Office and other Federal agencies.

(b) The Director shall establish and maintain the professional and analytic capability to evaluate independently the adequacy and comprehensiveness of the energy information in possession of the Office and other agencies of the Federal Government in relation to the purposes of this Act and for the performance of the analyses

described in section 52 of this Act. Such analytic capability shall include—

- (1) expertise in economics, finance, and accounting;
- (2) the capability to evaluate estimates of reserves of mineral fuels and nonmineral energy resources utilizing alternative methodologies;
- (3) the development and evaluation of energy flow and accounting models describing the production, distribution, and consumption of energy by the various sectors of the economy and lines of commerce in the energy industry;
- (4) the development and evaluation of alternative forecasting models describing the short- and long-term relationships between energy supply and consumption and appropriate variables; and
- (5) such other capabilities as the Director deems necessary to achieve the purposes of this Act.

[15 U.S.C. 790c]

【SEC. 55. Repealed by section 1051(k) of Public Law 104–66 (109 Stat. 717).】

COORDINATION OF ENERGY INFORMATION ACTIVITIES

SEC. 56. (a) In carrying out the purposes of this Act the Director shall, as he deems appropriate, review the energy information gathering activities of Federal agencies with a view toward avoiding duplication of effort and minimizing the compliance burden on business enterprises and other persons.

(b) In exercising his responsibilities under subsection (a) of this section, the Director shall recommend policies which, to the greatest extent practicable—

- (1) provide adequately for the energy information needs of the various departments and agencies of the Federal Government, the Congress, and the public;
- (2) minimize the burden of reporting energy information on businesses, other persons, and especially small businesses;
- (3) reduce the cost to Government of obtaining information; and
- (4) utilize files of information and existing facilities of established Federal agencies.

(c)(1) At the earliest practicable date after the date of enactment of this section, each Federal agency which is engaged in the gathering of energy information as a part of an established program, function, or other activity shall promptly provide the Administrator with a report on energy information which—

- (A) identifies the statutory authority upon which the energy information collection activities of such agency is based;
- (B) lists and describes the energy information needs and requirements of such agency; and
- (C) lists and describes the categories, definitions, levels of detail, and frequency of collection of the energy information collected by such agency.

Such agencies shall cooperate with the Administrator and provide such other descriptive information with respect to energy information activities as the Administrator may request. The Adminis-

trator shall prepare a report on his activities under this subsection, which report shall include recommendations with respect to the coordination of energy information activities of the Federal Government. Such report shall be available to the Congress and shall be transmitted to the President and to the Energy Resources Council for use in preparation of the plan required under subsection (c) of section 108 of the Energy Reorganization Act of 1974.

[15 U.S.C. 790e]

REPORTS

SEC. 57. (a) The Director shall make periodic reports and may make special reports to the Congress and the public, including but not limited to—

(1) such reports as the Director determines are necessary to provide a comprehensive picture of the quarterly, monthly, and, as appropriate, weekly supply and consumption of the various nonmineral energy resources, mineral fuels, and electricity in the United States; the information reported may be organized by company, by States, by regions, or by such other producing and consuming sectors, or combinations thereof, and shall be accompanied by an appropriate discussion of the evolution of the energy supply and consumption situation and such national and international trends and their effects as the Director may find to be significant; and

(2) an annual report which includes, but is not limited to, a description of the activities of the Office and the National Energy Information System during the preceding year; a summary of all special reports published during the preceding year; a summary of statistical information collected during the preceding year; short-, medium-, and long-term energy consumption and supply trends and forecasts under various assumptions; and, to the maximum extent practicable, a summary or schedule of the amounts of mineral fuel resources, nonmineral energy resources, and mineral fuels that can be brought to market at various prices and technologies and their relationship to forecasted demands.

(b)(1) The Director, on behalf of the Administrator, shall insure that adequate documentation for all statistical and forecast reports prepared by the Director is made available to the public at the time of publication of such reports. The Director shall periodically audit and validate analytical methodologies employed in the preparation of periodic statistical and forecast reports.

(2) The Director shall, on a regular basis, make available to the public information which contains validation and audits of periodic statistical and forecast reports.

(c) Prior to publication, the Director may not be required to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with the law.

[15 U.S.C. 790f]

ENERGY INFORMATION IN POSSESSION OF OTHER FEDERAL AGENCIES

SEC. 58. (a) In furtherance and not in limitation of any other authority, the Director, on behalf of the Administrator, shall have access to energy information in the possession of any Federal agency except information—

(1) the disclosure of which to another Federal agency is expressly prohibited by law; or

(2) the disclosure of which the agency so requested determines would significantly impair the discharge of authorities and responsibilities which have been delegated to, or vested by law, in such agency.

(b) In the event that energy information in the possession of another Federal agency which is required to achieve the purposes of this Act is denied the Director or the Administrator pursuant to paragraph (1) or paragraph (2) of subsection (a) of this section, the Administrator, or the Director, on behalf of the Administrator, shall take appropriate action, pursuant to authority granted by law, to obtain said information from the original sources or a suitable alternate source. Such source shall be notified of the reason for this request for information.

[15 U.S.C. 790g]

CONGRESSIONAL ACCESS TO INFORMATION IN POSSESSION OF THE
OFFICE

SEC. 59. The Director shall promptly provide upon request any energy information in the possession of the Office to any duly established committee of the Congress. Such information shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of such committee and the Rules of the House of Representatives or the Senate and as permitted by law.

[15 U.S.C. 790h]

ENERGY REORGANIZATION ACT OF 1974

ENERGY REORGANIZATION ACT OF 1974

Public Law 93-438, as Amended

AN ACT To reorganize and consolidate certain functions of the Federal Government in a new Energy Research and Development Administration and in a new Nuclear Regulatory Commission in order to promote more efficient management of such functions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the “Energy Reorganization Act of 1974”.

[42 U.S.C. 5801 note]

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby declares that the general welfare and the common defense and security require effective action to develop, and increase the efficiency and reliability of use of, all energy sources to meet the needs of present and future generations, to increase the productivity of the national economy and strengthen its position in regard to international trade, to make the Nation self-sufficient in energy, to advance the goals of restoring, protecting, and enhancing environmental quality, and to assure public health and safety.

(b) The Congress finds that to best achieve these objectives, improve Government operations, and assure the coordinated and effective development of all energy sources, it is necessary to establish an Energy Research and Development Administration to bring together and direct Federal activities relating to research and development on the various sources of energy, to increase the efficiency and reliability in the use of energy, and to carry out the performance of other functions, including but not limited to the Atomic Energy Commission’s military and production activities and its general basic research activities. In establishing an Energy Research and Development Administration to achieve these objectives, the Congress intends that all possible sources of energy be developed consistent with warranted priorities.

(c) The Congress finds that it is in the public interest that the licensing and related regulatory functions of the Atomic Energy Commission be separated from the performance of the other functions of the Commission, and that this separation be effected in an orderly manner, pursuant to this Act, assuring adequacy of technical and other resources necessary for the performance of each.

(d) The Congress declares that it is in the public interest and the policy of Congress that small business concerns be given a reasonable opportunity to participate, insofar as is possible, fairly and

equitably in grants, contracts, purchases, and other Federal activities relating to research, development and demonstration of sources of energy efficiency, and utilization and conservation of energy. In carrying out this policy, to the extent practicable, the Administrator shall consult with the Administrator of the Small Business Administration.

(e) Determination of priorities which are warranted should be based on such considerations as power-related values of an energy source, preservation of material resources, reduction of pollutants, export market potential (including reduction of imports), among others. On such a basis, energy sources warranting priority might include, but not be limited to, the various methods or utilizing solar energy.

[42 U.S.C. 5801]

TITLE I—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION¹

ESTABLISHMENT

SEC. 101. There is hereby established an independent executive agency to be known as the Energy Research and Development Administration (hereinafter in this Act referred to as the “Administration”).

[42 U.S.C. 5811]

OFFICERS

SEC. 102. (a) There shall be at the head of the Administration an Administrator of Energy Research and Development (hereinafter in this Act referred to as the “Administrator”), who shall be appointed from civilian life by the President by and with the advice and consent of the Senate. A person may not be appointed as Administrator within two years after release from active duty as a commissioned officer of a regular component of an Armed Force. The Administration shall be administered under the supervision and direction of the Administrator, who shall be responsible for the efficient and coordinated management of the Administration.

(b) There shall be in the Administration a Deputy Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The President shall appoint the Administrator and Deputy Administrator from among individuals who, by reason of their general background and experience are specially qualified to manage a full range of energy research and development programs.

(d) There shall be in the Administration six Assistant Administrators, one of whom shall be responsible for fossil energy, another for nuclear energy, another for environment and safety, another for conservation, another for solar, geothermal, and advanced energy systems, and another for national security. The Assistant Administrators shall be appointed by the President, by and with the advice and consent of the Senate. The President shall appoint each Assistant Administrator from among individuals who, by reason of general background and experience, are specially qualified to manage

¹The functions of the Energy Research and Development Administration were transferred to the Secretary of Energy by section 301(a) of the Department of Energy Organization Act.

the energy technology area assigned to such Assistant Administrator.

(e) There shall be in the Administration a General Counsel who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator.

(f) There shall be in the Administration not more than eight additional officers appointed by the Administrator. The positions of such officers shall be considered career positions and be subject to subsection 161 d. of the Atomic Energy Act.

(g) The Division of Military Application transferred to and established in the Administration by section 104(d) of this Act shall be under the direction of a Director of Military Application, who shall be appointed by the Administrator and who shall serve at the pleasure of and be removable by the Administrator and shall be an active commissioned officer of the Armed Forces serving in general or flag officer rank or grade. The functions, qualifications, and compensation of the Director of Military Application shall be the same as those provided under the Atomic Energy Act of 1954, as amended, for the Assistant General Manager for Military Application.

(h) Officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time. The Administrator shall delegate to one such officer the special responsibility for international cooperation in all energy and related environmental research and development.

(i) The Deputy Administrator (or in the absence or disability of the Deputy Administrator, or in the event of a vacancy in the office of the Deputy Administrator, an Assistant Administrator, the General Counsel of such other official, determined according to such order as the Administrator shall prescribe) shall act for and perform the functions of the Administrator during any absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

[42 U.S.C. 5812]

RESPONSIBILITIES OF THE ADMINISTRATOR

SEC. 103. The responsibilities of the Administrator shall include, but not be limited to—

(1) exercising central responsibility for policy planning, coordination, support, and management of research and development programs respecting all energy sources, including assessing the requirements for research and development in regard to various energy sources in relation to near-term and long-range needs, policy planning in regard to meeting those requirements, undertaking programs for the optimal development of the various forms of energy sources, managing such programs, and disseminating information resulting therefrom;

(2) encouraging and conducting research and development, including demonstration of commercial feasibility and practical applications of the extraction, conversion, storage, transmission, and utilization phases related to the development and use of energy from fossil, nuclear, solar, geothermal, and other energy sources;

(3) engaging in and supporting environmental, biomedical, physical, and safety research related to the development of energy sources and utilization technologies;

(4) taking into account the existence, progress, and results of other public and private research and development activities, including those activities of the Federal Energy Administration relating to the development of energy resources using currently available technology in promoting increased utilization of energy resources, relevant to the Administration's mission in formulating its own research and development programs;

(5) participating in and supporting cooperative research and development projects which may involve contributions by public or private persons or agencies, of financial or other resources to the performance of the work;

(6) developing, collecting, distributing, and making available for distribution, scientific and technical information concerning the manufacture or development of energy and its efficient extraction, conversion, transmission, and utilization;

(7) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;

(8) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;

(9) encouraging and participating in international cooperation in energy and related environmental research and development;

(10) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection, analysis, and dissemination of necessary manpower supply and demand data;

(11) encouraging and conducting research and development in clean and renewable energy sources.

[42 U.S.C. 5813]

ABOLITION AND TRANSFERS

SEC. 104. (a) The Atomic Energy Commission is hereby abolished. Sections 21 and 22 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2031 and 2032) are repealed.

(b) All other functions of the Commission, the Chairman and members of the Commission, and the officers and components of

the Commission are hereby transferred or allowed to lapse pursuant to the provisions of this Act.

(c) There are hereby transferred to and vested in the Administrator all functions of the Atomic Energy Commission, the Chairman and members of the Commission, and the officers and components of the Commission, except as otherwise provided in this Act.

(d) The General Advisory Committee established pursuant to section 26 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2036), the Patent Compensation Board established pursuant to section 157 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2187), and the Divisions of Military Application and Naval Reactors established pursuant to section 25, Atomic Energy Act of 1954, as amended (42 U.S.C. 2035), are transferred to the Energy Research and Development Administration and the functions of the Commission with respect thereto, and with respect to relations with the Military Liaison Committee established by section 27 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2037), are transferred to the Administrator.

(e) There are hereby transferred to and vested in the Administrator such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of such department—

(1) as relate to or are utilized by the Office of Coal Research established pursuant to the Act of July 1, 1960 (74 Stat. 336; 30 U.S.C. 661–668);

(2) as relate to or are utilized in connection with fossil fuel energy research and development programs and related activities conducted by the Bureau of Mines “energy centers” and synthane plant to provide greater efficiency in the extraction, processing, and utilization of energy resources for the purpose of conserving those resources, developing alternative energy resources, such as oil and gas secondary and tertiary recovery, oil shale and synthetic fuels, improving methods of managing energy-related wastes and pollutants, and providing technical guidance needed to establish and administer national energy policies; and

(3) as relate to or are utilized for underground electric power transmission research.

The Administrator shall conduct a study of the potential energy applications of helium and, within six months from the date of the enactment of this Act, report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy.

(f) There are hereby transferred to and vested in the Administrator such functions of the National Science Foundation as relate to or are utilized in connection with—

(1) solar heating and cooling development; and

(2) geothermal power development.

(g) There are hereby transferred to and vested in the Administrator such functions of the Environmental Protection Agency and the officers and components thereof as relate to or are utilized in connection with research, development, and demonstration, but not assessment or monitoring for regulatory purposes, or alternative automotive power systems.

(h) To the extent necessary or appropriate to perform functions and carry out programs transferred by this Act, the Administrator and Commission may exercise, in relation to the functions so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such functions were transferred.

(i) In the exercise of his responsibilities under section 103, the Administrator shall utilize, with their consent, to the fullest extent he determines advisable, the technical and management capabilities of other executive agencies having facilities, personnel, or other resources which can assist or advantageously be expanded to assist in carrying out such responsibilities. The Administrator shall consult with the head of each agency with respect to such facilities, personnel, or other resources, and may assign, with their consent, specific programs or projects in energy research and development as appropriate. In making such assignments under this subsection, the head of each such agency shall insure that—

(1) such assignments shall be in addition to and not detract from the basic mission responsibilities of the agency, and

(2) such assignments shall be carried out under such guidance as the Administrator deems appropriate.

[42 U.S.C. 5814]

ADMINISTRATIVE PROVISIONS

SEC. 105. (a) The Administrator is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

(b) The Administrator shall engage in such policy planning, and perform such program evaluation analyses and other studies, as may be necessary to promote the efficient and coordinated administration of the Administration and properly assess progress toward the achievement of its missions.

(c) Except as otherwise expressly provided by law, the Administrator may delegate any of his functions to such officers and employees of the Administration as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.

(d) Except as provided in section 102 and in section 104(d), the Administrator may organize the Administration as he may deem to be necessary or appropriate.

(e) The Administrator is authorized to establish, maintain, alter, or discontinue such State, regional, district, local, or other field offices as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.

(f) The Administrator shall cause a seal of office to be made for the Administration of such device as he shall approve, and judicial notice shall be taken of such seal.

(g) The Administrator is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, assets other than real prop-

erty, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized. The working capital fund shall recover, from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

(h) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Administrator, upon his request, any information or other data which the Administrator deems necessary to carry out his duties under this title.

[42 U.S.C. 5815]

PERSONNEL AND SERVICES

SEC. 106. (a) The Administrator is authorized to select, appoint, employ, and fix the compensation of such officers and employees, including attorneys, pursuant to section 161 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201(d)) as are necessary to perform the functions now or hereafter vested in him and to prescribe their functions.

(b) The Administrator is authorized to obtain services as provided by section 3109 of title 5 of the United States Code.

(c) The Administrator is authorized to provide for participation of military personnel in the performance of his functions. Members of the Army, the Navy, the Air Force, or the Marine Corps may be detailed for service in the Administration by the appropriate military Secretary, pursuant to cooperative agreements with the Secretary, for service in the Administration in positions other than a position the occupant of which must be approved by and with the advice and consent of the Senate.

(d) Appointment, detail, or assignment to, acceptance of, and service in, any appointive or other position in the Administration under this section shall in no way affect the status, office, rank, or grade which such officers or enlisted men may occupy or hold, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. A member so appointed, detailed, or assigned shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned.

(e) The Administrator is authorized to pay transportation expenses and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5 of the United States Code for travel between places of recruitment and duty, and while at places of duty, of persons appointed for emergency, temporary, or seasonal services in the field service of the Administration.

(f) The Administrator is authorized to utilize, on a reimbursable basis, the services of any personnel made available by any de-

partment, agency, or instrumentality, including any independent agency of the Government.

(g) The Administrator is authorized to establish advisory boards, in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92-463), to advise with and make recommendations to the Administrator on legislation, policies, administration, research, and other matters.

(h) The Administrator is authorized to employ persons who are not citizens of the United States in expert, scientific, technical, or professional capacities whenever he deems it in the public interest.

[42 U.S.C. 5816]

POWERS

SEC. 107. (a) The Administrator is authorized to exercise his powers in such manner as to insure the continued conduct of research and development and related activities in areas or fields deemed by the Administrator to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters. To this end, the Administrator is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental or experimental nature; to make payments (in lump sum or installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments); and generally to take such steps as he may deem necessary or appropriate to perform functions now or hereafter vested in him. Such functions of the Administrator under this Act as are applicable to the nuclear activities transferred pursuant to this title shall be subject to the provisions of the Atomic Energy Act of 1954, as amended, and to other authority applicable to such nuclear activities. The nonnuclear responsibilities and functions of the Administrator referred to in sections 103 and 104 of this Act shall be carried out pursuant to the provisions of this Act, applicable authority existing immediately before the effective date of this Act, or in accordance with the provisions of chapter 4 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2051-2053).

(b) Except for public buildings as defined in the Public Buildings Act of 1959, as amended, and with respect to leased space subject to the provisions of Reorganization Plan Numbered 18 of 1950, the Administrator is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain facilities and real property as the Administrator deems to be necessary in and outside of the District of Columbia. Such authority shall apply only to facilities required for the maintenance and operation of laboratories, research and testing sites and facilities, quarters, and related accommodations for employees and dependents of employees of the Administration, and such other special-purpose real property as the Administrator deems to be necessary in and outside the District of Columbia. Title to any property or interest therein, real, personal, or mixed, acquired pursuant to this section, shall be in the United States.

(c)(1) The Administrator is authorized to provide, construct, or maintain, as necessary and when not otherwise available, the following for employees and their dependents stationed at remote locations:

- (A) Emergency medical services and supplies.
 - (B) Food and other subsistence supplies.
 - (C) Messing facilities.
 - (D) Audiovisual equipment, accessories, and supplies for recreation and training.
 - (E) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons.
 - (F) Living and working quarters and facilities.
 - (G) Transportation for school-age dependents of employees to the nearest appropriate educational facilities.
- (2) The furnishing of medical treatment under subparagraph (A) of paragraph (1) and the furnishing of services and supplies under paragraphs (B) and (C) of paragraph (1) shall be at prices reflecting reasonable value as determined by the Administrator.

(3) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Administrator to pay directly the cost of such work or services, to repay or make advances to appropriations or funds which do or will bear all or a part of such cost, or to refund excess sums when necessary; except that such payments may be credited to a service or working capital fund otherwise established by law, and used under the law governing such funds, if the fund is available for use by the Administrator for performing the work or services for which payment is received.

(d) The Administrator is authorized to acquire any of the following described rights if the property acquired thereby is for use in, or is useful to, the performance of functions vested in him:

- (1) Copyrights, patents, and applications for patents, designs, processes, specifications, and data.
- (2) Licenses under copyrights, patents, and applications for patents.
- (3) Releases, before suit is brought, for past infringement of patents or copyrights.

(e) Subject to the provisions of chapter 12 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2161-2166), and other applicable law, the Administrator shall disseminate scientific, technical, and practical information acquired pursuant to this title through information programs and other appropriate means, and shall encourage the dissemination of scientific, technical, and practical information relating to energy so as to enlarge the fund of such information and to provide that free interchange of ideas and criticism which is essential to scientific and industrial progress and public understanding.

(f) The Administrator is authorized to accept, hold, administer, and utilize gifts, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Administration. Gifts and bequests of money and proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Administrator. For the purposes of Federal income, estate, and gift taxes,

property accepted under this section shall be considered as a gift or bequest to the United States.

[42 U.S.C. 5817]

【SEC. 108. Repealed by section 709(b) of Public Law 95–91, 91 Stat. 608.】

FUTURE REORGANIZATION

SEC. 109. (a) The President shall transmit to the Congress as promptly as possible, but not later than June 30, 1975, such additional recommendations as he deems advisable for organization of energy and related functions in the Federal Government, including, but not limited to, whether or not there shall be established (1) a Department of Energy and Natural Resources, (2) an Energy Policy Council, and (3) a consolidation in whole or in part of regulatory functions concerning energy.

(b) This report shall replace and serve the purposes of the report required by section 15(a)(4) of the Federal Energy Administration Act.

[42 U.S.C. 5819]

COORDINATION WITH ENVIRONMENTAL EFFORTS

SEC. 110. The Administrator is authorized to establish programs to utilize research and development performed by other Federal agencies to minimize the adverse environmental effects of energy projects. The Administrator of the Environmental Protection Agency, as well as other affected agencies and departments, shall cooperate fully with the Administrator in establishing and maintaining such programs, and in establishing appropriate interagency agreements to develop cooperative programs and to avoid unnecessary duplication.

[42 U.S.C. 5820]

PROVISIONS APPLICABLE TO ANNUAL AUTHORIZATION ACTS

SEC. 111. (a) All appropriations made to the Energy Research and Development Administration or the Administrator shall, except as otherwise provided by law, be subject to annual authorization in accordance with section 261 of the Atomic Energy Act of 1954, section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, and section 305 of this Act. The provisions of this section shall apply with respect to appropriations made pursuant to the Act providing such authorization (hereinafter in this section referred to as “annual authorization Acts.”).

(b)(1) Funds appropriated pursuant to an annual authorization Act for “Operating expenses” may be used for—

(A) the construction or acquisition of any facilities, or major items of equipment, which may be required at locations other than installations of the Administration, for the performance of research, development, and demonstration activities, and

(B) grants to any organization for purchase or construction of research facilities.

No such funds shall be used under this subsection for the acquisition of land. Fee title to all such facilities and items of equipment

shall be vested in the United States, unless the Administrator or his designee determines in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) No funds shall be used under paragraph (1) for any facility or major item of equipment, including collateral equipment, if the estimated cost to the Federal Government exceeds \$5,000,000 in the case of such a facility or \$2,000,000 in the case of such an item of equipment, unless such facility or item has been previously authorized by the appropriate committees of the House of Representatives and the Senate, or the Administrator—

(A) transmit to the appropriate committees of the House of Representatives and the Senate a report on such facility or item showing its nature, purpose, and estimated cost, and

(B) waits a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the administrator written notice to the effect that such committee has no objection to the proposed action.

(c)(1) Not to exceed 1 per centum of all funds appropriated pursuant to any annual authorization Act for "Operating expenses" may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (A) such action would be necessary because of changes in the national programs authorized to be funded by such Act or because of new scientific or engineering developments, and (B) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration.

(2) No funds may be obligated for expenditure or expended under paragraph (1) for activities described in such paragraph unless—

(A) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the Administrator has transmitted to the appropriate committees of the House of Representatives and the Senate a written report containing a full and complete statement concerning (i) the nature of the construction, expansion, or modification involved, (ii) the cost thereof, including

the cost of any real estate action pertaining thereto, and (iii) the reason why such construction, expansion, or modification is necessary and in the national interest, or

(B) each such committee before the expiration of such period has transmitted to the Administrator a written notice to the effect that such committee has no objection to the proposed action;

except that this paragraph shall not apply to any project the estimated total cost of which does not exceed \$50,000.

(d)(1) Except as otherwise provided in the authorization Act involved—

(A) no amount appropriated pursuant to any annual authorization Act may be used for any program in excess of the amount actually authorized for that particular program by such Act, and

(B) no amount appropriated pursuant to any annual authorization Act may be used for any program which has not been presented to, or requested of the Congress,

unless (i) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Administrator 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 Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) Notwithstanding any other provision of this section or the authorization Act involved, the aggregate amount available for use within the categories of coal, petroleum and natural gas, oil shale, solar, geothermal, nuclear energy (non-weapons), environment and safety, and conservation from sums appropriated pursuant to an annual authorization Act may not, as a result or reprogramming, be decreased by more than 10 per centum of the total of the sums appropriated pursuant of such Act for those categories.

(e) Subject to the applicable requirements and limitations of this section and the authorization Act involved, when so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may be merged with any other amounts appropriated for like purposes pursuant to any other Act authorizing appropriations for the Administration: *Provided*, That no such amounts appropriated for "Plant and capital equipment" may be merged with amounts appropriated for "Operating expenses."

(f) When so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may remain available until expended.

(g) The Administrator is authorized to perform construction design services for any administration construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Administration, and (2) the Administration determines that the project is of such

urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

(h) When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484); except that—

(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 or the Strategic and Critical Materials Stockpiling Act, as amended, or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (42 U.S.C. 2301; 50 U.S.C. 98h; 30 U.S.C. 7); and

(2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities.

(i) When so specified in an appropriation Act, transfers of sums from the “Operating expenses” appropriation made pursuant to an annual authorization Act 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 they are transferred.

[42 U.S.C. 5821]

TITLE II—NUCLEAR REGULATORY COMMISSION

[This title created the Nuclear Regulatory Commission]

* * * * *

TITLE III—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

TRANSITIONAL PROVISIONS

SEC. 301. (a) Except as otherwise provided in this Act, whenever all of the functions or programs of an agency, or other body, or any component thereof, affected by this Act, have been transferred from that agency, or other body, or any component thereof by this Act, the agency, or other body, or component thereof shall lapse. If an agency, or other body, or any component thereof, lapses pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall lapse.

(b) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act, and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, the Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(c) The provisions of this Act shall not affect any proceeding pending, at the time this section takes effect, before the Atomic Energy Commission or any department or agency (or component thereof) functions of which are transferred by this Act; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this Act had not been enacted.

(d) Except as provided in subsection (f)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

(e) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(f) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Administrator or Commission, or any other official, then such suit shall be continued as if this Act has not been enacted, with the Administrator or Commission, or other official, as the case may be, substituted.

(g) Final orders and actions of any official or component in the performance of functions transferred by this Act shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this Act. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function

transferred by this Act shall apply to the performance of those functions by the Administrator or Commission, or any officer or component.

(h) With respect to any function transferred by this Act and performed after the effective date of this Act, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, the Administrator or Commission, or other office or official in which this Act vests such functions.

(i) Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(j) Any reference in this Act to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

(k) Except as may be otherwise expressly provided in this Act, all functions expressly conferred by this Act shall be in addition to and not in substitution for functions existing immediately before the effective date of this Act and transferred by this Act.

[42 U.S.C. 5871]

TRANSFER OF PERSONNEL AND OTHER MATTERS

SEC. 302. (a) Except as provided in the next sentence, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions and programs transferred by this Act, are, subject to section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), correspondingly transferred for appropriate allocation. Personnel positions expressly created by law, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation at the rate prescribed for offices and positions at levels II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), on the effective date of this Act shall be subject to the provisions of subsection (c) of this section and section 301 of this Act.

(b) Except as provided in subsection (c), transfer of non-temporary personnel pursuant to this Act shall not cause any such employee to be separated or reduced in grade or compensation for one year after such transfer.

(c) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 of the United States Code, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position.

[42 U.S.C. 5872]

INCIDENTAL DISPOSITIONS

SEC. 303. The Director of the Office of Management and Budget is authorized to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with functions transferred by this Act, as he may deem necessary or appropriate to accomplish the intent and purpose of this Act.

[42 U.S.C. 5873]

DEFINITIONS

SEC. 304. As used in this Act—

(1) any reference to “function” or “functions” shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to “perform” or “performance”, when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

[42 U.S.C. 5874]

AUTHORIZATION OF APPROPRIATIONS

SEC. 305. (a) Except as otherwise provided by law, appropriations made under this Act shall be subject to annual authorization.

(b) Authorization of appropriations to the Commission shall reflect the need for effective licensing and other regulation of the nuclear power industry in relation to the growth of such industry.

[42 U.S.C. 5875]

COMPTROLLER GENERAL AUDIT

SEC. 306. (a) Section 166, “Comptroller General Audit” of the Atomic Energy Act of 1954, as amended, shall be deemed to be applicable, respectively, to the nuclear and nonnuclear activities under title I and to the activities under title II.

(b) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of title II of this Act by the Nuclear Safety and Licensing Commission not later than sixty months after the effective date of this Act, the Comptroller General shall prepare and submit to the Congress a report on his audit, which shall contain, but not be limited to—

(1) an evaluation of the effectiveness of the licensing and related regulatory activities of the Commission and the operations of the Office of Nuclear Safety Research and the Bureau of Nuclear Materials Security;

(2) an evaluation of the effect of such Commission activities on the efficiency, effectiveness, and safety with which the activities licensed under the Atomic Energy Act of 1954, as amended, are carried out;

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of title II.

[42 U.S.C. 5876]

REPORTS

SEC. 307. (a) The Administrator shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Administration during the preceding fiscal year. Such report shall include a statement of the short-range and long-range goals, priorities, and plans of the Administration together with an assessment of the progress made toward the attainment of those objectives and toward the more effective and efficient management of the Administration and the coordination of its functions.

(b) During the first year of operation of the Administration, the Administrator, in collaboration with the Secretary of Defense, shall conduct a thorough review of the desirability and feasibility of transferring to the Department of Defense or other Federal agencies the functions of the Administrator respecting military application and restricted data, and within one year after the Administrator first takes office the Administrator shall make a report to the President for submission to the Congress, setting forth his comprehensive analysis, the principal alternatives, and the specific recommendations of the Administrator and the Secretary of Defense.

(c) The Commission shall, as soon as practicable after the end of each fiscal year, make a report to the President for submission to the Congress on the activities of the Commission during the preceding fiscal year. Such report shall include a clear statement of the short-range and long-range goals, priorities, and plans of the Commission as they relate to the benefits, costs, and risks of commercial nuclear power. Such report shall also include a clear description of the Commission's activities and findings in the following areas—

- (1) insuring the safe design of nuclear powerplants and other licensed facilities;
- (2) investigating abnormal occurrences and defects in nuclear powerplants and other licensed facilities;
- (3) safeguarding special nuclear materials at all stages of the nuclear fuel cycle;
- (4) investigating suspected, attempted, or actual thefts of special nuclear materials in the licensed sector and developing contingency plans for dealing with such incidents;
- (5) insuring the safe, permanent disposal of high-level radioactive wastes through the licensing of nuclear activities and facilities;
- (6) protecting the public against the hazards of low-level radioactive emissions from licensed nuclear activities and facilities.

[42 U.S.C. 5877]

INFORMATION TO COMMITTEES

SEC. 308. The Administrator shall keep the appropriate congressional committees fully and currently informed with respect to all of the Administration's activities.

[42 U.S.C. 5878]

TRANSFER OF FUNDS

SEC. 309. The Administrator, when authorized in an appropriation Act, may, in any fiscal year, transfer funds from one appropriation to another within the Administration; except, that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

[42 U.S.C. 5879]

CONFORMING AMENDMENTS TO CERTAIN OTHER LAWS

SEC. 310. [Amends subchapter II (relating to Executive Schedule pay rates) of chapter 53 of title 5, United States Code.]

SEPARABILITY

SEC. 311. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

[42 U.S.C. 5801 note]

EFFECTIVE DATE AND INTERIM APPOINTMENTS

SEC. 312. (a) This Act shall take effect one hundred and twenty days after the date of its enactment, or on such earlier date as the President may prescribe and publish in the Federal Register; except that any of the officers provided for in title I of this Act may be nominated and appointed, as provided by this Act, at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), any functions of which are transferred to the Administrator and the Commission by this Act, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(b) In the event that any officer required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this Act, to act in such office until the office is filled as provided in this Act. While so acting, such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

[42 U.S.C. 5801 note]

TITLE IV—SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

SEC. 401. No person shall on the ground of sex be excluded from participation in, be denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under any title of this Act. This provision will be enforced through agency provisions

and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

[42 U.S.C. 5891]

DEPARTMENT OF ENERGY ORGANIZATION ACT

DEPARTMENT OF ENERGY ORGANIZATION ACT

Public Law 95–91, as Amended

AN ACT To establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Department of Energy Organization Act”.

TABLE OF CONTENTS

Sec. 2. Definitions.

TITLE I—DECLARATION OF FINDINGS AND PURPOSES

Sec. 101. Findings.
Sec. 102. Purposes.
Sec. 103. Relationship with States.

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

Sec. 201. Establishment.
Sec. 202. Principal officers.
Sec. 203. Assistant Secretaries.
Sec. 204. Federal Energy Regulatory Commission.
Sec. 205. Energy Information Administration.
Sec. 206. Economic Regulatory Administration.
Sec. 207. Comptroller General functions.
Sec. 208. [Repealed].
Section¹ 209. Office of Science.
Sec. 210. Leasing Liaison Committee.
Sec. 211. Office of Minority Economic Impact.
[Sec. 212. Repealed P.L. 106–65, § 3294(d)(1), Oct. 5, 1999, 113 Stat. 970]
213.² Establishment of policy for National Nuclear Security Administration.
214.² Establishment of security, counterintelligence, and intelligence policies.
215.² Office of Counterintelligence.
216.² Office of Intelligence.

TITLE III—TRANSFERS OF FUNCTIONS

Sec. 301. General transfers.
Sec. 302. Transfers from the Department of the Interior.
Sec. 303. Administration of leasing transfers.
Sec. 304. Transfers from the Department of Housing and Urban Development.
Sec. 305. Coordination with the Department of Transportation.
Sec. 306. Transfer from the Interstate Commerce Commission.
Sec. 307. Transfers from the Department of the Navy.
Sec. 308. Transfers from the Department of Commerce.
Sec. 309. Naval reactor and military application programs.
Sec. 310. Transfer to the Department of Transportation.

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

Sec. 401. Appointment and administration.
Sec. 402. Jurisdiction of the Commission.

¹ So in original. Should be “Sec.”.

² So in original. Should have “Sec.” before the section number.

- Sec. 403. Initiation of rulemaking proceedings before Commission.
- Sec. 404. Referral of other rulemaking proceedings to Commission.
- Sec. 405. Right of Secretary to intervene in Commission procedures.
- Sec. 406. Reorganization.
- Sec. 407. Access to information.

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

- Sec. 501. Procedures.
- Sec. 502. Judicial review.
- Sec. 503. Remedial orders.
- Sec. 504. Requests for adjustments.
- Sec. 505. Review and effect.

TITLE VI—ADMINISTRATIVE PROVISIONS

[PART A—REPEALED.]

PART B—PERSONNEL PROVISIONS

- Sec. 621. Officers and employees.
- Sec. 622. Senior positions.
- Sec. 623. Experts and consultants.
- Sec. 624. Advisory committees.
- Sec. 625. Armed services personnel.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

- Sec. 641. General authority.
- Sec. 642. Delegation.
- Sec. 643. Reorganization.
- Sec. 644. Rules.
- Sec. 645. Subpena.
- Sec. 646. Contracts.
- Sec. 647. Acquisition and maintenance of property.
- Sec. 648. Facilities construction.
- Sec. 649. Use of facilities.
- Sec. 650. Field offices.
- Sec. 651. Copyrights.
- Sec. 652. [Repealed.]
- Sec. 653. Capital fund.
- Sec. 654. Seal of Department.
- Sec. 655. Regional energy advisory boards.
- Sec. 656. Designation of conservation officers.
- Sec. 657. Annual report.
- Sec. 658. Leasing report.
- Sec. 659. Transfer of funds.
- Sec. 660. Authorization of appropriations.
- Sec. 661. Guards for Strategic Petroleum Reserve facilities.
- Sec. 662. Trespass on Strategic Petroleum Reserve facilities.

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

- Sec. 701. Transfer and allocations of appropriations and personnel.
- Sec. 702. Effect on personnel.
- Sec. 703. Agency terminations.
- Sec. 704. Incidental transfers.
- Sec. 705. Savings provisions.
- Sec. 706. Separability.
- Sec. 707. References.
- Sec. 708. Presidential authority.
- Sec. 709. Amendments.
- Sec. 710. Administrative amendments.
- Sec. 711. Transition.
- Sec. 712. Civil Service Commission report.
- Sec. 713. Environmental impact statements.

TITLE VIII—ENERGY PLANNING

- Sec. 801. National energy policy plan.
- Sec. 802. Congressional review.

TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

Sec. 901. Effective date.
Sec. 902. Interim appointments.

TITLE X—SUNSET PROVISIONS

Sec. 1001. Submission of comprehensive review.
Sec. 1002. Contents of review.

[42 U.S.C. 7101 note]

DEFINITIONS

SEC. 2. (a) As used in this Act, unless otherwise provided or indicated by the context, the term the “Department” means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this Act (1) reference to “function” includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to “perform”, when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this Act, “Federal lease” means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

[42 U.S.C. 7101]

TITLE I—DECLARATION OF FINDINGS AND PURPOSES

FINDINGS

SEC. 101. The Congress of the United States finds that—

(1) the United States faces an increasing shortage of non-renewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

[42 U.S.C. 7111]

PURPOSES

SEC. 102. The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this Act:

(1) To establish a Department of Energy in the executive branch.

(2) To achieve, through the Department, effective management of energy functions of the Federal Government, including consultation with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions.

(3) To provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages.

(4) To create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program.

(5) To carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies.

(6) To place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources.

(7) To continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department.

(8) To facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve.

(9) To promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost.

(10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization,

supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.

(11) To provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs.

(12) To foster and assure competition among parties engaged in the supply of energy and fuels.

(13) To assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety.

(14) To assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this Act.

(15) To provide for, encourage, and assist public participation in the development and enforcement of national energy programs.

(16) To create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.

(17) To foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising.

(18) To provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act.

(19) To ensure that the Department can continue current support of mathematics, science, and engineering education programs by using the personnel, facilities, equipment, and resources of its laboratories and by working with State and local education agencies, institutions of higher education, and business and industry. The Department's involvement in mathematics, science, and engineering education should be consistent with its main mission and should be coordinated with all Federal efforts in mathematics, science, and engineering education, especially with the Department of Education and the National Science Foundation (which have the primary Federal responsibility for mathematics, science, and engineering education).

RELATIONSHIP WITH STATES

SEC. 103. Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this Act shall affect the authority of any State over matters exclusively within its jurisdiction.

[42 U.S.C. 7113]

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

ESTABLISHMENT

SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the “Secretary”), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Secretary.

[42 U.S.C. 7131]

PRINCIPAL OFFICERS

SEC. 202. (a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c)(1) There shall be in the Department an Under Secretary for Nuclear Security, who shall be appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall be compensated at the rate provided for at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) The Under Secretary for Nuclear Security shall be appointed from among persons who—

(A) have extensive background in national security, organizational management, and appropriate technical fields; and

(B) are well qualified to manage the nuclear weapons, non-proliferation, and materials disposition programs of the National Nuclear Security Administration in a manner that advances and protects the national security of the United States.

(3) The Under Secretary for Nuclear Security shall serve as the Administrator for Nuclear Security under section 3212 of the National Nuclear Security Administration Act. In carrying out the functions of the Administrator, the Under Secretary shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.

[42 U.S.C. 7132]

ASSISTANT SECRETARIES

SEC. 203. (a) There shall be in the Department six Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

(A) solar energy resources;

(B) geothermal energy resources;

(C) recycling energy resources;

(D) the fuel cycle for fossil energy resources; and

(E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 102 of this Act.

[(5) Repealed P.L. 106-65, § 3294(b), Oct. 5, 1999, 113 Stat. 970.]

(6) Intergovernmental policies and relations including responsibilities for assuring that national energy policies are re-

flective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph, except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

[42 U.S.C. 7133]

FEDERAL ENERGY REGULATORY COMMISSION

SEC. 204. There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

[42 U.S.C. 7134]

ENERGY INFORMATION ADMINISTRATION

SEC. 205. (a)(1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 11 of the Energy Supply and Environmental Coordination Act of 1974) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy

Administration Act of 1974, and the provisions of sections 53(d) and 59 thereof shall be applicable to the Administrator in the performance of any function under this Act.

(d) The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55 of part B of the Federal Energy Administration Act of 1974.

(f) The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5, United States Code. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, and section 17 of the Federal Nonnuclear Energy Research and Development Act of 1974, shall continue to apply to any information obtained by the Administrator under such provisions.

(h)(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following the date of enactment of this Act the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of com-

merce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analysis or evaluations as the Administrator finds is necessary to achieve the purposes of this Act.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this Act, is consistent with such accounting practices where applicable.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this Act.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a)¹ of section 657 of this Act.

(6) As used in this subsection the term—

(A) “energy-producing company” means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

(iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;

(v) storage of mineral fuels or nonmineral energy resources;

(vi) the generation, transmission, or storage of electrical energy;

(vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or

(viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;

(B) “energy industry” means all energy-producing companies; and

¹ So in original. Section 657 of this Act was enacted without a subsection (a).

(C) “person” has the meaning as set forth in section 11 of the Energy Supply and Environmental Coordination Act of 1974.

(7) The provisions of section 1905 of title 18, United States Code, shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.

(i)(1) The Administrator shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States at least once every two years and in a manner designed to protect the confidentiality of individual responses. In conducting the survey, the Administrator shall collect information, including—

- (A) quantity of fuels consumed;
- (B) energy expenditures;
- (C) fuel switching capabilities; and
- (D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.

(2) This subsection does not affect the authority of the Administrator to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

(j)(1) The Administrator shall annually collect and publish the results of a survey of electricity production from domestic renewable energy resources, including production in kilowatt hours, total installed capacity, capacity factor, and any other measure of production efficiency. Such results shall distinguish between various renewable energy resources.

(2) In carrying out this subsection, the Administrator shall—

(A) utilize, to the maximum extent practicable and consistent with the faithful execution of his responsibilities under this Act, reliable statistical sampling techniques; and

(B) otherwise take into account the reporting burdens of energy information by small businesses.

(3) As used in this subsection, the term “renewable energy resources” includes energy derived from solar thermal, geothermal, biomass, wind, and photovoltaic resources.

(k) Pursuant to section 52(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a(a)), the Administrator shall—

(1) conduct surveys of residential and commercial energy use at least once every 3 years, and make such information available to the public;

(2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-side management programs being operated, the quantity of measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and

(3) in carrying out this subsection, take into account reporting burdens and the protection of proprietary information as required by law.

(l) In order to improve the ability to evaluate the effectiveness of the Nation’s energy efficiency policies and programs, the Admin-

istrator shall, in carrying out the data collection provisions of subsections (i) and (k), consider—

(1) expanding the survey instruments to include questions regarding participation in Government and utility conservation programs;

(2) expanding fuel-use surveys in order to provide greater detail on energy use by user subgroups; and

(3) expanding the scope of data collection on energy efficiency and load-management programs, including the effects of building construction practices such as those designed to obtain peak load shifting.

[42 U.S.C. 7135]

ECONOMIC REGULATORY ADMINISTRATION

SEC. 206. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of title IV, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

[42 U.S.C. 7136]

COMPTROLLER GENERAL FUNCTIONS

SEC. 207. The functions of the Comptroller General of the United States under section 12 of the Federal Energy Administration Act of 1974 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this Act or any other Act administered by the Department.

[42 U.S.C. 7137]

【Section 208 repealed by Public Law 100–504.】

OFFICE OF SCIENCE

SEC. 209. (a) There shall be within the Department an Office of Science to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) It shall be the duty and responsibility of the Director—

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act, as the Secretary considers advantageous.

[42 U.S.C. 7139]

LEASING LIAISON COMMITTEE

SEC. 210. There is hereby established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

[42 U.S.C. 7140]

OFFICE OF MINORITY ECONOMIC IMPACT

SEC. 211. (a) There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

(c) The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

(3) determines how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

(d) The Director may provide the management any¹ technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 646 of this Act and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;

(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

(e)(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

(f) As used in this section, the term—

(1) “minority” means any individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent;

¹ So in original. Probably should be “and”.

(2) “minority business enterprise” means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and

(3) “minority educational institution” means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

(g) There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed \$3,000,000 for fiscal year 1979, not to exceed \$5,000,000 for fiscal year 1980, and not to exceed \$6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e).

[42 U.S.C. 7141]

[SEC. 212. Repealed P.L. 106–65, § 3294(d)(1), Oct. 5, 1999, 113 Stat. 970.]

[42 U.S.C. 7143]

ESTABLISHMENT OF POLICY FOR NATIONAL NUCLEAR SECURITY
ADMINISTRATION

SEC. 213. (a) The Secretary shall be responsible for establishing policy for the National Nuclear Security Administration.

(b) The Secretary may direct officials of the Department who are not within the National Nuclear Security Administration to review the programs and activities of the Administration and to make recommendations to the Secretary regarding administration of those programs and activities, including consistency with other similar programs and activities of the Department.

(c) The Secretary shall have adequate staff to support the Secretary in carrying out the Secretary’s responsibilities under this section.

[42 U.S.C. 7144]

ESTABLISHMENT OF SECURITY, COUNTERINTELLIGENCE, AND
INTELLIGENCE POLICIES

SEC. 214. The Secretary shall be responsible for developing and promulgating the security, counterintelligence, and intelligence policies of the Department. The Secretary may use the immediate staff of the Secretary to assist in developing and promulgating those policies.

[42 U.S.C. 7144a]

OFFICE OF COUNTERINTELLIGENCE

SEC. 215. (a) There is within the Department an Office of Counterintelligence.

(b)(1) The head of the Office shall be the Director of the Office of Counterintelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to counterintelligence.

(3) The Director of the Federal Bureau of Investigation may detail, on a reimbursable basis, any employee of the Bureau to the Department for service as Director of the Office. The service of an employee of the Bureau as Director of the Office shall not result in any loss of status, right, or privilege by the employee within the Bureau.

(c)(1) The Director of the Office shall be responsible for establishing policy for counterintelligence programs and activities at Department facilities in order to reduce the threat of disclosure or loss of classified and other sensitive information at such facilities.

(2) The Director of the Office shall be responsible for establishing policy for the personnel assurance programs of the Department.

(3) The Director shall inform the Secretary, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation on a regular basis, and upon specific request by any such official, regarding the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(d)(1) Not later than March 1 each year, the Director of the Office shall submit a report on the status and effectiveness of the counterintelligence programs and activities at each Department facility during the preceding year. Each such report shall be submitted to the following:

(A) The Secretary.

(B) The Director of Central Intelligence.

(C) The Director of the Federal Bureau of Investigation.

(D) The Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(E) The Committee on Armed Services and the Select Committee on Intelligence of the Senate.

(2) Each such report shall include for the year covered by the report the following:

(A) A description of the status and effectiveness of the counterintelligence programs and activities at Department facilities.

(B) A description of any violation of law or other requirement relating to intelligence, counterintelligence, or security at such facilities, including—

(i) the number of violations that were investigated;
and

(ii) the number of violations that remain unresolved.

(C) A description of the number of foreign visitors to Department facilities, including the locations of the visits of such visitors.

(D) The adequacy of the Department's procedures and policies for protecting national security information, making such recommendations to Congress as may be appropriate.

(E) A determination of whether each Department of Energy national laboratory is in full compliance with all departmental security requirements and, in the case of any such laboratory that is not, what measures are being taken to bring that laboratory into compliance.

(3) Not less than 30 days before the date that the report required by paragraph (1) is submitted, the director of each Depart-

ment of Energy national laboratory shall certify in writing to the Director of the Office whether that laboratory is in full compliance with all departmental security requirements and, if not, what measures are being taken to bring that laboratory into compliance and a schedule for implementing those measures.

(4) Each report under this subsection as submitted to the committees referred to in subparagraphs (D) and (E) of paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

[42 U.S.C. 7144b]

OFFICE OF INTELLIGENCE

SEC. 216. (a) There is within the Department an Office of Intelligence.

(b)(1) The head of the Office shall be the Director of the Office of Intelligence, which shall be a position in the Senior Executive Service. The Director of the Office shall report directly to the Secretary.

(2) The Secretary shall select the Director of the Office from among individuals who have substantial expertise in matters relating to foreign intelligence.

(c) Subject to the authority, direction, and control of the Secretary, the Director of the Office shall perform such duties and exercise such powers as the Secretary may prescribe.

[42 U.S.C. 7144c]

TITLE III—TRANSFERS OF FUNCTIONS

GENERAL TRANSFERS

SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in title IV, there are hereby transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 402(a)(2) to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

[42 U.S.C. 7151]

TRANSFERS FROM THE DEPARTMENT OF THE INTERIOR

Sec. 302. (a)(1) There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 5 of the Flood Control Act of 1944, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

- (A) the Southeastern Power Administration;
- (B) the Southwestern Power Administration;

(C) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 and the Federal Columbia River Transmission System Act;

(D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration, shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(d) There are hereby transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

[42 U.S.C. 7152]

ADMINISTRATION OF LEASING TRANSFERS

SEC. 303. (a) The Secretary of the Interior shall retain any authorities not transferred under section 302(b) of this Act and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leas-

ing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 302(b) of this Act with respect to the issuance or supervision of Federal leases. Nothing in section 302(b) of this Act shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) In exercising the authority under section 302(b) of this Act to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

(d) The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

[42 U.S.C. 7153]

TRANSFERS FROM THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

SEC. 304. (a) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976, to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act, shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 509 of the Housing and Urban Development Act of 1970.

[42 U.S.C. 7154]

COORDINATION WITH THE DEPARTMENT OF TRANSPORTATION

SEC. 305. **[Amends Section 502 of the Motor Vehicle Information and Cost Savings Act.]**

TRANSFER FROM THE INTERSTATE COMMERCE COMMISSION

SEC. 306. Except as provided in title IV, there are hereby transferred to the Secretary such functions set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.

[42 U.S.C. 7155]

TRANSFERS FROM THE DEPARTMENT OF THE NAVY

SEC. 307. There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

[42 U.S.C. 7156]

TRANSFERS FROM THE DEPARTMENT OF COMMERCE

SEC. 308. There are hereby transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

[42 U.S.C. 7157]

NAVAL REACTOR AND MILITARY APPLICATION PROGRAMS

SEC. 309. The Division of Naval Reactors established pursuant to section 25 of the Atomic Energy Act of 1954, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Under Secretary for Nuclear Security, and such organizational unit shall be deemed to be an organizational unit established by this Act.

[42 U.S.C. 7158]

TRANSFER TO THE DEPARTMENT OF TRANSPORTATION

SEC. 310. Notwithstanding section 301(a), there are hereby transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy

Administration by section 381(b)(1)(B) of the Energy Policy and Conservation Act.

[42 U.S.C. 7159]

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

APPOINTMENT AND ADMINISTRATION

SEC. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b)(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after the date of enactment of the Federal Energy Regulatory Commission Member Term Act of 1990 shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and

consultants in accordance with section 3109 of title 5, United States Code. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.

(h) The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this Act or as otherwise authorized by law.

(j) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) as assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commis-

sion shall concurrently transmit a copy thereof to the appropriate committees of Congress.

[42 U.S.C. 7171]

JURISDICTION OF THE COMMISSION

SEC. 402. (a)(1) There are hereby transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act;

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act, and the interconnection, under section 202(b), of such Act, of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act;

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act;

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act and Natural Gas Act.

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act.

(b) There are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.

(c)(1) Pursuant to the procedures specified in section 404 and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the

regulation required to be issued under section 4(a) of the Emergency Petroleum Allocation Act of 1973 which is required by section 8 or 12 of such Act to be transmitted by the President to, and reviewed by, each House of Congress, under section 551 of the Energy Policy and Conservation Act.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 8 or 12 of the Emergency Petroleum Allocation Act of 1973, and section 551 of the Energy Policy and Conservation Act.

(d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act.

(f) No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404, shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to section 402.

[42 U.S.C. 7172]

INITIATION OF RULEMAKING PROCEEDINGS BEFORE COMMISSION

SEC. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act, the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

[42 U.S.C. 7173]

REFERRAL OF OTHER RULEMAKING PROCEEDINGS TO COMMISSION

SEC. 404. (a) Except as provided in section 403, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 301 or 306 of this Act, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 402 (a)(1), (b), and (c)(1), the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted. The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1);

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes pro-

posed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2); or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5, United States Code.

[42 U.S.C. 7174]

RIGHT OF SECRETARY TO INTERVENE IN COMMISSION PROCEEDINGS

SEC. 405. The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

[42 U.S.C. 7175]

REORGANIZATION

SEC. 406. For the purposes of chapter 9 of title 5, United States Code, the Commission shall be deemed to be an independent regulatory agency.

[42 U.S.C. 7176]

ACCESS TO INFORMATION

SEC. 407. (a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this Act.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 304 and section 311 of the Federal Power Act and section 10 and section 11 of the Natural Gas Act, shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

[42 U.S.C. 7177]

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

PROCEDURES

SEC. 501. (a)(1) Subject to the other requirements of this title, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5, United States Code), issued pur-

suant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this Act or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this title. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this Act, provides administrative procedure requirements in addition to the requirements provided in this title, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this title shall apply to the Commission to the same extent this title applies to the Secretary in the exercise of any of the Commission's functions under section 402 (c)(1) or which the Secretary has assigned under section 402(e).

(b)(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a)) that no substantial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5, United States Code. If, the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a).

(c) The requirements of subsection (b) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(d)(1) With respect to any rule, regulation, or order described in subsection (a), the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic

area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term “unit of local government” means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term “geographic area within a State” means a special purpose district or other region recognized for governmental purpose within such State is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(e) Where authorized by any law vested, transferred, or delegated pursuant to this Act, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

[42 U.S.C. 7191]

JUDICIAL REVIEW

SEC. 502. (a) Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

(b) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Subject to the provisions of section 401(i) of this Act, and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28, United States Code. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

[42 U.S.C. 7192]

REMEDIAL ORDERS

SEC. 503. (a) If upon investigation the Secretary or his authorized representatives believes that a person has violated any regulation, rule, or order described in section 501(a) promulgated pursuant to the Emergency Petroleum Allocation Act of 1973, he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section "person" includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

(c) If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

(e) Nothing in this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

(f) The provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after the effective date of this Act.

(g) With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

[42 U.S.C. 7193]

REQUESTS FOR ADJUSTMENTS

SEC. 504. (a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 501(a) issued under the Federal Energy Administration Act, the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environmental Coordination Act of 1974, or the Energy Policy and Conservation Act, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this title when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

[42 U.S.C. 7194]

REVIEW AND EFFECT

SEC. 505. Within one year after the effective date of this Act, the Secretary shall submit a report to Congress concerning the actions taken to implement section 501. The report shall include a

discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

[42 U.S.C. 7195]

TITLE VI—ADMINISTRATIVE PROVISIONS

【Part A (sections 601-603) repealed by P.L. 104–106.】

PART B—PERSONNEL PROVISIONS

OFFICERS AND EMPLOYEES

SEC. 621. (a) In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code.

(b)(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5, United States Code.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after the effective date of this Act, to fill such position under paragraph (1) leaves such position or

(B) on the day which is four years after such effective date, whichever is later.

(c)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS–16, GS–17, and GS–18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections¹ 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments under GS–16, GS–17, and GS–18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this Act and who immediately before the effective date of this Act, held a position and duties comparable to those of such position.

¹ So in original. Should be “section.”.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) In addition to the number of positions which may be placed at GS-16, GS-17, and GS-18 under section 5108 of title 5, United States Code, under existing law, or under this Act and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(e) For the purposes of determining the maximum aggregate number of positions which may be placed at GS-16, GS-17, or GS-18 under section 5108(a) of title 5, United States Code, 63 percent of the positions established under subsections (b) and (c) shall be deemed GS-16 positions, 25 percent of such positions shall be deemed GS-17 positions, and 12 percent of such positions shall be deemed GS-18.

(f) All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of the date of enactment of this Act shall, while employed in such positions, be exempt from the competitive service.

[42 U.S.C. 7231]

SENIOR POSITIONS

SEC. 622. In addition to those positions created by title II of this Act, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5, United States Code, who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

[42 U.S.C. 7232]

EXPERTS AND CONSULTANTS

SEC. 623. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for persons in Government service employed intermittently.

[42 U.S.C. 7233]

ADVISORY COMMITTEES

SEC. 624. The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving 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 individuals in the Government serving without pay.

[42 U.S.C. 7234]

ARMED SERVICES PERSONNEL

SEC. 625. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on the date of enactment of this Act, in the Energy Research and Development Administration and under chapter 641 of title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

[42 U.S.C. 7235]

PART C—GENERAL ADMINISTRATIVE PROVISIONS

GENERAL AUTHORITY

SEC. 641. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

[42 U.S.C. 7251]

DELEGATION

SEC. 642. Except as otherwise expressly prohibited by law, and except as otherwise provided in this Act, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

[42 U.S.C. 7252]

REORGANIZATION

SEC. 643. (a) Subject to subsection (b), the Secretary¹ is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may

¹ Section 3159(b)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (H.R. 5408 as introduced in the 106th Congress and enacted by section 1 of Public Law 106-398; 114 Stat. 1654A-469) attempted to amend subsection (a) by striking "The Secretary" and inserting "(a) Except as provided in subsection (b), the Secretary". The amendment could not be executed due to an earlier amendment by section 314(b)(1) of Public Law 106-377 (114 Stat. 1441A-79).

deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this Act, or to the transfer of functions vested by this Act in any organizational unit or component.

(b) The authority of the Secretary to establish, abolish, alter, consolidate, or discontinue any organizational unit or component of the National Nuclear Security Administration is governed by the provisions of section 3219 of the National Nuclear Security Administration Act (title XXXII of Public Law 106–65).

(b)² The authority of the Secretary under subsection (a) does not apply to the National Nuclear Security Administration. The corresponding authority that applies to the Administration is set forth in section 3212(e) of the National Nuclear Security Administration Act.

[42 U.S.C. 7253]

RULES

SEC. 644. The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

[42 U.S.C. 7254]

SUBPENA

SEC. 645. For the purpose of carrying out the provisions of this Act, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 9 of the Federal Trade Commission Act with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this Act. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the Commission shall have the same powers and authority as the Secretary has under this section.

[42 U.S.C. 7255]

CONTRACTS

SEC. 646. (a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Notwithstanding any other provision of this title, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the

²So in law. The second subsection (b) was added by section 3159(b)(2) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (H.R. 5408 as introduced in the 106th Congress and enacted by section 1 of Public Law 106–398; 114 Stat. 1654A–469).

public interest, acquired real property and related personal property that—

(1) is located at a facility of the Department of Energy to be closed or reconfigured;

(2) at the time the lease is entered into, is not needed by the Department of Energy; and

(3) is under the control of the Department of Energy.

(d)(1) A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

(2) A lease entered into under subsection (c) may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the leasehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

(e)(1) Before entering into a lease under subsection (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

(2) Before entering into a lease under subsection (c), the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (c) without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) To the extent provided in advance in appropriations Acts, the Secretary may retain and use money rentals received by the Secretary directly from a lease entered into under subsection (c) in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report on amounts retained and amounts used under this subsection.

[42 U.S.C. 7256]

ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 647. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, op-

erate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

[42 U.S.C. 7257]

FACILITIES CONSTRUCTION

SEC. 648. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

- (1) Emergency medical services and supplies;
- (2) Food and other subsistence supplies;
- (3) Messing facilities;
- (4) Audio-visual equipment, accessories, and supplies for recreation and training;
- (5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;
- (6) Living and working quarters and facilities; and
- (7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

[42 U.S.C. 7258]

USE OF FACILITIES

SEC. 649. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit

the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in 3(e) of the Federal Property and Administrative Services Act of 1949.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, of facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 653 of this Act, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

[42 U.S.C. 7259]

FIELD OFFICES

SEC. 650. The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

[42 U.S.C. 7260]

COPYRIGHTS

SEC. 651. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

- (1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;
- (2) licenses under copyrights, patents, and applications for patents; and
- (3) releases, before suit is brought, for past infringement of patents or copyrights.

【SEC. 652. Repealed by section 502 of P.L. 104–206 (110 Stat. 3002).】

CAPITAL FUND

SEC. 653. The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agen-

cies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

[42 U.S.C. 7263]

SEAL OF DEPARTMENT

SEC. 654. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

[42 U.S.C. 7264]

REGIONAL ENERGY ADVISORY BOARDS

SEC. 655. (a) The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Each Board established pursuant to subsection (a) may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) If any Regional Advisory Board makes specific recommendations pursuant to subsection (c), the Secretary shall, if such recommendations are not adopted in the implementation of

the program, notify the Board in writing of his reasons for not adopting such recommendations.

[42 U.S.C. 7265]

DESIGNATION OF CONSERVATION OFFICERS

SEC. 656. The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

[42 U.S.C. 7266]

ANNUAL REPORT

SEC. 657. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 365(c) of the Energy Policy and Conservation Act, section 304(c) of the Nuclear Waste Policy Act of 1982, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include:

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet

such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities.

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State and local governments and nongovernmental entities to achieve the purposes of this Act;

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

[42 U.S.C. 7267]

LEASING REPORT

SEC. 658. The Secretary of the Interior shall submit to the Congress not later than one year after the date of enactment of this

Act, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

[42 U.S.C. 7268]

TRANSFER OF FUNDS

SEC. 659. The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

[42 U.S.C. 7269]

AUTHORIZATION OF APPROPRIATIONS

SEC. 660. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.

[42 U.S.C. 7270]

GUARDS FOR STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 661. Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

(2) arrest without warrant any person for an offense against the United States—

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

(i) has committed or is committing a felony; and

(ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

[42 U.S.C. 7270a]

TRESPASS ON STRATEGIC PETROLEUM RESERVE FACILITIES

SEC. 662. (a) The Secretary may issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231–6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than \$5,000, imprisonment for not more than one year, or both.

[42 U.S.C. 7270b]

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedure Act of 1950, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function¹ transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312–5316) on the effective date of this Act, shall be subject to the provisions of section 703 of this Act.

[42 U.S.C. 7291]

EFFECT ON PERSONNEL

SEC. 702. (a) Except as otherwise provided in this Act, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

(b) Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position

¹ So in original. Should be "functions."

having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred twenty days from the effective date of this Act or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

[42 U.S.C. 7292]

AGENCY TERMINATIONS

SEC. 703. Except as otherwise provided in this Act, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate.

[42 U.S.C. 7293]

INCIDENTAL TRANSFERS

SEC. 704. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

[42 U.S.C. 7294]

SAVINGS PROVISIONS

SEC. 705. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

[42 U.S.C. 7295]

SEPARABILITY

SEC. 706. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

[42 U.S.C. 7296]

REFERENCE

SEC. 707. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions.

[42 U.S.C. 7297]

PRESIDENTIAL AUTHORITY

SEC. 708. Except as provided in title IV, nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

[42 U.S.C. 7298]

AMENDMENTS

【Section 709 amends the Federal Energy Administration Act of 1974, the Energy Reorganization Act of 1974, the Atomic Energy Act of 1954, the Housing and Urban Development Act of 1970, the Energy Conservation Standards for New Buildings Act of 1976, the Rural Electrification Act of 1936, and title 3, United States Code.】

ADMINISTRATIVE AMENDMENTS

【Section 710 amends title 5, United States Code】

TRANSITION

SEC. 711. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

[42 U.S.C. 7299]

CIVIL SERVICE COMMISSION REPORT

SEC. 712. The Civil Service Commission shall, as soon as practicable but not later than one year after the effective date of this Act, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this Act, which shall include—

- (1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;
- (2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this Act;
- (3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

- (4) an estimate of the personnel costs associated with such reorganization;
- (5) the effects of such reorganization on labor management relations; and
- (6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

[42 U.S.C. 7300]

ENVIRONMENTAL IMPACT STATEMENTS

SEC. 713. The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.

[42 U.S.C. 7301]

TITLE VIII—ENERGY PLANNING

NATIONAL ENERGY POLICY PLAN

SEC. 801. (a) The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this title referred to as a “proposed Plan”) as provided in subsection (b);

(2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of

conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

[42 U.S.C. 7321]

CONGRESSIONAL REVIEW

SEC. 802. (a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

[42 U.S.C. 7322]

TITLE IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

EFFECTIVE DATE

SEC. 901. The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 705(b)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

[42 U.S.C. 7341]

INTERIM APPOINTMENTS

SEC. 902. In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

[42 U.S.C. 7342]

TITLE X—SUNSET PROVISIONS

SUBMISSION OF COMPREHENSIVE REVIEW

SEC. 1001. Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 660, for such programs for the fiscal year beginning October 1, 1982.

[42 U.S.C. 7351]

CONTENTS OF REVIEW

SEC. 1002. Each comprehensive review prepared for submission under section 1001 shall include—

- (1) the name of the component of the Department responsible for administering the program;
- (2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

PART B—MISCELLANEOUS LAWS

**FEDERAL NONNUCLEAR ENERGY RESEARCH AND
DEVELOPMENT ACT OF 1974**

**FEDERAL NONNUCLEAR ENERGY RESEARCH AND
DEVELOPMENT ACT OF 1974**

PUBLIC LAW 93-577, AS AMENDED

AN ACT To establish a national program for research and development in
nonnuclear energy sources.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Nonnuclear
Energy Research and Development Act of 1974”.

[42 U.S.C. 5901 note]

STATEMENT OF FINDINGS

SEC. 2. The Congress hereby finds that—

(a) The Nation is suffering from a shortage of environmentally
acceptable forms of energy.

(b) Compounding this energy shortage is our past and present
failure to formulate a comprehensive and aggressive research and
development program designed to make available to American con-
sumers our large domestic energy reserves including fossil fuels,
nuclear fuels, geothermal resources, solar energy, and other forms
of energy. This failure is partially because the unconventional en-
ergy technologies have not been judged to be economically competi-
tive with traditional energy technologies.

(c) The urgency of the Nation’s energy challenge will require
commitments similar to those undertaken in the Manhattan and
Apollo projects; it will require that the Nation undertake a re-
search, development, and demonstration program in nonnuclear en-
ergy technologies with a total Federal investment which may reach
or exceed \$20,000,000,000 over the next decade.

(d) In undertaking such program, full advantage must be taken
of the existing technical and managerial expertise in the various
energy fields within Federal agencies and particularly in the pri-
vate sector.

(e) The Nation’s future energy needs can be met if a national
commitment is made now to dedicate the necessary financial re-
sources, to enlist our scientific and technological capabilities, and
to accord the proper priority to developing new nonnuclear energy
options to serve national needs, conserve vital resources, and pro-
tect the environment.

[42 U.S.C. 5901]

STATEMENT OF POLICY

SEC. 3. (a) It is the policy of the Congress to develop on an urgent basis the technological capabilities to support the broadest range of energy policy options through conservation and use of domestic resources by socially and environmentally acceptable means.

(b)(1) The Congress declares the purpose of this Act to be to establish and vigorously conduct a comprehensive, national program of basic and applied research and development, including but not limited to demonstrations of practical applications, of all potentially beneficial energy sources and utilization technologies, within the Energy Research and Development Administration.

(2) In carrying out this program, the Administrator of the Energy Research and Development Administration (hereinafter in this Act referred to as the "Administrator") shall be governed by the terms of this Act and other applicable provisions of law with respect to all nonnuclear aspects of the research, development, and demonstration program; and the policies and provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), and other provisions of law shall continue to apply to the nuclear research, development, and demonstration program.

(3) In implementing and conducting the research, development, and demonstration programs pursuant to this Act, the Administrator shall incorporate programs in specific nonnuclear technologies previously enacted into law, including those established by the Solar Heating and Cooling Act of 1974 (Public Law 93-409), the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410), and the Solar Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-473).

[42 U.S.C. 5902]

DUTIES AND AUTHORITIES OF THE ADMINISTRATOR

SEC. 4. The Administrator shall—

(a) review the current status of nonnuclear energy resources and current nonnuclear energy research and development activities, including research and development being conducted by Federal and non-Federal entities;

(b) formulate and carry out a comprehensive Federal nonnuclear energy research, development, and demonstration program which will expeditiously advance the policies established by this Act and other relevant legislation establishing programs in specific energy technologies;

(c) utilize the funds authorized pursuant to this Act to advance energy research and development by initiating and maintaining, through fund transfers, grants or contracts, energy research, development and demonstration programs or activities utilizing the facilities, capabilities, expertise, and experience of Federal agencies, national laboratories, universities, nonprofit organizations, industrial entities, and other non-Federal entities which are appropriate to each type of research, development, and demonstration activity;

(d) establish procedures for periodic consultation with representatives of science, industry, environmental organizations,

consumers, and other groups who have special expertise in the areas of energy research, development, and technology; and

(e) initiate programs to design, construct, and operate energy facilities of sufficient size to demonstrate the technical and economic feasibility of utilizing various forms of non-nuclear energy.

[42 U.S.C. 5903]

GOVERNING PRINCIPLES

SEC. 5. (a) The Congress authorizes and directs that the comprehensive program in research, development, and demonstration required by this Act shall be designed and executed according to the following principles:

(1) Energy conservation shall be a primary consideration in the design and implementation of the Federal nonnuclear energy program. For the purposes of this Act, energy conservation means both improvement in efficiency of energy production and use, and reduction in energy waste.

(2) The environmental and social consequences of a proposed program shall be analyzed and considered in evaluating its potential.

(3) Any program for the development of a technology which may require significant consumptive use of water after the technology has reached the stage of commercial application shall include thorough consideration of the impacts of such technology and use on water resources pursuant to the provisions of section 13.

(4) Heavy emphasis shall be given to those technologies which utilize renewable or essentially inexhaustible energy sources.

(5) The potential for production of net energy by the proposed technology at the stage of commercial application shall be analyzed and considered in evaluating proposals.

(b) The Congress further directs that the execution of the comprehensive research, development, and demonstration program shall conform to the following principles:

(1) Research and development of nonnuclear energy sources shall be pursued in such a way as to facilitate the commercial availability of adequate supplies of energy to all regions of the United States.

(2) In determining the appropriateness of Federal involvement in any particular research and development undertaking, the Administrator shall give consideration to the extent to which the proposed undertaking satisfies criteria including, but not limited to, the following:

(A) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance.

(B) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results.

(C) The extent of the problems treated and the objectives sought by the undertaking are national or widespread in their significance.

(D) There are limited opportunities to induce non-Federal support of the undertaking through regulatory actions, end use controls, tax and price incentives, public education, or other alternatives to direct Federal financial assistance.

(E) The degree of risk of loss of investment inherent in the research is high, and the availability or risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technology.

(F) The magnitude of the investment appears to exceed the financial capabilities of potential non-Federal participants in the research to support effective efforts.

[42 U.S.C. 5904]

COMPREHENSIVE PLANNING AND PROGRAMMING

SEC. 6. (a) Pursuant to the authority and directions of this Act and the Energy Reorganization Act of 1974 (Public Law 93-438), the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), and titles XX through XXIII of the Energy Policy Act of 1992, the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992, shall transmit to the Congress, on or before June 30, 1975, a comprehensive plan for energy research, development, and demonstration. This plan shall be appropriately revised annually as provided in section 15(a). Such plan shall be designated to achieve—

(1) solutions to immediate and short-term (the period up to 5 years after submission of the plan or its annual revision) energy supply system and associated environmental problems;

(2) solutions to middle-term (the period from 5 years to 10 years after submission of the plan or its annual revision) energy supply system and associated environmental problems; and

(3) solutions to long-term (the period beyond 10 years after submission of the plan or its annual revision) energy supply system and associated environmental problems.

(b)(1) Based on the comprehensive energy research, development, and demonstration plan developed under subsection (a), the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992, shall develop and transmit to the Congress, on or before June 30, 1975, a comprehensive nonnuclear energy research, development, and demonstration program to implement the nonnuclear research, development and demonstration aspects of the comprehensive plan. Such program shall be updated and transmitted to the Congress annually as part of the report required under section 15.

(2) This program shall be designed to achieve solutions to the energy supply and associated environmental problems in the immediate and short-term, middle-term, and long-term time intervals described in subsection (a)(1) through (3). In formulating the nonnuclear aspects of this program, the Secretary, in consultation with

the Advisory Board established under section 2302 of the Energy Policy Act of 1992, shall evaluate the economic, environmental, and technological merits of each aspect of the program.

(3) The Administrator shall assign program elements and activities in specific nonnuclear energy technologies to the short-term, middle-term, and long-term time intervals, and shall present full and complete justification for these assignments and the degree of emphasis for each. These program elements and activities shall include, but not be limited to, research, development, and demonstrations designed—

(A) to advance energy conservation technologies, including but not limited to—

(i) productive use of waste, including garbage, sewage, agricultural wastes, and industrial waste heat;

(ii) reuse and recycling of materials and consumer products;

(iii) improvements in automobile design for increased efficiency and lowered emissions, including investigation of the full range of alternatives to the internal combustion engine and systems of efficient public transportation; and

(iv) advanced urban and architectural design to promote efficient energy use in the residential and commercial sectors, improvements in home design and insulation technologies, small thermal storage units and increased efficiency in electrical appliances and lighting fixtures;

(B) to accelerate the commercial demonstration of technologies for producing low-sulfur fuels suitable for boiler use;

(C) to demonstrate improved methods for the generation, storage, and transmission of electrical energy through (i) advances in gas turbine technologies, combined power cycles, the use of low British thermal unit gas and, if practicable, magnetohydrodynamics; (ii) storage systems to allow more efficient load following, including the use of inertial energy storage systems; and (iii) improvement in cryogenic transmission methods;

(D) to accelerate the commercial demonstration of technologies for producing substitutes for natural gas, including coal gasification: *Provided*, That the Administrator shall invite and consider proposals from potential participants based upon Federal assistance and participation in the form of a joint Federal-industry corporation, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(E) to accelerate the commercial demonstration of technologies for producing syncrude and liquid petroleum products from coal: *Provided*, That the Administrator shall invite and consider proposals from potential participants based upon Federal assistance and participation through guaranteed prices or purchase of the products, and recommendations pursuant to this clause shall be accompanied by a report on the viability of using this form of Federal assistance or participation;

(F) in accordance with the program authorized by the Geothermal Energy Research, Development, and Demonstration Act of 1974 (Public Law 93-410), to accelerate the commercial demonstration of geothermal energy technologies;

(G) to demonstrate the production of syncrude from oil shale by all promising technologies including in situ technologies;

(H) to demonstrate new and improved methods for the extraction of petroleum resources, including secondary and tertiary recovery of crude oil;

(I) to demonstrate the economics and commercial viability of solar energy for residential and commercial energy supply applications in accordance with the program authorized by the Solar Heating and Cooling Act of 1974 (Public Law 93-409);

(J) to accelerate the commercial demonstration of environmental control systems for energy technologies developed pursuant to this Act;

(K) to investigate the technical and economic feasibility of tidal power for supplying electrical energy;

(L) to commercially demonstrate advanced solar energy technologies in accordance with the Solar Research, Development, and Demonstration Act of 1974 (Public Law 93-473);

(M) to determine the economics and commercial viability of the production of synthetic fuels such as hydrogen and methanol;

(N) to commercially demonstrate the use of fuel cells for central station electric power generation;

(O) to determine the economics and commercial viability of in situ coal gasification;

(P) to improve techniques for the management of existing energy systems by means of quality control; application of systems analysis, communications, and computer techniques; and public information with the objective of improving the reliability and efficiency of energy supplies and encourage the conservation of energy resources;

(Q) to improve methods for the prevention and cleanup of marine oil spills;

(R) to implement the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (42 U.S.C. 12001 et seq.); and

(S) to implement titles XX through XXIII of the Energy Policy Act of 1992.

(c) Based upon the comprehensive plan developed under subsection (a), the Secretary, in consultation with the Advisory Board established under section 2302 of the Energy Policy Act of 1992, shall develop and transmit to the Congress, on or before September 1, 1978, a comprehensive environment and safety program to insure the full consideration and evaluation of all environmental, health, and safety impacts of each element, program, or initiative contained in the nuclear and nonnuclear energy research, development, and demonstration plans. Such program shall be updated and transmitted to the Congress annually as part of the report required under section 15.

FORMS OF FEDERAL ASSISTANCE

SEC. 7. (a) In carrying out the objectives of this Act, the Administrator may utilize various forms of Federal assistance and participation which may include but are not limited to—

(1) joint Federal-industry experimental, demonstration, or commercial corporations consistent with the provisions of subsection (b) of this section;

(2) contractual arrangements with non-Federal participants including corporations, consortia, universities, governmental entities and nonprofit institutions;

(3) contracts for the construction and operation of federally owned facilities;

(4) Federal purchases or guaranteed price of the products of demonstration plants or activities consistent with the provisions of subsection (c) of the section;

(5) Federal loans to non-Federal entities conducting demonstrations of new technologies;

(6) incentives, including financial awards, to individual inventors, such incentives to be designed to encourage the participation of a large number of such inventors; and

(7) Federal loan guarantees and commitments thereof as provided in section 19.

(b) Joint Federal-industry corporations proposed for congressional authorization pursuant to this Act shall be subject to the provisions of section 9 of this Act and shall conform to the following guidelines except as otherwise authorized by Congress:

(1) Each such corporation may design, construct, operate, and maintain one or more experimental, demonstration, or commercial-size facilities, or other operations which will ascertain the technical, environmental, and economic feasibility of a particular energy technology. In carrying out this function, the corporation shall be empowered, either directly or by contract, to utilize commercially available technologies, perform tests, or design, construct, and operate pilot plants, as may be necessary for the design of the full-scale facility.

(2) Each corporation shall have—

(A) a Board of nine directors consisting of individuals who are citizens of the United States, of whom one shall be elected annually by the Board to serve as Chairman. The Board shall be empowered to adopt and amend by-laws. Five members of the Board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and four members of the Board shall be appointed by the President on the basis of recommendations received by him from any non-Federal entity or entities entering into contractual arrangements to participate in the corporation;

(B) a President and such other officers and employees as may be named and appointed by the Board (with the rates of compensation of all officers and employees being fixed by the Board); and

(C) the usual powers conferred upon corporations by the laws of the District of Columbia.

(3) An appropriate time interval, not to exceed 12 years, shall be established for the term of Federal participation in the corporation, at the expiration of which the Board of Directors shall take such action as may be necessary to dissolve the corporation or otherwise terminate Federal participation and financial interests. In carrying out such dissolution, the Board of Directors shall dispose of all physical facilities of the corporation in such manner and subject to such terms and conditions as the Board determines are in the public interest and consistent with existing law; and a share of the appraised value of the corporate assets proportional to the Federal participation in the corporation, including the proceeds from the disposition of such facilities, on the date of its dissolution, after satisfaction of all its legal obligations, shall be made available to the United States and deposited in the Treasury of the United States as miscellaneous receipts. All patent rights of the corporation shall, on such date of dissolution, be vested in the Administrator: *Provided*, That Federal participation may be terminated prior to the time established in the authorizing Act upon recommendation of the Board of Directors.

(4) Any commercially valuable product produced by demonstration facilities shall be disposed of in such manner and under such terms and conditions as the corporation shall prescribe. All revenues received by the corporation from the sale of such products shall be available to the corporation for use by it in defraying expenses incurred in connection with carrying out its functions to which this Act applies.

(5) The estimated Federal share of the construction, operation, and maintenance cost over the life of each corporation shall be determined in order to facilitate a single congressional authorization of the full amount at the time of establishment of the corporation.

(6) The Federal share of the cost of each such corporation shall reflect (A) the technical and economic risk of the venture, (B) the probability of any financial return to the non-Federal participants arising from the venture, (C) the financial capability of the potential non-Federal participants, and (D) such other factors as the Administrator may set forth in proposing the corporation: *Provided*, That in no instance shall the Federal share exceed 90 per centum of the cost.

(7) No such corporation shall be established unless previously authorized by specific legislation enacted by the Congress.

(c) Competitive systems of price supports proposed for congressional authorization pursuant to this Act shall conform to the following guidelines:

(1) The Administrator shall determine the types and capacities of the desired full-scale, commercial-size facility or other operation which would demonstrate the technical, environmental, and economic feasibility of a particular nonnuclear energy technology.

(2) The Administrator may award planning grants for the purpose of financing a study of the full cycle economic and environmental costs associated with the demonstration facility selected pursuant to paragraph (1) of this subsection. Such

planning grants may be awarded to Federal and non-Federal entities including, but not limited to, industrial entities, universities, and nonprofit organizations. Such planning grants may also be used by the grantee to prepare a detailed and comprehensive bid to construct the demonstration facility.

(3) Following the completion of the studies pursuant to the planning grants awarded under paragraph (2) of this subsection regarding each such potential price supported demonstration facility for which the Administrator intends to request congressional authorization, he shall invite bids from all interested parties to determine the minimum amount of Federal price support needed to construct the demonstration facility. The Administrator may designate one or more competing entities, each to construct one commercial demonstration facility. Such designation shall be made on the basis of those entities, (A) commitment to construct the demonstration facility at the minimum level of Federal price supports, (B) detailed plan of environmental protection, and (C) proposed design and operation of the demonstration facility.

(4) The construction plans and actual construction of the demonstration facility, together with all related facilities, shall be monitored by the Environmental Protection Agency. If additional environmental requirements are imposed by the Administrator after the designation of the successful bidders and if such additional environmental requirements result in additional costs, the Administrator is authorized to renegotiate the support price to cover such additional costs.

(5) The estimated amount of the Federal price support for a demonstration facility's product over the life of such facility shall be determined by the Administrator to facilitate a single congressional authorization of the full amount of such support at the time of the designation of the successful bidders.

(6) No price support program shall be implemented unless previously authorized by specific legislation enacted by the Congress.

(d) Nothing in this section shall preclude Federal participation in and support for, joint university-industry nonnuclear energy research efforts.

[42 U.S.C. 5906]

DEMONSTRATIONS

SEC. 8. (a) The Administrator is authorized to—

(1) identify opportunities to accelerate the commercial applications of new energy technologies, and provide Federal assistance for or participation in demonstration projects (including pilot plants demonstrating technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources); and

(2) enter into cooperative agreements with non-Federal entities to demonstrate the technical feasibility and economic potential of energy technologies on a prototype or full-scale basis.

(b) In reviewing potential projects, the Administrator shall consider criteria including but not limited to—

(1) the anticipated research, development, and application objectives to be achieved by the activities or facilities proposed;

(2) the economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system;

(3) the relationship of the proposal to the criteria of priority set forth in section 5(b)(2);

(4) the availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal;

(5) the total estimated cost including the Federal investment and the probable time schedule;

(6) the proposed participants and the proposed financial contributions of the Federal Government and of the non-Federal participants; and

(7) the proposed cooperative arrangement, agreements among the participants, and form of management of the activities.

(c)(1) A financial award under this section may be made only to the extent of the Federal share of the estimated total design and construction costs, plus operation and maintenance costs.

(2) For the purposes of this Act the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

(d)(1) The Administrator shall, within six months of enactment of this Act, promulgate regulations establishing procedures for submission of proposals to the Energy Research and Development Administration for the purposes of this Act. Such regulations shall establish a procedure for selection of proposals which—

(A) provides that projects will be carried out under such conditions and varying circumstances as will assist in solving energy extraction, transportation, conversion, conservation, and end-use problems of various areas and regions, under representative geological, geographic, and environmental conditions; and

(B) provides time schedules for submission of, and action on, proposal requests for the purposes of implementing the goals and objectives of this Act.

(2) Such regulations also shall specify the types and form of the information, data, and support documentation that are to be contained in proposals for each form of Federal assistance or participation set forth in subsection 7(a): *Provided*, That such proposals to the extent possible shall include, but not be limited to—

(A) specification of the technology;

(B) description of prior pilot plant operating experience with the technology;

(C) preliminary design of the demonstration plant;

(D) time tables containing proposed construction and operation plans;

(E) budget-type estimates of construction and operating costs;

(F) description and proof of title to land for proposed site, natural resources, electricity and water supply and logistical information related to access to raw materials to construct and operate the plant and to dispose of salable products produced from the plant;

(G) analysis of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(H) plans for commercial use of the technology if the demonstration is successful;

(I) plans for continued use of the plant if the demonstration is successful; and

(J) plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned.

(3) The Administrator shall from time to time review and, as appropriate, modify and re promulgate regulations issued pursuant to this section.

(e) If the estimate of the Federal investment with respect to construction costs of any demonstration project proposed to be established under this section exceeds \$50,000,000, no amount may be appropriated for such project except as specifically authorized by legislation hereafter enacted by the Congress.

(f) If the total estimated amount of the Federal contribution to the construction cost of a demonstration project does not exceed \$50,000,000, the Administrator is authorized to proceed with the negotiation of agreements and implementation of the proposal subject to the availability of funds under the authorization of appropriations pursuant to section 16: *Provided*, That if such Federal contribution to the construction cost is estimated to exceed \$25,000,000 the Administrator shall provide a full and comprehensive report on the proposed demonstration project to the appropriate committees of the Congress and no funds may be expended for any agreement under the authority granted by this section prior to the expiration of sixty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which the Administrator's report on the proposed project is received by the Congress. Such reports shall contain an analysis of the extent to which the proposed demonstration satisfies the criteria specified in subsection (b) of this section.

[42 U.S.C. 5907]

PATENT POLICY

SEC. 9. (a) Whenever any invention is made or conceived in the course of or under any contract of the Administration, other than nuclear energy research, development, and demonstration pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) and the Administrator determines that—

(1) the person who made the invention was employed or assigned to perform research, development, or demonstration work and the invention is related to the work he was employed or assigned to perform, or that it was within the scope of his employment duties, whether or not it was made during working hours, or with a contribution by the Government of the use

of Government facilities, equipment, materials, allocated funds, information proprietary to the Government, or services of Government employees during working hours; or

(2) the person who made the invention was not employed or assigned to perform research, development, or demonstration work, but the invention is nevertheless related to the contract or to the work or duties he was employed or assigned to perform, and was made during working hours, or with a contribution from the Government of the sort referred to in clause (1);

title to such invention shall vest in the United States, and if patents on such invention are issued they shall be issued to the United States, unless in particular circumstances the Administrator waives all or any part of the rights of the United States to such invention in conformity with the provisions of this section.

(b) Each contract entered into by the Administration with any person shall contain effective provisions under which such person shall furnish promptly to the Administration a written report containing full and complete technical information concerning any invention, discovery, improvement, or innovation which may be made in the course of or under such contract.

(c) Under such regulations in conformity with the provisions of this section as the Administrator shall prescribe, the Administrator may waive all or any part of the rights of the United States under this section with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of the Administration if he determines that the interests of the United States and the general public will best be served by such waiver. The Administration shall maintain a publicly available, periodically updated record of waiver determinations. In making such determinations, the Administrator shall have the following objectives:

(1) Making the benefits of the energy research, development, and demonstration program widely available to the public in the shortest practicable time.

(2) Promoting the commercial utilization of such inventions.

(3) Encouraging participation by private persons in the Administration's energy research, development, and demonstration program.

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

(d) In determining whether a waiver to the contractor at the time of contracting will best serve the interests of the United States and the general public, the Administrator shall specifically include as considerations—

(1) the extent to which the participation of the contractor will expedite the attainment of the purposes of the program;

(2) the extent to which a waiver of all or any part of such rights in any or all fields of technology is needed to secure the participation of the particular contractor;

(3) the extent to which the contractor's commercial position may expedite utilization of the research, development, and demonstration program results;

(4) the extent to which the Government has contributed to the field of technology to be funded under the contract;

(5) the purpose and nature of the contract, including the intended use of the results developed thereunder;

(6) the extent to which the contractor has made or will make substantial investment of financial resources or technology developed at the contractor's private expense which will directly benefit the work to be performed under the contract;

(7) the extent to which the field of technology to be funded under the contract has been developed at the contractor's private expense;

(8) the extent to which the Government intends to further develop to the point of commercial utilization the results of the contract effort;

(9) the extent to which the contract objectives are concerned with the public health, public safety, or public welfare;

(10) the likely effect of the waiver on competition and market concentration; and

(11) in the case of a nonprofit educational institution, the extent to which such institution has a technology transfer capability and program, approved by the Administrator as being consistent with the applicable policies of this section.

(e) In determining whether a waiver to the contractor or inventor of rights to an identified invention will best serve the interests of the United States and the general public, the Administrator shall specifically include as considerations paragraphs (4) through (11) of subsection (d) as applied to the invention and—

(1) the extent to which such waiver is a reasonable and necessary incentive to call forth private risk capital for the development and commercialization of the invention; and

(2) the extent to which the plans, intentions, and ability of the contractor or inventor will obtain expeditious commercialization of such invention.

(f) Whenever title to an invention is vested in the United States, there may be reserved to the contractor or inventor—

(1) a revocable or irrevocable nonexclusive, paid-up license for the practice of the invention throughout the world; and

(2) the rights to such invention in any foreign country where the United States has elected not to secure patent rights and the contractor elects to do so, subject to the rights set forth in paragraphs (2), (3), (6), and (7) of subsection (h): *Provided*, That when specifically requested by the Administration and three years after issuance of such a patent, the contract shall submit the report specified in subsection (h)(1) of this section. [(g), (h), (i) Repealed by Public Law 96-517.]

(j) The Administrator shall, in granting waivers or licenses, consider the small business status of the applicant.

(k) The Administrator is authorized to take all suitable and necessary steps to protect any invention or discovery to which the United States hold title, and to require that contractors or persons who acquire rights to inventions under this section protect such inventions.

(l) The Administration shall be considered a defense agency of the United States for the purpose of chapter 17 of title 35 of the United States Code.

(m) As used in this section—

(1) the term “person” means any individual, partnership, corporation, association, institution, or other entity;

(2) the term “contract” means any contract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder;

(3) the term “made”, when used in relation to any invention means the conception or first actual reduction to practice of such invention;

(4) the term “invention” means inventions or discoveries, whether patented or unpatented; and

(5) the term “contractor” means any person having a contract with or on behalf of the Administration.

(n) Within twelve months after the date of the enactment of this Act, the Administrator with the participation of the Attorney General, the Secretary of Commerce, and other officials as the President may designate, shall submit to the President and the appropriate congressional committees a report concerning the applicability of existing patent policies affecting the programs under this Act, along with his recommendations for amendments or additions to the statutory patent policy, including his recommendations on mandatory licensing, which he deems advisable for carrying out the purposes of this Act.

[42 U.S.C. 5908]

RELATIONSHIP TO ANTITRUST LAWS

SEC. 10. (a) Nothing in this Act shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) As used in this section, the term “antitrust law” means—

(1) the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (15 U.S.C. 12 et seq.) as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes”, approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

[42 U.S.C. 5909]

【SEC. 11. Repealed by section 2021(i) of Public Law 104–66 (109 Stat. 727).】

ACQUISITION OF ESSENTIAL MATERIALS

SEC. 12. (a) The President may, by rule or order, require the allocation of, or the performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment if he finds that—

(1) such supplies are scarce, critical, and essential to carry out the purposes of this Act; and

(2) such supplies cannot reasonably be obtained without exercising the authority granted by this section.

(b) The President shall transmit any rule or order proposed under subsection (a) of this section (bearing an identification number) to each House of Congress on the date on which it is proposed. If such proposed rule or order is transmitted to the Congress such proposed rule or order shall take effect at the end of the first period of thirty calendar days of continuous session of Congress after the date on which such proposed rule or order is transmitted to it unless, between the date of transmittal and the end of the thirty day period, either House passes a resolution stating in substance that such House does not favor such a proposed rule or order.

[42 U.S.C. 5911]

WATER RESOURCE EVALUATION

SEC. 13. (a) The Water Resources Council shall undertake assessments of water resource requirements and water supply availability for any nonnuclear energy technology and any probable combinations of technologies which are the subject of Federal research and development efforts authorized by this Act, and the commercial development of which could have significant impacts on water resources. In the preparation of its assessment, the Council shall—

(1) utilize to the maximum extent practicable data on water supply and demand available in the files of member agencies of the Council;

(2) collect and compile any additional data it deems necessary for complete and accurate assessments;

(3) give full consideration to the constraints upon availability imposed by treaty, compact, court decree, State water laws, and water rights granted pursuant to State and Federal law;

(4) assess the effects of development of such technology on water quality;

(5) include estimates of cost associated with production and management of the required water supply, and the cost of disposal of waste water generated by the proposed facility or process;

(6) assess the environmental, social, and economic impact of any change in use of currently utilized water resource that may be required by the proposed facility or process; and

(7) consult with the Council on Environmental Quality.

(b) For any proposed demonstration project which may involve a significant impact on water resources, the Administrator shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water re-

quirements and availability for such project. A report on the assessment shall be published in the Federal Register for public review thirty days prior to the expenditure of Federal funds on the demonstration.

(c) For any proposed Federal assistance for commercial application of energy technologies pursuant to this Act, the Water Resource Council shall, as a precondition of such Federal assistance, provide to the Administrator an assessment of the availability of adequate water resources for such commercial application and an evaluation of the environmental, social, and economic impacts of the dedication of water to such uses.

(d) Reports of assessments and evaluations prepared by the Council pursuant to subsections (a) and (c) shall be published in the Federal Register and at least ninety days shall be provided for public review and comment. Comments received shall accompany the reports when they are submitted to the Administrator and shall be available to the public.

(e) The Council shall include a broad survey and analysis of regional and national water resource availability for energy development in the biennial assessment required by section 102(a) of the Water Resources Planning Act (42 U.S.C. 1962a-1(a)).

(f) The Administrator shall, upon enactment of this subsection, be a member of the Council.

[42 U.S.C. 5912]

ENERGY-RELATED INVENTIONS

SEC. 14. The National Bureau of Standards shall give particular attention to the evaluation of all promising energy-related inventions, particularly those submitted by individual inventors and small companies for the purpose of obtaining direct grants from the Administrator. The National Bureau of Standards is authorized to promulgate regulations in the furtherance of this section.

[42 U.S.C. 5913]

REPORTS TO CONGRESS

SEC. 15. (a) Concurrent with the submission of the President's annual budget to the Congress, the Administrator shall submit to the Congress each year—

(1) a report detailing the activities carried out pursuant to this Act during the preceding fiscal year;

(2) a detailed description of the comprehensive plan for nuclear and nonnuclear energy research, development, and demonstration then in effect under section 6(a); and

(3) a detailed description of the comprehensive nonnuclear research, development, and demonstration program then in effect under section 6(b) including its program elements and activities,

setting forth such modifications in the comprehensive plan referred to in clause (2) and the comprehensive program referred to in clause (3) as may be necessary to revise appropriately such plan and program in the light of the activities referred to in clause (1)

and any changes in circumstances which may have occurred since the last previous report under this subsection.

(b) The description of the comprehensive nonnuclear research, development, and demonstration program submitted under subsection (a)(2) shall include a statement setting forth—

(1) the anticipated research, development, and application objections to be achieved by the proposed program;

(2) the economic, environmental, and societal significance which the proposed program may have;

(3) the total estimated costs of individual program items;

(4) the estimated relative financial contributions of the Federal Government and non-Federal participants in the research and development program;

(5) the relationship of the proposed program to any Federal national energy or fuel policies; and

(6) the relationship of any short-term undertakings and expenditures to long-range goals.

(c) The reports required by subsections (a) and (b) of this section will satisfy the reporting requirements of section 307(a) of the Energy Reorganization Act of 1974 (Public Law 93-438) insofar as is concerned activities, goals, priorities, and plans of the Energy Research and Development Administration pertaining to non-nuclear energy.

[42 U.S.C. 5914]

APPROPRIATION AUTHORIZATION

SEC. 16. (a) There may be appropriated to the Administrator to carry out the purposes of this Act such sums as may be authorized in annual authorization Acts.

(b) Of the amounts appropriated pursuant to subsection (a) of this section—

(1) \$500,000 annually shall be made available by fund transfer to the Council on Environmental Quality for the purposes authorized by section 11; and

(2) not to exceed \$1,000,000 annually shall be made available by fund transfer to the Water Resources Council for the purposes authorized by section 13.

(c) There also may be appropriated to the Administrator by separate Acts such amounts as are required for demonstration projects for which the total Federal contribution to construction costs exceeds \$50,000,000.

[42 U.S.C. 5915]

CENTRAL SOURCE OF NONNUCLEAR ENERGY INFORMATION

SEC. 17. The Administrator shall promptly establish, develop, acquire, and maintain a central source of information on all energy resources and technology in furtherance of the Administrator's research, development, and demonstration mission carried out directly or indirectly under this Act. When the Administrator determines that such information is needed to carry out the purposes of this Act, he may acquire proprietary and other information (a) by purchase through negotiation or by donation from any person, or (b) from another Federal agency. The information maintained by

the Administrator shall be made available to the public, subject to the provisions of section 552 of title 5, United States Code, and section 1905 of title 18, United States Code, and to other Government agencies in a manner that will facilitate its dissemination; *Provided*, That upon a showing satisfactory to the Administrator by any person that any information, or portion thereof, obtained under this section by the Administrator directly or indirectly from such person, would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 or title 18, United States Code: *Provided further*, That the Administrator shall, upon request, provide such information to (A) any delegate of the Administrator for the purpose of carrying out this Act, and (B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Federal Energy Administration, the Environmental Protection Agency, the Federal Power Commission, the General Accounting Office, other Federal agencies, when necessary to carry out their duties and responsibilities under this and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress or any committee of Congress upon request of the chairman.

[42 U.S.C. 5916]

ENERGY INFORMATION

SEC. 18. The Administrator is, upon request, authorized to obtain energy information under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, as amended (15 U.S.C. 796(d)).

[42 U.S.C. 5917]

LOAN GUARANTEES FOR ALTERNATIVE FULL DEMONSTRATION FACILITIES

SEC. 19. (a) It is the purpose of this section—

(1) to assure adequate Federal support to foster a demonstration program to produce alternative fuels from coal, oil shale, biomass, and other domestic resources;

(2) to authorize assistance, through loan guarantees under subsection (b) and (y) for construction and startup and related costs, to demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels; and

(3) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

(b)(1) Except as provided in paragraph (5) of this subsection and subsection (y) of this section the Administrator is authorized, in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee, in such manner and subject to such conditions (not inconsistent with the provisions of this Act) as he deems appropriate, the payment of interest on, and the

principal balance of, bonds, debentures, notes, and other obligations issued by, or on behalf of, any borrower for the purpose of financing the construction and startup costs of demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels: *Provided*, That no loan guarantee for a full sized oil shale facility shall be provided under this section until after successful demonstration of a modular facility producing between six and ten thousand barrels per day, taking into account such considerations as water usage, environmental effects, waste disposal, labor conditions, health and safety, and the socioeconomic impacts on local communities: *Provided further*, That no loan guarantee shall be available under this subsection for the manufacture of component parts for demonstration facilities eligible for assistance under this subsection.

(2) An applicant for any financial assistance under this section shall provide information to the Administrator in such form and with such content as the Administrator deems necessary.

(3) Prior to issuing any guarantee under this section the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

(4) The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

(5)(A) The Administrator is authorized, in the case of a facility for the conversion of oil shale to alternative fuels which is determined by the Administrator pursuant to the proviso in paragraph (1) of this subsection, to be constructed at a modular size, to enter into a cooperative agreement with the applicant in accordance with section 8 of this Act and the other provisions of this Act to share the estimated total design and construction costs, plus operation and maintenance costs, of such modular facility. The Federal share shall not exceed 75 per centum of such costs. All receipts for the sale of any products produced during the operation of the facility shall be used to offset the costs incurred in the operation and maintenance of the facility. The provisions of subsections (d), (e), (k), (m), (p), (s), (t), (u), (v), (w), and (x) shall apply to any such modular facility. The provisions of this section shall apply to any loan guarantee for such modular facility.

(B) After successful demonstration of the modular facility, as determined by the Administrator, the facility is eligible for financial assistance under this section for purposes of expansion to a full sized facility and the applicant may purchase the Federal interest in the modular facility as represented by the Federal share thereof by means of (i) a cash payment to the United States, or (ii) a share of the product or sales resulting from such expanded operation, as determined by the Administrator. If expansion of such facility is determined not to be warranted by the Administrator, he may, at the option of the applicant, dispose of the modular facility to the applicant at not less than fair market value, as determined by the

Administrator as of the date of the disposal, or otherwise dispose of it, in accordance with applicable provisions of law, and distribute the net proceeds thereof, after expenses of such disposal, to the applicant in proportion to the applicant's share of the costs of such facility.

(6) To the extent possible, loan guarantees shall be issued on the basis of competitive bidding among guarantee applicants in a particular technology area.

(c) The Administrator, with due regard for the need for competition, shall guarantee or make a commitment to guarantee any obligation under subsection (b) or (y) only if—

(1) the Administrator is satisfied that the financial assistance applied for is necessary to encourage financial participation;

(2) the amount guaranteed to any borrower at any time does not exceed—

(A) an amount equal to 75 per centum of the project cost of the demonstration facility as estimated at the time the guarantee is issued, which cost shall not include amounts expended for facilities and equipment used in the extraction of a mineral other than coal or shale, and in the case of coal only to the extent that the Administrator determines that the coal is to be converted to alternative fuel; and

(B) an amount equal to 60 per centum of that portion of the actual total project cost of any demonstration facility which exceeds the project cost of such facility as estimated at the time the loan guarantee is issued;

(3) the Administrator has determined that there will be a continued reasonable assurance of full repayment;

(4) the obligation is subject to the condition that it not be subordinated to any other financing;

(5) the Administrator has determined, taking into consideration all reasonably available forms of assistance under this section and other Federal and State statutes, that the impacts resulting from the proposed demonstration facility have been fully evaluated by the borrower, the Administrator, and the Governor of the affected State, and that effective steps have been taken or will be taken in a timely manner to finance community planning and development costs resulting from such facility under this section, under other provisions of law, or by other means;

(6) the maximum maturity of the obligation does not exceed twenty years, or 90 per centum of the projected useful economic life of the physical assets of the demonstration facility covered by the guarantee, whichever is less, as determined by the Administrator;

(7) the Administrator has determined that, in the case of any demonstration or modular facility planned to be located on Indian lands, the appropriate Indian tribe, with the approval of the Secretary of the Interior, has given written consent to such location;

(8) the obligation provides for the orderly and ratable retirement of the obligation and includes sinking fund provisions, installment payment provisions or other methods of payments

and reserves as may be reasonably required by the Administrator. Prior to approving and repayment schedule the Administrator may consider the date on which operating revenues are anticipated to be generated by the project. To the maximum extent possible repayment or provision therefor shall be required to be made in equal payments payable at equal intervals; and

(9) the obligation provides that the Administrator shall, after, a period of not less than ten years from issuance of the obligation, taking into consideration whether the Government's needs for information to be derived from the project have been substantially met and whether the project is capable of commercial operation, determine the feasibility and advisability of terminating the Federal participation in the project. In the event that such determination is positive, the Administrator shall notify the borrower and provide the borrower with not less than two nor more than three years in which to find alternative financing. At the expiration of the designated period of time, if the borrower has been unable to secure alternative financing, the Administrator is authorized to collect from the borrower an additional fee of 1 per centum per annum on the remaining obligation to which the Federal guarantee applies. [(d) Repealed by Public Law 96-470.]

(e)(1) As soon as the Administrator knows the geographic location of a proposed facility for which a guarantee or a commitment to guarantee or cooperative agreement is sought under this section, he shall inform the Governor of the State, and officials of each political subdivision and Indian Tribe, as appropriate, in which the facility would be located or which would be impacted by such facility. The Administrator shall not guarantee or make a commitment to guarantee or enter into a cooperative agreement under subsection (b) or subsection (y) of this section, if the Governor of the State in which the proposed facility would be located recommends that such action not be taken, unless the Administrator finds that there is an overriding national interest in taking such action in order to achieve the purpose of this section. If the Administrator decides to guarantee or make a commitment to guarantee or enter into a cooperative agreement despite a Governor's recommendation not to take such action, the Administrator shall communicate, in writing, to the Governor reasons for not concurring with such recommendation. This Administrator's decision, pursuant to this subsection, shall be final unless determined upon judicial review initiated by the Governor to be unlawful by the reviewing court pursuant to 5 U.S.C. 706(2) (A) through (D). Such review shall take place in the United States court of appeals for the circuit in which the State involved is located, upon application made within ninety days from the date of such decision. The Administrator shall, by regulation, establish procedures for review of, and comment on, the proposed facility by States, local political subdivisions, and Indian tribes which may be impacted by such facility, and the general public.

(2) The Administrator shall review and approve the plans of the applicant for the construction and operation of any demonstration and related facilities constructed or to be constructed with assistance under this section. Such plans and the actual construction

shall include such monitoring and other data-gathering costs associated with such facility as are required by the comprehensive plan and program under this section. The Administrator shall determine the estimated total cost of such demonstration facility, including, but not limited to, construction costs, startup costs, costs to political subdivisions and Indian tribe by such facility, and cost of any water storage facilities needed in connection with such demonstration facility, and determine who shall pay such costs. Such determination shall not be binding upon the States, political subdivisions, or Indian tribes.

(3) There is hereby established a panel to advise the Administrator on matters relating to the program authorized by this section, including, but not limited to, the impact of the demonstration facilities on communities and States and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts, and other matters relating to the development of alternative fuels and other energy sources under this section. The panel shall include such Governors or their designees as shall be designated by the Chairman of the National Governors Conference. Representatives of Indian tribes, industry, environmental organizations, and the general public shall be appointed by the Administrator. The Chairman of the panel shall be selected by the Administrator. No person shall be appointed to the panel who has a financial interest in any applicant applying for assistance under this section. Members of the panel shall serve without compensation. The provisions of section 106(e) of the Energy Reorganization Act of 1974 (42 U.S.C. 5816(e)) shall apply to the panel.

(f) Except in accordance with reasonable terms and conditions contained in the written contract of guarantee, no guarantee issued or commitment to guarantee made under this section shall be terminated, canceled, or otherwise revoked. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this section and that such obligation has been approved and is legal as to principal, interest, and other terms. Subject to the conditions of the guarantee or commitment to guarantee, such a guarantee shall be incontestable in the hands of the holder of the guaranteed obligation, except as to fraud or material misrepresentation on the part of the holder.

(g)(1) If there is a default by the borrower, as defined in regulations promulgated by the Administrator and in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Administrator. Within such period as may be specified in the guarantee or related agreements, the Administrator shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of, the guaranteed obligation as to which the borrower has defaulted, unless the Administrator finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the guaranteed obligation and approved by the Administrator.

(2) If the Administrator makes a payment under paragraph (1) of this subsection, the Administrator shall be subrogated to the

rights of the recipient of such payment (and such subrogation shall be expressly set forth in the guarantee or related agreements), including the authority to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or any other property of the borrower (of a value equal to the amount of such payment) to the extent that the guarantee applies to amounts in excess of the estimated project cost under subsection (c)(2)(B), without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act (40 U.S.C. 488), or any other law, or to permit the borrower pursuant to an agreement with the Administrator, to continue to pursue the purposes of the demonstration facility if the Administrator determines that this is in the public interest. The rights of the Administrator with respect to any property acquired pursuant to such guarantee or related agreements, shall be superior to the rights of any other person with respect to such property.

(3) In the event of a default on any guarantee under this section, the Administrator shall notify the Attorney General, who shall take such action as may be appropriate to recover the amounts of any payments made under paragraph (1) including any payment of principal and interest under subsection (h) from such assets of the defaulting borrower as are associated with the demonstration facility, or from any other security included in the terms of the guarantee.

(4) For purposes of this section, patents, including any inventions for which a waiver was made by the Administrator under section 9 of this Act, and technology resulting from the demonstration facility, shall be treated as project assets of such facility. The guarantee agreement shall include such detailed terms and conditions as the Administrator deems appropriate to protect the interests of the United States in the case of default and to have available all the patents and technology necessary for any person selected, including, but not limited to the Administrator, to complete and operate the defaulting project. Furthermore, the guarantee agreement shall contain a provision specifying that patents, technology, and other proprietary rights which are necessary for the completion or operation of the demonstration facility shall be available to the United States and its designees on equitable terms, including due considerations to the amount of the United States default payments. Inventions made or conceived in the course of or under such guarantee, title to which is vested in the United States under this Act, shall not be treated as project assets of such facility for disposal purposes under this subsection, unless the Administrator determines in writing that it is in the best interests of the United States to do so.

(h) With respect to any obligation guaranteed under this section, the Administrator is authorized to enter into a contract to pay, and to pay, holders of the obligations, for and on behalf of the borrowers, from the fund established by this section, the principal and interest payments which become due and payable on the unpaid balance of such obligation if the Administrator finds that—

(1) the borrower is unable to meet such payments and is not in default; it is in the public interest to permit the borrower to continue to pursue the purposes of such demonstra-

tion facility; and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which would result in the event of a default;

(2) the amount of such payment which the Administrator is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

(3) the borrower agrees to reimburse the Administrator for such payment on terms and conditions, including interest, which are satisfactory to the Administrator.

(i) Regulations required by this section shall be issued within one hundred and eighty days after enactment of this section. All regulations under this section and any amendments thereto shall be issued in accordance with section 553 of title 5, of the United States Code.

(j) The Administrator shall charge and collect fees for guarantees of obligations authorized by subsection (b)(1), in amounts which (1) are sufficient in the judgment of the Administrator to cover the applicable administrative costs, and (2) reflect the percentage of projects costs guaranteed. In no event shall the fee be less than 1 per centum per annum of the outstanding indebtedness covered by the guarantee. Nothing in this subsection shall be construed to apply to community planning and development assistance pursuant to subsection (k) of this section.

(k)(1) In accordance with such rules and regulations as the Administrator in consultation with the Secretary of the Treasury shall prescribe, and subject to such terms and conditions as he deems appropriate, the Administrator is authorized, for the purpose of financing essential community development and planning which directly result from, or are necessitated by, one or more demonstration facilities assisted under this section to—

(A) guarantee and make commitments to guarantee the payment of interest on, and the principal balance of obligations for such financing issued by eligible States, political subdivisions, or Indian tribes,

(B) guarantee and make commitments to guarantee the payment of taxes imposed on such demonstration facilities by eligible non-Federal taxing authorities which taxes are earmarked by such authorities to support the payment of interest and principal on obligations for such financing, and

(C) require that the applicant for assistance for a demonstration facility under this section advance sums of eligible States, political subdivisions, and Indian tribes to pay for the financing of such development and planning: *Provided*, That the State, political subdivision, or Indian tribe agrees to provide tax abatement credits over the life of the facilities for such payments by such applicant.

(2) Prior to issuing any guarantee under this subsection, the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital

markets of the United States, taking into account other Federal direct and indirect securities activities.

(3) In the event of any default by the borrower in the payment of taxes guaranteed by the Administrator under this subsection, the Administrator shall pay out of the fund established by this section such taxes at the time or times they may fall due, and shall have by reason of such payment a claim against the borrower for all sums paid plus interest.

(4) If after consultation with the State, political subdivision, or Indian tribe, the Administrator finds that the financial assistance programs of paragraph (1) of this subsection will not result in sufficient funds to carry out the purposes of this subsection, then the Administrator may—

(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: *Provided*, That such loans shall be made on such reasonable terms and conditions as the Administrator shall prescribe: *Provided further*, That the Administrator may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Administrator that due to a change in circumstances there will be net adverse impacts resulting from such demonstration facility that would probably cause such State, subdivision, or tribe to default on the loan; or

(B) require that any community development and planning costs which are associated with, or result from, such demonstration facility and which are determined by the Administrator to be appropriate for such inclusion shall be included in the total costs of the demonstration facility.

(5) The Administrator is further authorized to make grants to States, political subdivisions, or Indian tribes for studying and planning for the potential economic, environmental, and social consequences of demonstration facilities, and for establishing related management expertise.

(6) At any time the Administrator may, with the concurrence of the Secretary of the Treasury, redeem, in whole or in part, out of the fund established by this section, the debt obligations guaranteed or the debt obligations for which tax payments are guaranteed under this subsection.

(7) When one or more States, political subdivisions, or Indian tribes would be eligible for assistance under this subsection, but for the fact that construction and operation of the demonstration facilities occurs outside its jurisdiction, the Administrator is authorized to provide, to the greatest extent possible, arrangements for equitable sharing of such assistance.

(8) Such amounts as may be necessary for direct loans and grants pursuant to this subsection shall be available as provided in annual authorization Acts.

(9) The Administrator, if appropriate, shall provide assistance in the financing of up to 100 per centum of the costs of the required community development and planning pursuant to this subsection.

(10) In carrying out the provisions of this subsection, the Administrator shall provide that title to any facility receiving financial assistance under this subsection shall vest in the applicable

State, political subdivision, or Indian tribe, as appropriate, and in the case of default by the borrower on a loan guarantee such facility shall not be considered a project asset for the purposes of subsection (g) of this section.

(1) The Administrator is directed to submit a report to the Congress within one hundred and eighty days after the enactment of this section setting forth his recommendations on the best opportunities to implement a program of Federal financial assistance with the objective of demonstrating production and conservation of energy. Such report shall be updated and submitted to Congress at least annually and shall include specific comments and recommendations by the Secretary of the Treasury on the methods and procedures set forth in subparagraph (B)(viii) of this subsection, including their adequacy, and changes necessary to satisfy the objectives stated in this subsection. This report shall include—

(A) a study of the purchase or commitment to purchase by the Federal Government, for the use by the United States, of all or a portion of the products of any alternative fuel facilities constructed pursuant to this program as a direct or an alternate form of Federal assistance, which assistance, if recommended, shall be carried out pursuant to section 7(a)(4) of this Act; and

(B) a comprehensive plan and program to acquire information and evaluate the environmental, economic, social, and technological impacts of the demonstration program under this section. In preparing such a comprehensive plan and program, the Administrator shall consult with the Environmental Protection Agency, the Federal Energy Administration, the Department of Housing and Urban Development, the Department of the Interior, the Department of Agriculture, and the Department of the Treasury, and shall include therein, but not be limited to, the following:

(i) information about potential demonstration facilities proposed in the program under this section;

(ii) any significant adverse impacts which may result from any activity included in the program;

(iii) the extent to which it is feasible to commercialize the technologies as they affect different regions of the Nation;

(iv) proposed regulations required to carry out the purposes of this section;

(v) a list of Federal agencies, governmental entities, and other persons that will be consulted or utilized to implement the program;

(vi) the methods and procedures by which the information gathered under the program will be analyzed and disseminated;

(vii) a plan for the study and monitoring of the health effects of such facilities on workers and other persons, including, but not limited to, any carcinogenic effect of alternative fuels; and

(viii) the methods and procedures to insure that (I) the use of the Federal assistance for demonstration facilities is kept to the minimum level necessary for the information objectives of this section, (II) the impact of loan guarantees

on the capital markets of the United States is minimized, taking into account other Federal direct and indirect securities activities, and any economic sectors which may be negatively impacted as a result of the reduction of capital by the placement of guaranteed loans, and (III) the granting of Federal loan guarantees under this Act does not impede movement toward improvement in the climate for attracting private capital to develop alternative fuels without continued direct Federal incentives.

(2) The Administrator shall annually submit a detailed report to the Congress concerning—

(A) the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including, but not be limited to (i) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility, including byproduct production therefrom, and the distribution of such products and byproducts, (ii) a detailed statement of the financial conditions of each such demonstration facility, (iii) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (iv) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (v) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section; and

(B) the activities of the fund referred to in subsection (n) of this section during the preceding fiscal year, including a statement of the amount and source of fees or other moneys, property, or assets deposited into the funds, all payments made, the notes or other obligations issued by the Administrator, and such other data as may be appropriate.

(3) The annual reports required by this subsection shall be a part of the annual report required by section 15 of this Act, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports and the one-hundred-and-eighty-day report required in paragraph (1) of this subsection shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science, Space, and Technology and to the President of the Senate and the Committee on Energy and Natural Resources of the Senate.

(m) Prior to issuing any guarantee or commitment to guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section the Administrator shall submit to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a full and complete report on the proposed demonstration facility and such guarantee, agreement, or contract. Such guarantee, commitment to guarantee, cooperative agreement, or contract shall not be finalized under the authority granted by this section prior to the expiration of ninety calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days

to a day certain) from the date on which such report is received by such committees: *Provided*, That, where the cost of a demonstration facility to be assisted with a guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section exceeds \$50,000,000 such guarantee or commitment to guarantee or cooperative agreement shall not be finalized unless (1) the making of such guarantee or commitment or agreement is specifically authorized by legislation hereafter enacted by the Congress or (2) both Houses pass a resolution stating in substance that the Congress favors the making of such guarantee or commitment or agreement.

(n)(1) There is hereby created within the Treasury a separate fund (hereafter in this section called the "fund") which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purpose of carrying out the program authorized by subsection (b)(1) and subsections (g), (h), (k), and (y) of this section.

(2) There are hereby authorized to be appropriated to the fund for administrative expenses from time to time such amounts as may be necessary to carry out the purposes of the applicable provisions of this section, including, but not limited to, the payments of interest and principal and the payment of interest differentials and redemption of debt. All amounts received by the Administrator as interest payments or repayments of principal on loans which are guaranteed under this section, fees, and any other moneys, property, or assets derived by him from operations under this section shall be deposited in the fund.

(3) All payments on obligations, appropriate expenses (including reimbursements to other Government accounts), and repayments pursuant to operations of the Administrator under this section shall be paid from the fund subject to appropriations. If at any time the Administrator determines that moneys in the fund exceed the present and reasonably foreseeable future requirements of the fund, such excess shall be transferred to the general fund of the Treasury.

(4) If at any time the moneys available in the fund are insufficient to enable the Administrator to discharge his responsibilities as authorized by subsections (b)(1), (g), (h), and (y) of this section, the Administrator shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Administrator from appropriations or other moneys available under paragraph (2) of this subsection for loan guarantees authorized by subsection (b)(1) and subsections (g), (h), (k), and (y) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection.

(5) The provisions of this subsection do not apply to direct loans or planning grants made under subsection (k) of this section.

(o) For the purposes of this section, the term—

(1) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, any territory or possession of the United States,

(2) “United States” means the several States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa,

(3) “borrower” or “applicant” shall include any individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other non-Federal entity, and

(4) “biomass” shall include, but is not limited to, animal and timber waste, municipal and industrial waste, sewage, sludge, and oceanic and terrestrial crops.

(p)(1) An applicant seeking a guarantee or cooperative agreement under subsection (b) or subsection (y) of this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Administrator determines that it satisfactorily meets all the requirements of section 802 of title 46, United States Code, for determining such citizenship, except that the provisions in subsection (a) of such section 802 concerning (A) the citizenship of officers or directors of a corporation, and (B) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable.

(2) The Administrator, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

(q) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after the date of enactment of this section.

(r) Inventions made or conceived in the course of or under a guarantee authorized by this section shall be subject to the title and waiver requirements and conditions of section 9 of this Act.

(s) Nothing in this section shall be construed as affecting the obligations of any person receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

(t) The information maintained by the Administrator under this section shall be made available to the public subject to the provision of section 552 of title 5, United States Code, and section 1905 of title 18, United States Code, and to other Government agencies in a manner that will facilitate its dissemination: *Provided*, That upon a showing satisfactory to the Administrator by any person that any information, or portion thereof obtained under this section by the Administrator directly or indirectly from such person would, if made public, divulge (1) trade secrets or (2) other proprietary information of such person, the Administrator shall not

disclose such information and disclosure thereof shall be punishable under section 1905 of title 18, United States Code: *Provided further*, That the Administrator shall, upon request, provide such information to (A) any delegate of the Administrator for the purpose of carrying out this Act, and (B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Federal Energy Administration, the Environmental Protection Agency, the Federal Power Commission, the General Accounting Office, other Federal agencies, or heads of other Federal agencies, when necessary to carry out their duties and responsibilities under this and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress, or from any committee of Congress upon request of the Chairman. For the purposes of this subsection, the term "person" shall include the borrower.

(u) Notwithstanding any other provision of this section, the authority provided in this section to make guarantees or commitments to guarantee or enter into cooperative agreements under subsection (b)(1) or subsection (y), to make guarantees or commitments to guarantees, or to make loans or grants, under subsection (k), to make contracts under subsection (h), and to use fees and receipts collected under subsections (b), (j), and (y) of this section, and the authorities provided under subsection (n) of this section shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after the date of enactment of this section.

(v) No person in the United States shall on the grounds of race, color, religion, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with assistance made available under this section: *Provided*, That Indian tribes are exempt from the operation of this subsection: *Provided further*, That such exemption shall be limited to the planning and provision of public facilities which are located on reservations and which are provided for members of the affected Indian tribes as the primary beneficiaries.

(w) In carrying out his functions under this section, the Administrator shall provide a realistic and adequate opportunity for small business concerns to participate in the program to the optimum extent feasible consistent with the size and nature of each project.

(x)(1) recipients of financial assistance under this section shall keep such records and other pertinent documents, as the Administrator shall prescribe by regulation, including, but not limited to, records which fully disclose the disposition of the proceeds of such assistance, the cost of any facility, the total cost of the provision of public facilities for which assistance was used and such other records as the Administrator may require to facilitate an effective audit. The Administrator and the Comptroller General of the United States, or their duly authorized representative shall have access, for the purpose of audit, to such records and other pertinent documents.

(2) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance under this section shall be paid

wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276(c)).

(y)(1) The Administrator is authorized in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by or on behalf of any borrower for the purpose of (A) financing the construction and startup costs of demonstration facilities for the conversion of municipal or industrial waste, sewage sludge, or other municipal organic wastes into synthetic fuels, and (B) financing the construction and startup costs of demonstration facilities to generate desirable forms of energy (including synthetic fuels) from municipal or industrial waste, sewage sludge, or other municipal organic waste. With respect to a guarantee or a commitment to guarantee authorized by this subsection; the following subsections of this section shall not apply: (b)(1), (b)(5), (c)(2), (c)(5), (c)(6), (c)(7), (c)(8), (c)(9), (e)(3), (j), (k), and (q).

(2) In the case where the Administrator seeks to guarantee or to make commitments to guarantee as provided by this subsection he is authorized to incur an outstanding indebtedness which at no time shall exceed \$300,000,000.

(3) The Administrator shall apply the following provisions thereto:

(A) With respect to any demonstration facility for the conversion of solid waste (as the term is defined in the Resource Conservation and Recovery Act (42 U.S.C. 6903)), the Administrator, prior to issuing any guarantee under this section, must be in receipt of a certification from the Administrator of the Environmental Protection Agency and any appropriate State or areawide solid waste management planning agency that the proposed application for a guarantee is consistent with any applicable suggested guidelines published pursuant to section 1008(a) of the Resource Conservation and Recovery Act, and any applicable State or regional solid waste management plan.

(B) The amount guaranteed shall not exceed 75 per centum of the total cost of the commercial demonstration facility, as determined by the Administrator: *Provided*, That the amount guaranteed may not exceed 90 per centum of the total cost of the commercial demonstration facility during the period of construction and startup.

(C) The maximum maturity of the obligation shall not exceed thirty years, or 90 per centum of the projected useful economic life of the physical assets of the commercial demonstration facility covered by the guarantee, whichever is less, as determined by the Administrator.

(D) The Administrator shall charge and collect fees for guarantees of obligations in amounts sufficient in the judgment of the Administrator to cover the applicable administrative

costs and probable losses on guaranteed obligations, but in any event not to exceed 1 per centum per annum of the outstanding indebtedness covered by the guarantee.

(E) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after the date of enactment of this section: *Provided*, That project agreements entered into pursuant to this section for any commercial demonstration facility for the conversion of bioconversion of solid waste (as that term is defined in the Resource Conservation and Recovery Act) shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy From Solid Wastes, and provided specifically that in accordance with this agreement (i) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (ii) energy-related projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Energy Research and Development Administration; and (iii) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines pursuant to section 1008 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), as amended, and any applicable State or regional solid waste management plan.

(F) With respect to any obligation which is issued after the enactment of this section by, or in behalf of, any State, political subdivision, or Indian tribe and which is either guaranteed under, or supported by taxes levied by said issuer which are guaranteed under, this section, the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successor in interest) shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954, as amended: *Provided*, That the Administrator shall pay to such issuer out of the fund established by this section such portion of the interest on such obligations, as determined by the Secretary of the Treasury to be appropriated after taking into account current market yields (i) on obligations of said issuer, if any, and (ii) on other obligations with similar terms and conditions the interest on which is not so included in gross income for purposes of chapter 1 of such Code, and in accordance with, such terms and conditions as the Secretary of the Treasury shall require.

[42 U.S.C. 5919]

FINANCIAL SUPPORT PROGRAM FOR MUNICIPAL WASTE REPROCESSING
DEMONSTRATION FACILITIES

SEC. 20. (a) It is the purpose of this section—

(1) to assure adequate Federal support to foster a program to demonstrate municipal waste reprocessing for the production of fuel and energy intensive products; and

(2) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

(b)(1) The Administrator is authorized and directed, to the extent provided in appropriation Acts, to establish such a demonstration program by making grants, contracts, price supports, and cooperative agreements pursuant to this Act or any combination thereof for the establishment of municipal waste reprocessing demonstration facilities. For the purpose of this section municipal waste shall include but not be limited to municipal solid waste, sewage sludge, and other municipal organic wastes.

(2) The aggregate amount of funds available for grants, contracts, price supports, and cooperative agreements for municipal waste reprocessing demonstration facilities shall not exceed \$20,000,000 in the fiscal year ending September 30, 1978.

(3) For purposes of this section the term "municipal" shall include any city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(4) Municipal waste reprocessing demonstration facilities established under this section shall be owned or operated (or both owned and operated) by the municipality and shall involve the recovery of energy or energy intensive products. Such facilities may be established by any public or private entity, by contract or otherwise, as may be determined by the local government which will own or operate (or both own and operate) such facilities and to which financial support is provided. The Federal share for any such facility to which this section applies shall not exceed 75 per centum of the cost of such facility, and not more than \$40,000,000 in Federal funds under this section may be used for the construction of any one facility.

(5) The Administrator shall promulgate such regulations as he deems necessary, pursuant to section 7(a)(4) and section 7(c) (1) and (6) of this Act, for purposes of establishing a price support program for revenue producing products of municipal waste reprocessing demonstration facilities.

(c)(1) The Administrator shall consult with the Environmental Protection Agency to assure that the provisions of section 8004 of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580) are applied in carrying out this section.

(2) Any energy-related research, development, or demonstration project for the conversion (including bioconversion) of municipal waste carried out by the Energy Research and Development Administration pursuant to this or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the development of energy from solid wastes; and specifically, in accordance with such Agreement (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (B) energy-related aspects of projects for recovery of fuels or en-

ergy intensive products from municipal waste as defined in this section shall be the responsibility of the Energy Research and Development Administration including energy-related economic and institutional aspects; and (C) the Environmental Protection Agency shall retain responsibility for the environmental and other economic and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 1008 of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580), and any applicable State or regional waste management plan.

(d)(1) The Administrator shall establish such guidelines as he deems necessary for purposes of obtaining pertinent information from municipalities receiving funding under this section. These guidelines shall include but not be limited to methods of assessment and evaluation of projects authorized under this section. Such assessments and evaluations shall be presented by the Administrator to the House Committee on Science, Space, and Technology and the Senate Committee on Energy and Natural Resources upon the request of either such committee.

(2) The Administrator shall annually submit a report to the Congress concerning the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including but not limited to (A) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility including byproduct production therefrom, and the distribution of such products and byproducts, (B) a statement of the financial condition of each such demonstration facility, (C) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (D) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (E) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section.

(3) The annual reports required by this subsection shall be a part of the annual report required by section 15 of this Act, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science, Space, and Technology and to the President of the Senate and the Senate Committee on Energy and Natural Resources.

(e) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after the date of the enactment of this section.

(f) Nothing in this section shall be construed as abrogating any obligations of any municipality receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regula-

tions or to obtain applicable Federal and State permits, licenses, and certificates.

[42 U.S.C. 5920]

OUTER CONTINENTAL SHELF LANDS ACT

OUTER CONTINENTAL SHELF LANDS ACT

THE ACT OF AUGUST 7, 1953, CHAPTER 345, AS AMENDED

AN ACT To provide for the jurisdiction of the United States over the submerged lands of the outer Continental Shelf, and to authorize the Secretary of the Interior to lease such lands for certain purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Outer Continental Shelf Lands Act".

[43 U.S.C. 1301 note]

SEC. 2. DEFINITIONS.—When used in this Act—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (Public Law 31, Eighty-third Congress, first session), and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior, except that with respect to functions under this Act transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term "Secretary" means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

(c) The term "lease" means any form of authorization which is issued under section 8 or maintained under section 6 of this Act and which authorizes exploration for, and development and production of, minerals;

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation;

(e) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

(f) The term “affected State” means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this Act, any State—

(1) the laws of which are declared, pursuant to section 4(a)(2) of this Act, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of this Act;

(3) which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(g) The term “marine environment” means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

(h) The term “coastal environment” means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(i) The term “human environment” means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

(j) The term “Governor” means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this Act;

(k) The term “exploration” means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such dis-

covery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(l) The term “development” means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

(m) The term “production” means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

(n) The term “antitrust law” means—

- (1) the Sherman Act (15 U.S.C. 1 et seq.);
- (2) the Clayton Act (15 U.S.C. 12 et seq.);
- (3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);
- (4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or
- (5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(o) The term “fair market value” means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

(p) The term “major Federal action” means any action or proposal by the Secretary which is subject to the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(q) The term “minerals” includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from “public lands” as defined in section 103 of the Federal Land Policy and Management Act of 1976.

[43 U.S.C. 1331]

SEC. 3. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.—It is hereby declared to be the policy of the United States that—

- (1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this Act;
- (2) this Act shall be construed in such a manner that the character of the waters above the outer Continental Shelf as

high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts;

(B) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf.

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillage, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

[43 U.S.C. 1332]

SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—

(a)(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental shelf were an area of exclusive Federal jurisdiction located within a state: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

(2)(A) To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of

the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after the date of enactment of this subparagraph, the President shall establish procedures for setting any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the Outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.

(d)(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warn-

ing devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulation issued under this Act, and the owner shall pay the cost of such marking.

(e) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to the artificial islands, installations, and other devices referred to in subsection (a).

(f) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

[43 U.S.C. 1333]

SEC. 5. ADMINISTRATION OF LEASING OF THE OUTER CONTINENTAL SHELF.—(a) The Secretary shall administer the provisions of this Act relating to the leasing of the outer Continental Shelf, and shall prescribe such rules and regulations as may be necessary to carry out such provisions. The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein, and, notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this Act. In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States. In the formulation and promulgation of regulations, the Secretary shall request and give due consideration to the views of the Attorney General with respect to matters which may affect competition. In considering any regulations and in preparing any such views the Attorney General shall consult with the Federal Trade Commission. The regulations prescribed by the Secretary under this subsection shall include, but not be limited to, provisions—

(1) for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit (A) at the request of a lessee, in the national interest, to facilitate proper development of a lease or to allow for the construction or negotiation for use of transportation facilities, or (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment,

and for the extension of any permit or lease affected by suspension or prohibition under clause (A) or (B) by a period equivalent to the period of such suspension or prohibition, except that no permit or lease shall be so extended when such suspension or prohibition is the result of gross negligence or willful violation of such lease or permit, or of regulations issued with respect to such lease or permit;

(2) with respect to cancellation of any lease or permit—

(A) that such cancellation may occur at any time, if the Secretary determines, after a hearing, that—

(i) continued activity pursuant to such lease or permit would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment;

(ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(iii) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force;

(B) that such cancellation shall not occur unless and until operations under such lease or permit shall have been under suspension, or temporary prohibition, by the Secretary, with due extension of any lease or permit term continuously for a period of five years, or for a lesser period upon request of the lessee;¹

(C) that such cancellation shall entitle the lessee to receive such compensation as he shows to the Secretary as being equal to the lesser of (i) the fair value of the canceled rights as of the date of cancellation, taking account of both anticipated revenues from the lease and anticipated costs, including costs of compliance with all applicable regulations and operating orders, liability for cleanup costs or damages, or both, in the case of an oilspill, and all other costs reasonably anticipated on the lease, or (ii) the excess, if any, over the lessee's revenues, from the lease (plus interest thereon from the date of receipt to date of reimbursement) of all consideration paid for the lease and all direct expenditures made by the lessee after the date of issuance of such lease and in connection with exploration or development, or both, pursuant to the lease (plus interest on such consideration and such expenditures from date of payment to date of reimbursement), except that (I) with respect to leases issued before the date of enactment of this subparagraph, such compensation shall be equal to the amount specified in clause (i) of this subparagraph; and (II) in the case of joint leases which are canceled due to the failure of one or more partners to exercise due diligence, the innocent parties shall have the right to seek damages for such loss from the responsible party or parties and the right to acquire the interests of the negligent party or parties and be issued the lease in question;

¹ Probably should end with "and".

- (3) for the assignment or relinquishment of a lease;
- (4) for unitization, pooling, and drilling agreements;
- (5) for the subsurface storage of oil and gas other than by the Federal Government;
- (6) for drilling or easements necessary for exploration, development, and production;
- (7) for the prompt and efficient exploration and development of a lease area; and
- (8) for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), to the extent that activities authorized under this Act significantly affect the air quality of any State.

(b) The issuance and continuance in effect of any lease, or of any assignment or other transfer of any lease, under the provisions of this Act shall be conditioned upon compliance with regulations issued under this Act.

(c) Whenever the owner of a nonproducing lease fails to comply with any of the provisions of this Act, or of the lease, or of the regulations issued under this Act, such lease may be canceled by the Secretary, subject to the right of judicial review as provided in this Act, if such default continues for the period of thirty days after mailing of notice by registered letter to the lease owner at his record post office address.

(d) Whenever the owner of any producing lease fails to comply with any of the provisions of this Act, of the lease, or of the regulations issued under this Act, such lease may be forfeited and canceled by a appropriate proceeding in any United States district court having jurisdiction under the provisions of this Act.

(e) Rights-of-way through the submerged lands of the outer Continental Shelf, whether or not such lands are included in a lease maintained or issued pursuant to this Act, may be granted by the Secretary for pipeline purposes for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, or where appropriate the Secretary of Transportation, including (as provided in section 21(b) of this Act) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial and upon the express condition that oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste. Failure to comply with the provisions of this section or the regulations and conditions prescribed under this section shall be ground for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States district court having jurisdiction under the provisions of this Act.

(f)(1) Except as provided in paragraph (2), every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf

of oil or gas shall require that the pipeline be operated in accordance with the following competitive principles:

(A) The pipeline must provide open and nondiscriminatory access to both owner and nonowner shippers.

(B) Upon the specific request of one or more owner or nonowner shippers able to provide a guaranteed level of throughput, and on the condition that the shipper or shippers requesting such expansion shall be responsible for bearing their proportionate share of the costs and risks related thereto, the Federal Energy Regulatory Commission may, upon finding, after a full hearing with due notice thereof to the interested parties, that such expansion is within technological limits and economic feasibility, order a subsequent expansion of throughput capacity of any pipeline for which the permit, license, easement, right-of-way, or other grant of authority is approved or issued after the date of enactment of this subparagraph. This subparagraph shall not apply to any such grant of authority approved or issued for the Gulf of Mexico or the Santa Barbara Channel.

(2) The Federal Energy Regulatory Commission may, by order or regulation, exempt from any or all of the requirements of paragraph (1) of this subsection any pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed.

(3) The Secretary of Energy and the Federal Energy Regulatory Commission shall consult with and give due consideration to the views of the Attorney General on specific conditions to be included in any permit, license, easement, right-of-way, or grant of authority in order to ensure that pipelines are operated in accordance with the competitive principles set forth in paragraph (1) of this subsection. In preparing any such views, the Attorney General shall consult with the Federal Trade Commission.

(4) Nothing in this subsection shall be deemed to limit, abridge, or modify any authority of the United States under any other provision of law with respect to pipelines on or across the outer Continental Shelf.

(g)(1) The lessee shall produce any oil or gas, or both, obtained pursuant to an approved development and production plan, at rates consistent with any rule or order issued by the President in accordance with any provision of law.

(2) If no rule or order referred to in paragraph (1) has been issued, the lessee shall produce such oil or gas, or both, at rates consistent with any regulation promulgated by the Secretary of Energy which is to assure the maximum rate of production which may be sustained without loss of ultimate recovery of oil or gas, or both, under sound engineering and economic principles, and which is safe for the duration of the activity covered by the approved plan. The Secretary may permit the lessee to vary such rates if he finds that such variance is necessary.

(h) The head of any Federal department or agency who takes any action which has a direct and significant effect on the outer Continental Shelf or its development shall promptly notify the Secretary of such action and the Secretary shall thereafter notify the Governor of any affected State and the Secretary may thereafter

recommend such changes in such action as are considered appropriate.

(i) After the date of enactment of this section, no holder of any oil and gas lease issued or maintained pursuant to this Act shall be permitted to flare natural gas from any well unless the Secretary finds that there is no practicable way to complete production of such gas, or that such flaring is necessary to alleviate a temporary emergency situation or to conduct testing or work-over operations.

(j) COOPERATIVE DEVELOPMENT OF COMMON HYDROCARBON-BEARING AREAS.—

(1) FINDINGS.—

(A) The Congress of the United States finds that the unrestrained competitive production of hydrocarbons from a common hydrocarbon-bearing geological area underlying the Federal and State boundary may result in a number of harmful national effects, including—

(i) the drilling of unnecessary wells, the installation of unnecessary facilities and other imprudent operating practices that result in economic waste, environmental damage, and damage to life and property;

(ii) the physical waste of hydrocarbons and an unnecessary reduction in the amounts of hydrocarbons that can be produced from certain hydrocarbon-bearing areas; and

(iii) the loss of correlative rights which can result in the reduced value of national hydrocarbon resources and disorders in the leasing of Federal and State resources.

(2) PREVENTION OF HARMFUL EFFECTS.—The Secretary shall prevent, through the cooperative development of an area, the harmful effects of unrestrained competitive production of hydrocarbons from a common hydrocarbon-bearing area underlying the Federal and State boundary.

[43 U.S.C. 1334]

SEC. 6. MAINTENANCE OF LEASES ON OUTER CONTINENTAL SHELF.—(a) The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from the effective date of this Act, or within such further period or periods as provided in section 7 hereof or as may be fixed from time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in paragraph (1) of this subsection, (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force

and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 7 hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and the effective date of this Act, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after the effective date of this Act, are paid to the Secretary, who shall deposit such payments in the Treasury in accordance with section 9 of this Act;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on the effective date of this Act;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than 12½ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary, to the increase of the royalty to the minimum herein specified;

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and the effective date of this Act and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on the effective date of this Act;

(10) such lease will terminate within a period of not more than five years from the effective date of this Act in the absence of production or operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

(b) Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this

section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provisions of paragraphs (8), (9) and (10) of subsection (a) of this section, as to royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 5 of this Act prescribe within ninety days after making his determination that such lease meets the requirements of subsection (a) of this section: *Provided, however,* That any rights to sulphur under any lease maintained under the provisions of this subsection shall not extend beyond the primary term of such lease or any extension thereof under the provisions of such subsection (b) unless sulphur is being produced in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by such lease on the date of expiration of such primary term or extension: *Provided further,* That if sulphur is being produced in paying quantities on such date, then such rights shall continue to be maintained in accordance with such lease and the provisions of this Act: *Provided further,* That, if the primary term of a lease being maintained under subsection (b) hereof has expired prior to the effective date of this Act and oil or gas is being produced in paying quantities on such date, then such rights to sulphur as the lessee may have under such lease shall continue for twenty-four months from the effective date of this Act and as long thereafter as sulphur is produced in paying quantities, or drilling, well working, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by the lease.

(c) The permission granted in subsection (b) of this section shall not be construed to be a waiver of such claims, if any, as the United States may have against the lessor or the lessee or any other person respecting sums payable or paid for or under the lease, or respecting activities conducted under the lease, prior to the effective date of this Act.

(d) Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

(e) In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in the Submerged Lands Act, as well as lands of the outer Continental Shelf,

the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf.

[43 U.S.C. 1335]

SEC. 7. CONTROVERSY OVER JURISDICTION.—In the event of a controversy between the United States and a State as to whether or not lands are subject to the provisions of this Act, the Secretary is authorized, notwithstanding the provisions of subsections (a) and (b) of section 6 of this Act, and with the concurrence of the Attorney General of the United States, to negotiate and enter into agreements with the State, its political subdivision or grantee or a lessee thereof, respecting operations under existing mineral leases and payment and impounding of rents, royalties, and other sums payable thereunder, or with the State, its political subdivision or grantee, respecting the issuance or nonissuance of new mineral leases pending the settlement or adjudication of the controversy. The authorization contained in the preceding sentence of this section shall not be construed to be a limitation upon the authority conferred on the Secretary in other sections of this Act. Payments made pursuant to such agreement, or pursuant to any stipulation between the United States and a State, shall be considered as compliance with section 6(a)(4) hereof. Upon the termination of such agreement or stipulation by reason of the final settlement or adjudication of such controversy, if the lands subject to any mineral lease are determined to be in whole or in part lands subject to the provisions of this Act, the lessee, if he has not already done so, shall comply with the requirements of section 6(a), and thereupon the provisions of section 6(b) shall govern such lease. The notice concerning "Oil and Gas Operations in the Submerged Coastal Lands of the Gulf of Mexico" issued by the Secretary on December 11, 1950 (15 F. R. 8835), as amended by the notice dated January 26, 1951 (16 F. R. 953), and as supplemented by the notices dated February 2, 1951 (16 F. R. 1203), March 5, 1951 (16 F. R. 2195), April 23, 1951 (16 F. R. 3623), June 25, 1951 (16 F. R. 6404), August 22, 1951 (16 F. R. 8720), October 24, 1951 (16 F. R. 10998), December 21, 1951 (17 F. R. 43), March 25, 1952 (17 F. R. 2821), June 26, 1952 (17 F. R. 5833), and December 24, 1952 (18 F. R. 48), respectively, is hereby approved and confirmed.

[43 U.S.C. 1336]

SEC. 8. LEASING OF OUTER CONTINENTAL SHELF.—(a)(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 6 of this Act. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of—

(A) cash bonus bid with a royalty at not less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

(B) variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;

(C) cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(E) fixed cash bonus with the net profit share reserved as the bid variable;

(F) cash bonus bid with a royalty at no less than 12½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(G) work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold;

(H) cash bonus bid with royalty at no less than 12 and ½ per centum fixed by the Secretary in amount or value of production saved, removed, or sold, and with suspension of royalties for a period, volume, or value of production determined by the Secretary, which suspensions may vary based on the price of production from the lease; or

(I) subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this Act, except that no such bidding system or modification shall have more than one bid variable.

(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years after the date of the lease sale.

(3)(A) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

(B) In the Western and Central Planning Areas of the Gulf of Mexico and the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, the Secretary may, in order to—

(i) promote development or increased production on producing or non-producing leases; or

(ii) encourage production of marginal resources on producing or non-producing leases;

through¹ primary, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease(s). With the lessee's consent, the Secretary may make other modifications to the royalty or net profit share terms of the lease in order to achieve these purposes.

(C)(i) Notwithstanding the provisions of this Act other than this subparagraph, with respect to any lease or unit in existence on the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act meeting the requirements of this subparagraph, no royalty payments shall be due on new production, as defined in clause (iv) of this subparagraph, from any lease or unit located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, until such volume of production as determined pursuant to clause (ii) has been produced by the lessee.

(ii) Upon submission of a complete application by the lessee, the Secretary shall determine within 180 days of such application whether new production from such lease or unit would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph. In making such determination, the Secretary shall consider the increased technological and financial risk of deep water development and all costs associated with exploring, developing, and producing from the lease. The lessee shall provide information required for a complete application to the Secretary prior to such determination. The Secretary shall clearly define the information required for a complete application under this section. Such application may be made on the basis of an individual lease or unit. If the Secretary determines that such new production would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) shall not apply to such production. If the Secretary determines that such new production would not be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i), the Secretary must determine the volume of production from the lease or unit on which no royalties would be due in order to make such new production economically viable; except that for new production as defined in clause (iv)(I), in no case will that volume be less than 17.5 million barrels of oil equivalent in water depths of 200 to 400 meters, 52.5 million barrels of oil equivalent in 400–800 meters of water, and 87.5 million barrels of oil equivalent in water depths greater than 800 meters. Redetermination of the applicability of clause (i) shall be undertaken by the Secretary when requested by the lessee prior to the commencement of the new production and upon significant change in the factors upon which the original determination was made. The Secretary shall make such redetermination within 120 days of submission of a complete application. The Secretary may extend the time period for making any determination or redetermination under this clause for 30 days, or longer if agreed to by the applicant, if circumstances so warrant. The lessee shall be notified in writing of any determination or rede-

¹ Indentation so in original. Probably should be flush.

termination and the reasons for and assumptions used for such determination. Any determination or redetermination under this clause shall be a final agency action. The Secretary's determination or redetermination shall be judicially reviewable under section 10(a) of the Administrative Procedures Act (5 U.S.C. 702), only for actions filed within 30 days of the Secretary's determination or redetermination.

(iii) In the event that the Secretary fails to make the determination or redetermination called for in clause (ii) upon application by the lessee within the time period, together with any extension thereof, provided for by clause (ii), no royalty payments shall be due on new production as follows:

(I) For new production, as defined in clause (iv)(I) of this subparagraph, no royalty shall be due on such production according to the schedule of minimum volumes specified in clause (ii) of this subparagraph.

(II) For new production, as defined in clause (iv)(II) of this subparagraph, no royalty shall be due on such production for one year following the start of such production.

(iv) For purposes of this subparagraph, the term "new production" is—

(I) any production from a lease from which no royalties are due on production, other than test production, prior to the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or

(II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document, or supplement thereto that would expand production significantly beyond the level anticipated in the Development Operations Coordination Document, approved by the Secretary after the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act.

(v) During the production of volumes determined pursuant to clauses (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for light sweet crude oil exceeds \$28.00 per barrel, any production of oil will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clause (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds \$28.00. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

(vi) During the production of volumes determined pursuant to clause (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for natural gas exceeds \$3.50 per million British thermal units, any production of natural gas will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clauses (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds \$3.50. After the end of the calendar year, when the

new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

(vii) The prices referred to in clauses (v) and (vi) of this subparagraph shall be changed during any calendar year after 1994 by the percentage, if any, by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.

(4)(A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes a resolution of disapproval within thirty days after receipt of the bidding system.

(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress—

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and

(ii) 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.

(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representative, as the case may be.

(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same bidding system which has been referred to the committee.

(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.

(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this para-

graph, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.

(5)(A) During the five-year period commencing on the date of enactment of this subsection, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this Act, require, as to no more than 10 per centum of the tracts offered each year, each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random for the acquisition of valid statistical data if such bidding alternative is otherwise consistent with the provisions of this Act.

(B) The bidding systems authorized by paragraph (1) of this subsection, other than the system authorized by subparagraph (A), shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period beginning on the date of enactment of this subsection, unless the Secretary determines that the requirements set forth in this subparagraph are inconsistent with the purposes and policies of this Act.

(6) At least ninety days prior to notice of any lease sale under subparagraph (D), (E), (F), or, if appropriate, (H) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee.

(7) After an oil and gas lease is granted pursuant to any of the work commitment options of paragraph (1) of this subsection—

(A) the lessee, at its option, shall deliver to the Secretary upon issuance of the lease either (i) a cash deposit for the full amount of the exploration work commitment, or (ii) a performance bond in form and substance and with a surety satisfactory to the Secretary, in the principal amount of such exploration work commitment assuring the Secretary that such commit-

ment shall be faithfully discharged in accordance with this section, regulations, and the lease; and for purposes of this subparagraph, the principal amount of such cash deposit or bond may, in accordance with regulations, be periodically reduced upon proof, satisfactory to the Secretary, that a portion of the exploration work commitment has been satisfied;

(B) 50 per centum of all exploration expenditures on, or directly related to, the lease, including, but not limited to (i) geological investigations and related activities, (ii) geophysical investigations including seismic, geomagnetic, and gravity surveys, data processing and interpretation, and (iii) exploratory drilling, core drilling, re-drilling, and well completion or abandonment, including the drilling of wells sufficient to determine the size and area extent of any newly discovered field, and including the cost of mobilization and demobilization of drilling equipment, shall be included in satisfaction of the commitment, except that the lessee's general overhead cost shall not be so included against the work commitment, but its cost (including employee benefits) of employees directly assigned to such exploration work shall be so included; and

(C) if at the end of the primary term of the lease, including any extension thereof, the full dollar amount of the exploration work commitment has not been satisfied, the balance shall then be paid in cash to the Secretary.

(8) Not later than thirty days before any lease sale, the Secretary shall submit to the Congress and publish in the Federal Register a notice—

(A) identifying any bidding system which will be utilized for such lease sale and the reasons for the utilization of such bidding system; and

(B) designating the lease tracts selected which are to be offered in such sale under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (H) of paragraph (1), and the reasons such lease tracts are to be offered under a particular bidding system.

(b) An oil and gas lease issued pursuant to this section shall—

(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

(2) be for an initial period of—

(A) five years; or

(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions, and as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

(4) entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this Act;

(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 5 of this Act;

(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced on such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

(c)(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease may create or maintain a situation inconsistent with the antitrust laws, the Secretary may—

(A) refuse (i) to accept an otherwise qualified bid for such lease, or (ii) to issue such lease, notwithstanding subsection (a) of this section; or

(B) issue such lease, and notify the lessee and the Attorney General of the reason for such decision.

(4)(A) Nothing in this subsection shall restrict the power under any other Act or the common law of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(B) Neither the issuance of a lease nor anything in this subsection shall modify or abridge any private right of action under the antitrust laws.

(d) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases.

(e) No lease issued under this Act may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General.

(f) Nothing in this Act shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(g)(1) At the time of soliciting nominations for the leasing of lands containing tracts wholly or partially within three nautical miles of the seaward boundary of any coastal State, and subsequently as new information is obtained or developed by the Secretary, the Secretary, in addition to the information required by section 26 of this Act, shall provide the Governor of such State—

(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

(B) at the request of the Governor of such State, all information from all sources concerning the geographical, geological, and ecological characteristics of such tracts;

(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

(D) at the request of the Governor of such State, an identification of any field, geological structure, or trap located wholly or partially within three nautical miles of the seaward boundary of such coastal State, including all information relating to the entire field, geological structure, or trap.

The provisions of the first sentence of subsection (c) and the provisions of subsections (e)–(h) of section 26 of this Act shall be applicable to the release by the Secretary of any information to any coastal State under this paragraph. In addition, the provisions of subsections (c) and (e)–(h) of section 26 of this Act shall apply in their entirety to the release by the Secretary to any coastal State of any information relating to Federal lands beyond three nautical miles of the seaward boundary of such coastal State.

(2) Notwithstanding any other provision of this Act, the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly (or, in the case of Alaska, partially until seven years from the date of settlement of any boundary dispute that is the subject of an agreement under section 7 of this Act entered into prior to January 1, 1986 or until April 15, 1993 with respect to any other tract) within three nautical miles of the seaward boundary of any coastal State, or, (except as provided above for Alaska) in the case where a Federal tract lies partially within three nautical miles of the seaward boundary, a percentage of bo-

nuses, rents, royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of such tract equal to the percentage of surface acreage of the tract that lies within such three nautical miles. Except as provided in paragraph (5) of this subsection, not later than the last business day of the month following the month in which those revenues are deposited in the Treasury, the Secretary shall transmit to such coastal State 27 percent of those revenues, together with all accrued interest thereon. The remaining balance of such revenues shall be transmitted simultaneously to the miscellaneous receipts account of the Treasury of the United States.

(3) Whenever the Secretary or the Governor of a coastal State determines that a common potentially hydrocarbon-bearing area may underlie the Federal and State boundary, the Secretary or the Governor shall notify the other party in writing of his determination and the Secretary shall provide to the Governor notice of the current and projected status of the tract or tracts containing the common potentially hydrocarbon-bearing area. If the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any common potentially hydrocarbon-bearing area, by unitization or other royalty sharing agreement, pursuant to existing law. If the Secretary and the Governor do not enter into an agreement, the Secretary may nevertheless proceed with the leasing of the tract or tracts. Any revenue received by the United States under such an agreement shall be subject to the requirements of paragraph (2).

(4) The deposits in the Treasury account described in this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

(5)(A) When there is a boundary dispute between the United States and a State which is subject to an agreement under section 7 of this Act, the Secretary shall credit to the account established pursuant to such agreement all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary asserted by the State, if that money has not otherwise been deposited in such account. Proceeds of an escrow account established pursuant to an agreement under section 7 shall be distributed as follows:

(i) Twenty-seven percent of all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978, of any tract which lies wholly within three nautical miles of the seaward boundary asserted by the Federal Government in the boundary dispute, together with all accrued interest thereon, shall be paid to the State either—

(I) within thirty days of December 1, 1987, or

(II) by the last business day of the month following the month in which those revenues are deposited in the Treasury, whichever date is later.

(ii) Upon the settlement of a boundary dispute which is subject to a section 7 agreement between the United States and a State, the Secretary shall pay to such State any additional moneys due such State from amounts deposited in or credit to the escrow account. If there is insufficient money deposited in the escrow account, the Secretary shall transmit, from any revenues derived from any lease of Federal lands under this Act, the remaining balance due such State in accordance with the formula set forth in section 8004(b)(1)(B) of the Outer Continental Shelf Lands Act Amendments of 1985.

(B) This paragraph applies to all Federal oil and gas lease sales, under this Act, including joint lease sales, occurring after September 18, 1978.

(6) This section shall be deemed to take effect on October 1, 1985, for purposes of determining the amounts to be deposited in the separate account and the States' shares described in paragraph (2).

(7) When the Secretary leases any tract which lies wholly or partially within three miles of the seaward boundary of two or more States, the revenues from such tract shall be distributed as otherwise provided by this section, except that the State's share of such revenues that would otherwise result under this section shall be divided equally among such States.

(h) Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title or interest in, any submerged lands.

(i) In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of subsection (a) of section 6 of this Act, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(j) A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production of value of the sulphur at the wellhead, and (4) contained such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(k)(1) The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(2)(A) Notwithstanding paragraph (1), the Secretary may negotiate with any person an agreement for the use of Outer Continental Shelf sand, gravel and shell resources—

(i) for use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

(ii) for use in a construction project, other than a project described in clause (i), that is funded in whole or in part by or authorized by the Federal Government.

(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against a Federal, State, or local government agency.

(C) The Secretary may, through this paragraph and in consultation with the Secretary of Commerce, seek to facilitate projects in the coastal zone, as such term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453), that promote the policy set forth in section 303 of that Act (16 U.S.C. 1452).

(D) Any Federal agency which proposes to make use of sand, gravel and shell resources subject to the provisions of this Act shall enter into a Memorandum of Agreement with the Secretary concerning the potential use of those resources. The Secretary shall notify the Committee on Merchant Marine and Fisheries and the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any proposed project for the use of those resources prior to the use of those resources.

(l) Notices of sale of leases, and the terms of bidding authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(m) All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 9 of this Act.

(n) The issuance of any lease by the Secretary pursuant to this Act, or the making of any interim arrangements by the Secretary pursuant to section 7 of this Act shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(o) The Secretary may cancel any lease obtained by fraud or misrepresentation.

[43 U.S.C. 1337]

SEC. 9. DISPOSITION OF REVENUES.—All rentals, royalties, and other sums paid to the Secretary or the Secretary of the Navy

under any lease on the outer Continental Shelf for the period from June 5, 1950, to date, and thereafter shall be deposited in the Treasury of the United States and credited to miscellaneous receipts.

[43 U.S.C. 1338]

【SEC. 10. Repealed by section 8(b) of P.L. 104–185, 110 Stat. 1717.】

SEC. 11. GEOLOGICAL AND GEOPHYSICAL EXPLORATIONS.—(a)(1) Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area.

(2) The provisions of paragraph (1) of this subsection shall not apply to any person conducting explorations pursuant to an approved exploration plan on any area under lease to such person pursuant to the provisions of this Act.

(b) Except as provided in subsection (f) of this section, beginning ninety days after the date of enactment of this subsection, no exploration pursuant to any oil and gas lease issued or maintained under this Act may be undertaken by the holder of such lease, except in accordance with the provisions of this section.

(c)(1) Except as otherwise provided in the Act, prior to commencing exploration pursuant to any oil and gas lease issued or maintained under this Act, the holder thereof shall submit an exploration plan to the Secretary for approval. Such plan may apply to more than one lease held by a lessee in any one region of the outer Continental Shelf, or by a group of lessees acting under a unitization, pooling, or drilling agreement, and shall be approved by the Secretary if he finds that such plan is consistent with the provisions of this Act, regulations prescribed under this Act, including regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act, and the provisions of such lease. The Secretary shall require such modifications of such plan as are necessary to achieve such consistency. The Secretary shall approve such plan, as submitted or modified, within thirty days of its submission, except that the Secretary shall disapprove such plan if he determines that (A) any proposed activity under such plan would result in any condition described in section 5(a)(2)(A)(i) of this Act, and (B) such proposed activity cannot be modified to avoid such condition. If the Secretary disapproves a plan under the preceding sentence, he may, subject to section 5(a)(2)(B) of this Act, cancel such lease and the lessee shall be entitled to compensation in accordance with the regulations prescribed under section 5(a)(2)(C) (i) or (ii) of this Act.

(2) The Secretary shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section

307(c)(3)(B) (i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

(3) An exploration plan submitted under this subsection shall include, in the degree of detail which the Secretary may by regulation require—

(A) a schedule of anticipated exploration activities to be undertaken;

(B) a description of equipment to be used for such activities;

(C) the general location of each well to be drilled; and

(D) such other information deemed pertinent by the Secretary.

(4) The Secretary may, by regulation, require that such plan be accompanied by a general statement of development and production intentions which shall be for planning purposes only and which shall not be binding on any party.

(d) The Secretary may, by regulation, require any lessee operating under an approved exploration plan to obtain a permit prior to drilling any well in accordance with such plan.

(e)(1) If a significant revision of an exploration plan approved under this subsection is submitted to the Secretary, the process to be used for the approval of such revision shall be the same as set forth in subsection (c) of this section.

(2) All exploration activities pursuant to any lease shall be conducted in accordance with an approved exploration plan or an approved revision of such plan.

(f)(1) Exploration activities pursuant to any lease for which a drilling permit has been issued or for which an exploration plan has been approved, prior to ninety days after the date of enactment of this subsection, shall be considered in compliance with this section, except that the Secretary may, in accordance with section 5(a)(1)(B) of this Act, order a suspension or temporary prohibition of any exploration activities and require a revised exploration plan.

(2) The Secretary may require the holder of a lease described in paragraph (1) of this subsection to supply a general statement in accordance with subsection (c)(4) of this section, or to submit other information.

(3) Nothing in this subsection shall be construed to amend the terms of any permit or plan to which this subsection applies.

(g) Any permit for geological explorations authorized by this section shall be issued only if the Secretary determines, in accordance with regulations issued by the Secretary that—

(1) the applicant for such permit is qualified;

(2) the exploration will not interfere with or endanger operations under any lease issued or maintained pursuant to this Act; and

(3) such exploration will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or archeological significance.

(h) The Secretary shall not issue a lease or permit for, or otherwise allow, exploration, development, or production activities within fifteen miles of the boundaries of the Point Reyes Wilderness as

depicted on a map entitled "Wilderness Plan, Point Reyes National Seashore", numbered 612-90,000-B and dated September 1976, unless the State of California issues a lease or permit for, or otherwise allows, exploration, development, or production activities on lands beneath navigable waters (as such term is defined in section 2 of the Submerged Lands Act) of such State which are adjacent to such Wilderness.

[43 U.S.C. 1340]

SEC. 12. RESERVATIONS.—(a) The President of the United States may, from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf.

(b) In time of war, or when the President shall so prescribe, the United States shall have the right of first refusal to purchase at the market price all or any portion of any mineral produced from the outer Continental Shelf.

(c) All leases issued under this Act, and leases, the maintenance and operation of which are authorized under this Act, shall contain or be construed to contain a provision whereby authority is vested in the Secretary, upon a recommendation of the Secretary of Defense, during a state of war or national emergency declared by the Congress or the President of the United States after the effective date of this Act, to suspend operations under any lease; and all such leases shall contain or be construed to contain provisions for the payment of just compensation to the lessee whose operations are thus suspended.

(d) The United States reserves and retains the right to designate by and through the Secretary of Defense, with the approval of the President, as areas restricted from exploration and operation that part of the outer Continental Shelf needed for national defense; and so long as such designation remains in effect no exploration or operations may be conducted on any part of the surface of such area except with the concurrence of the Secretary of Defense; and if operations or production under any lease theretofore issued on lands within any such restricted area shall be suspended, any payment of rentals, minimum royalty, and royalty prescribed by such lease likewise shall be suspended during such period of suspension of operation and production, and the term of such lease shall be extended by adding thereto any such suspension period, and the United States shall be liable to the lessee for such compensation as is required to be paid under the Constitution of the United States.

(e) All uranium, thorium, and all other materials determined pursuant to paragraph (1) of subsection (b) of section 5 of the Atomic Energy Act of 1946, as amended, to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the subsoil or seabed of the outer Continental Shelf are hereby reserved for the use of the United States.

(f) The United States reserves and retains the ownership of and the right to extract all helium, under such rules and regulations as shall be prescribed by the Secretary, contained in gas produced from any portion of the outer Continental Shelf which may be subject to any lease maintained or granted pursuant to this Act, but the helium shall be extracted from such gas so as to cause no

substantial delay in the delivery of gas produced to the purchaser of such gas.

[43 U.S.C. 1341]

SEC. 13. NAVAL PETROLEUM RESERVE EXECUTIVE ORDER REPEALED.—Executive Order Numbered 10426, dated January 16, 1953, entitled “Setting Aside Submerged Lands of the Continental Shelf as a Naval Petroleum Reserve”, is hereby revoked.

[43 U.S.C. 524 note]

SEC. 14. PRIOR CLAIMS NOT AFFECTED.—Nothing herein contained shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this Act and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: *Provided, however,* That nothing herein contained is intended or shall be construed as a finding, interpretation, or construction by the Congress that the law under which such rights may be claimed in fact applies to the lands subject to this Act or authorizes or compels the granting of such rights in such lands, and that the determination of the applicability or effect of such law shall be unaffected by anything herein contained.

[43 U.S.C. 1342]

【SEC. 15. Repealed by section 901(l)(1) of Public Law 105–362, 112 Stat. 3290.】

SEC. 16. APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

[43 U.S.C. 1331 note]

SEC. 17. SEPARABILITY.—If any provision of this Act, or any section, subsection, sentence, clause, phrase or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase or individual word to other persons and circumstances shall not be affected thereby.

[43 U.S.C. 1331 note]

SEC. 18. OUTER CONTINENTAL SHELF LEASING PROGRAM.—(a) The Secretary, pursuant to procedures set forth in subsections (c) and (d) of this section, shall prepare and periodically revise, and maintain an oil and gas leasing program to implement the policies of this Act. The leasing program shall consist of a schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval. Such leasing program shall be prepared and maintained in a manner consistent with the following principles:

(1) Management of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the po-

tential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.

(2) Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of—

(A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

(B) an equitable sharing of developmental benefits and environmental risks among the various regions;

(C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

(D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf;

(E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

(F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

(G) the relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf; and

(H) relevant environmental and predictive information for different areas of the outer Continental Shelf.

(3) The Secretary shall select the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

(4) Leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.

(b) The leasing program shall include estimates of the appropriations and staff required to—

(1) obtain resource information and any other information needed to prepare the leasing program required by this section;

(2) analyze and interpret the exploratory data and any other information which may be compiled under the authority of this Act;

(3) conduct environmental studies and prepare any environmental impact statement required in accordance with this Act and with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(4) supervise operations conducted pursuant to each lease in the manner necessary to assure due diligence in the exploration and development of the lease area and compliance with the requirement of applicable laws and regulations, and with the terms of the lease.

(c)(1) During the preparation of any proposed leasing program under this section, the Secretary shall invite and consider suggestions for such program from any interested Federal agency, including the Attorney General, in consultation with the Federal Trade Commission, and from the Governor of any State which may become an affected State under such proposed program. The Secretary may also invite or consider any suggestions from the executive of any affected local government in such an affected State, which have been previously submitted to the Governor of such State, and from any other person.

(2) After such preparation and at least sixty days prior to publication of a proposed leasing program in the Federal Register pursuant to paragraph (3) of this subsection, the Secretary shall submit a copy of such proposed program to the Governor of each affected State for review and comment. The Governor may solicit comments from those executives of local governments in his State which he, in his discretion, determines will be affected by the proposed program. If any comment by such Governor is received by the Secretary at least fifteen days prior to submission to the Congress pursuant to such paragraph (3) and includes a request for any modification of such proposed program, the Secretary shall reply in writing, granting or denying such request in whole or in part, or granting such request in such modified form as the Secretary considers appropriate, and stating his reasons therefor. All such correspondence between the Secretary and Governor of any affected State, together with any additional information and data relating thereto, shall accompany such proposed program when it is submitted to the Congress.

(3) Within nine months after the date of enactment of this section, the Secretary shall submit a proposed leasing program to the Congress, the Attorney General, and the Governors of affected States, and shall publish such proposed program in the Federal Register. Each Governor shall, upon request, submit a copy of the proposed leasing program to the executive of any local government affected by the proposed program.

(d)(1) Within ninety days after the date of publication of a proposed leasing program, the Attorney General may, after consultation with the Federal Trade Commission, submit comments on the anticipated effects of such proposed program upon competition. Any State, local government, or other person may submit comments and recommendations as to any aspect of such proposed program.

(2) At least sixty days prior to approving a proposed leasing program, the Secretary shall submit it to the President and the Congress, together with any comments received. Such submission shall indicate why any specific recommendation of the Attorney General or a State or local government was not accepted.

(3) After the leasing program has been approved by the Secretary, or after eighteen months following the date of enactment of this section, whichever first occurs, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review pursuant to the provisions of this Act.

(e) The Secretary shall review the leasing program approved under this section at least once each year. He may revise and reapprove such program, at any time, and such revision and reapproval, except in the case of a revision which is not significant, shall be in the same manner as originally developed.

(f) The Secretary shall, by regulation, establish procedures for—

(1) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(2) public notice of and participation in development of the leasing program;

(3) review by State and local governments which may be impacted by the proposed leasing;

(4) periodic consultation with State and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on the outer Continental Shelf, including those involved in fish and shellfish recovery, and recreational activities; and

(5) consideration of the coastal zone management program being developed or administered by an affected coastal State pursuant to section 305 or section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454, 1455).

Such procedures shall be applicable to any significant revision or reapproval of the leasing program.

(g) The Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information (including interpretations of such data, survey, report, or other information) which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this Act. Data of a classified nature provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. The Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this Act, established by regulation, or agreed to by the parties.

(h) The heads of all Federal departments and agencies shall provide the Secretary with any nonprivileged or nonproprietary information he requests to assist him in preparing the leasing program and may provide the Secretary with any privileged or proprietary information he requests to assist him in preparing the leasing program. Privileged or proprietary information provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary shall utilize the existing capabilities and resources of such Federal departments and agencies by appropriate agreement.

[43 U.S.C. 1344]

SEC. 19. COORDINATION AND CONSULTATION WITH AFFECTED STATES AND LOCAL GOVERNMENTS.—(a) Any Governor of any affected State or the executive of any affected local government in such State may submit recommendations to the Secretary regard-

ing the size, timing, or location of a proposed lease sale or with respect to a proposed development and production plan. Prior to submitting recommendations to the Secretary, the executive of any affected local government in any affected State must forward his recommendations to the Governor of such State.

(b) Such recommendations shall be submitted within sixty days after notice of such proposed lease sale or after receipt of such development and production plan.

(c) The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. For purposes of this subsection, a determination of the national interest shall be based on the desirability of obtaining oil and gas supplies in a balanced manner and on the findings, purposes, and policies of this Act. The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

(d) The Secretary's determination that recommendations provide, or do not provide, for a reasonable balance between the national interest and the well-being of the citizens of the affected State shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale or a proposed development and production plan in any suit or judicial review pursuant to section 23 of this Act, unless found to be arbitrary or capricious.

(e) The Secretary is authorized to enter into cooperative agreements with affected States for purposes which are consistent with this Act and other applicable Federal law. Such agreements may include, but need not be limited to, the sharing of information (in accordance with the provisions of section 26 of this Act), the joint utilization of available expertise, the facilitating of permitting procedures, joint planning and review, and the formation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws, regulations, and stipulations relevant to outer Continental Shelf operations both onshore and offshore.

[43 U.S.C. 1345]

SEC. 20. ENVIRONMENTAL STUDIES.—(a)(1) The Secretary shall conduct a study of any area or region included in any oil and gas lease sale or other lease in order to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas or other mineral development in such area or region.

(2) Each study required by paragraph (1) of this subsection shall be commenced not later than six months after the date of enactment of this section with respect to any area or region where a lease sale has been held or announced by publication of a notice of proposed lease sale before such date of enactment, and not later than six months prior to the holding of a lease sale with respect

to any area or region where no lease sale has been held or scheduled before such date of enactment. In the case of an agreement under section 8(k)(2), each study required by paragraph (1) of this subsection shall be commenced not later than 6 months prior to commencing negotiations for such agreement or the entering into the memorandum of agreement as the case may be. The Secretary may utilize information collected in any study prior to such date of enactment.

(3) In addition to developing environmental information, any study of an area or region, to the extent practicable, shall be designed to predict impacts on the marine biota which may result from chronic low level pollution or large spills associated with outer Continental Shelf production, from the introduction of drill cuttings and drilling muds in the area, and from the laying of pipe to serve the offshore production area, and the impacts of development offshore on the affected and coastal areas.

(b) Subsequent to the leasing and developing of any area or region, the Secretary shall conduct such additional studies to establish environmental information as he deems necessary and shall monitor the human, marine, and coastal environments of such area or region in a manner designed to provide time-series and data trend information which can be used for comparison with any previously collected data for the purpose of identifying any significant changes in the quality and productivity of such environments, for establishing trends in the areas studied and monitored, and for designing experiments to identify the causes of such changes.

(c) The Secretary shall, by regulation, establish procedures for carrying out his duties under this section, and shall plan and carry out such duties in full cooperation with affected States. To the extent that other Federal agencies have prepared environmental impact statements, are conducting studies, or are monitoring the affected human, marine, or coastal environment, the Secretary may utilize the information derived therefrom in lieu of directly conducting such activities. The Secretary may also utilize information obtained from any State or local government, or from any person, for the purposes of this section. For the purpose of carrying out his responsibilities under this section, the Secretary may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of any Federal, State, or local government agency.

(d) The Secretary shall consider available relevant environmental information in making decisions (including those relating to exploration plans, drilling permits, and development and production plans), in developing appropriate regulations and lease conditions, and in issuing operating orders.

(e) As soon as practicable after the end of every 3 fiscal years, the Secretary shall submit to the Congress and make available to the general public an assessment of the cumulative effect of activities conducted under this Act on the human, marine, and coastal environments.

(f) In executing his responsibilities under this section, the Secretary shall, to the maximum extent practicable, enter into appropriate arrangements to utilize on a reimbursable basis the capabilities of the Department of Commerce. In carrying out such arrangements, the Secretary of Commerce is authorized to enter into con-

tract or grants with any person, organization, or entity with funds appropriated to the Secretary of the Interior pursuant to this Act.

[43 U.S.C. 1346]

SEC. 21. SAFETY REGULATIONS.—(a) Upon the date of enactment of this section, the Secretary and the Secretary of the Department in which the Coast Guard is operating shall, in consultation with each other and, as appropriate, with the heads of other Federal departments and agencies, promptly commence a joint study of the adequacy of existing safety and health regulations and of the technology, equipment, and techniques available for the exploration, development, and production of the minerals of the outer Continental Shelf. The results of such study shall be submitted to the President who shall submit a plan to the Congress of his proposals to promote safety and health in the exploration, development, and production of the minerals of the outer Continental Shelf.

(b) In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a)(1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment, except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

(c) The Secretary of the Department in which the Coast Guard is operating shall promulgate regulations or standards applying to unregulated hazardous working conditions related to activities on the Outer Continental Shelf when he determines such regulations or standards are necessary. The Secretary of the Department in which the Coast Guard is operating may from time to time modify any regulations, interim or final, dealing with hazardous working conditions on the Outer Continental Shelf.

(d) Nothing in this Act shall affect the authority provided by law to the Secretary of Labor for the protection of occupational safety and health, the authority provided by law to the Administrator of the Environmental Protection Agency for the protection of the environment, or the authority provided by law to the Secretary of Transportation with respect to pipeline safety.

(e) The Secretary of Commerce, in cooperation with the Secretary of the Department in which the Coast Guard is operating, and the Director of the National Institute of Occupational Safety and Health, shall conduct studies of underwater diving techniques and equipment suitable for protection of human safety and improvement of diver performance. Such studies shall include, but need not be limited to, decompression and excursion table development and improvement and all aspects of diver physiological restraints and protective gear for exposure to hostile environments.

(f)(1) In administering the provisions of this section, the Secretary shall consult and coordinate with the heads of other appropriate Federal departments and agencies for purposes of assuring

that, to the maximum extent practicable, inconsistent or duplicative requirements are not imposed.

(2) The Secretary shall make available to any interested person a compilation of all safety and other regulations which are prepared and promulgated by any Federal department or agency and applicable to activities on the Outer Continental Shelf. Such compilation shall be revised and updated annually.

[43 U.S.C. 1347]

SEC. 22. ENFORCEMENT.—(a) The Secretary, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of the Army shall enforce safety and environmental regulations promulgated pursuant to this Act. Each such Federal department may by agreement utilize, with or without reimbursement, the services, personnel, or facilities of other Federal departments and agencies for the enforcement of their respective regulations.

(b) It shall be the duty of any holder of a lease or permit under this Act to—

(1) maintain all places of employment within the lease area or within the area covered by such permit in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the lease holder or permit holder or of any contractor or subcontractor operating within such lease area or within the area covered by such permit on the outer Continental Shelf;

(2) maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the outer Continental Shelf; and

(3) allow prompt access, at the site of any operation subject to safety regulations, to any inspector, and to provide such documents and records which are pertinent to occupational or public health, safety, or environmental protection, as may be requested.

(c) The Secretary and the Secretary of the Department in which the Coast Guard is operating shall individually, or jointly if they so agree, promulgate regulations to provide for—

(1) scheduled onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and

(2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations.

(d)(1) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on each major fire and each major oil spillage occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of lesser oil spillages. For purposes of this subsection, a major oil spillage is any spillage in one instance of more than two hundred barrels of oil during a period of thirty days. All holders of leases

or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

(2) The Secretary or the Secretary of the Department in which the Coast Guard is operating shall make an investigation and public report on any death or serious injury occurring as a result of operations conducted pursuant to this Act, and may, in his discretion, make an investigation and report of any injury. For purposes of this subsection, a serious injury is one resulting in substantial impairment of any bodily unit or function. All holders of leases or permits issued or maintained under this Act shall cooperate with the appropriate Secretary in the course of any such investigation.

(e) The Secretary, or, in the case of occupational safety and health, the Secretary of the Department in which the Coast Guard is operating, may review any allegation from any person of the existence of a violation of a safety regulation issued under this Act.

(f) In any investigation conducted pursuant to this section, the Secretary or the Secretary of the Department in which the Coast Guard is operating shall have power to summon witnesses and to require the production of books, papers, documents, and any other evidence. Attendance of witnesses or the production of books, papers, documents, or any other evidence shall be compelled by a similar process, as in the district courts of the United States. Such Secretary, or his designee, shall administer all necessary oaths to any witnesses summoned before such investigation.

[43 U.S.C. 1348]

SEC. 23. CITIZEN SUITS, COURT JURISDICTION, AND JUDICIAL REVIEW.—(a)(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this Act against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this Act or any regulation promulgated under this Act, or of the terms of any permit or lease issued by the Secretary under this Act.

(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

(4) In any action commenced pursuant to this section, the Attorney General, upon the request of the Secretary or any other appropriate Federal official, may intervene as a matter of right.

(5) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this Act, or any regulation promulgated under this Act, or the terms of any permit or lease issued by the Secretary under this Act, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.

(b)(1) Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this Act. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

(2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.

(c)(1) Any action of the Secretary to approve a leasing program pursuant to section 18 of this Act shall be subject to judicial review only in the United States Court of Appeal for the District of Columbia.

(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this Act shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly

transmits copies of the petition to the Secretary and to the Attorney General.

(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a) of this section.

(5) The Secretary shall file in the appropriate court the record of any public hearings required by this Act and any additional information upon which the Secretary based his decision, as required by section 2112 of title 28, United States Code. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

[43 U.S.C. 1349]

SEC. 24. REMEDIES AND PENALTIES.—(a) At the request of the Secretary, the Secretary of the Army, or the Secretary of the Department in which the Coast Guard is operating, the Attorney General or a United States attorney shall institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under this Act, or any term of a lease, license, or permit issued pursuant to this Act.

(b)(1) Except as provided in paragraph (2), if any person fails to comply with any provision of this Act, or any term of a lease, or permit issued pursuant to this Act, or any regulation or order issued under this Act, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$20,000 for each day of the continuance of such failure. The Secretary may assess, collect, and compromise any such penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing. The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor.

(2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a

civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

(c) Any person who knowingly and willfully (1) violates any provision of this Act, any term of a lease, license, or permit issued pursuant to this Act, or any regulations or order issued under the authority of this Act designed to protect health, safety, or the environment or conserve natural resources, (2) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this Act, (3) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under this Act, or (4) reveals any data or information required to be kept confidential by this Act shall, upon conviction, be punished by a fine of not more than \$100,000, or by imprisonment for not more than ten years, or both. Each day that a violation under clause (1) of this subsection continues, or each day that any monitoring device or data recorder remains inoperative or inaccurate because of any activity described in clause (3) of this subsection, shall constitute a separate violation.

(d) Whenever a corporation or other entity is subject to prosecution under subsection (c) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the proscribed activity shall be subject to the same fines or imprisonment, or both, as provided for under subsection (c) of this section.

(e) The remedies and penalties prescribed in this Act shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies and penalties prescribed in this Act shall be in addition to any other remedies and penalties afforded by any other law or regulation.

[43 U.S.C. 1350]

SEC. 25. OIL AND GAS DEVELOPMENT AND PRODUCTION.—(a)(1) Prior to development and production pursuant to an oil and gas lease issued after the date of enactment of this section in any area of the outer Continental Shelf, other than the Gulf of Mexico, or issued or maintained prior to such date of enactment in any area of the outer Continental Shelf, other than the Gulf of Mexico, with respect to which no oil or gas has been discovered in paying quantities prior to such date of enactment, the lessee shall submit a development and production plan (hereinafter in this section referred to as a “plan”) to the Secretary, for approval pursuant to this section.

(2) A plan shall be accompanied by a statement describing all facilities and operations, other than those on the outer Continental Shelf, proposed by the lessee and known by him (whether or not owned or operated by such lessee) which will be constructed or utilized in the development and production of oil or gas from the lease area, including the location and site of such facilities and operations, the land, labor, material, and energy requirements associated with such facilities and operations, and all environmental and safety safeguards to be implemented.

(3) Except for any privileged or proprietary information (as such term is defined in regulations issued by the Secretary), the Secretary, within ten days after receipt of a plan and statement,

shall (A) submit such plan and statement to the Governor of any affected State, and, upon request, to the executive of any affected local government, and (B) make such plan and statement available to any appropriate interstate regional entity and the public.

(b) After the date of enactment of this section, no oil and gas lease may be issued pursuant to this Act in any region of the outer Continental Shelf, other than the Gulf of Mexico, unless such lease requires that development and production activities be carried out in accordance with a plan which complies with the requirements of this section.

(c) A plan may apply to more than one oil and gas lease, and shall set forth, in the degree of detail established by regulations issued by the Secretary—

- (1) the specific work to be performed;
- (2) a description of all facilities and operations located on the outer Continental Shelf which are proposed by the lessee of known by him (whether or not owned or operated by such lessee) to be directly related to proposed development, including the location and size of such facilities and operations, and the land, labor, material, and energy requirements associated with such facilities and operations;
- (3) the environmental safeguards to be implemented on the outer Continental Shelf and how much safeguards are to be implemented;
- (4) all safety standards to be met and how such standards are to be met;
- (5) an expected rate of development and production and a time schedule for performance; and
- (6) such other relevant information as the Secretary may by regulation require.

(d) The Secretary shall not grant any license or permit for any activity described in detail in a plan affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act, or the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act.

(e)(1) At least once the Secretary shall declare the approval of a development and production plan in any area or region (as defined by the Secretary) of the outer Continental Shelf, other than the Gulf of Mexico, to be a major Federal action.

(2) The Secretary may require lessees of tracts for which development and production plans have not been approved, to submit preliminary or final plans for their leases, prior to or immediately after a determination by the Secretary that the procedures under the National Environmental Policy Act of 1969 shall commence.

(f) If approval of a development and production plan is found to be a major Federal action, the Secretary shall transmit the draft environmental impact statement to the Governor of any affected State, and upon request, to the executive of any local government, and shall make such draft available to any appropriate interstate regional entity and the public.

(g) If approval of a development and production plan is not found to be a major Federal action, the Governor of any affected State and the executive of any affected local government shall have sixty days from the date of receipt of the plan from the Secretary to submit comments and recommendations. Prior to submitting recommendations to the Secretary, the executive of any affected local government must forward his recommendations to the Governor of his State. Such comments and recommendations shall be made available to the public upon request. In addition, any interested person may submit comments and recommendations.

(h)(1) After reviewing the record of any public hearing held with respect to the approval of a plan pursuant to the National Environmental Policy Act of 1969 or the comments and recommendations submitted under subsection (g) of this section, the Secretary shall, within sixty days after the release of the final environmental impact statement prepared pursuant to the National Environmental Policy Act of 1969 in accordance with subsection (e) of this section, or sixty days after the period provided for comment under subsection (g) of this section, approve, disapprove, or require modifications of the plan. The Secretary shall require modification of a plan if he determines that the lessee has failed to make adequate provision in such plan for safe operations on the lease area or for protection of the human, marine, or coastal environment, including compliance with the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act. Any modification required by the Secretary which involves activities for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) must receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act unless the Secretary of Commerce makes the finding authorized by section 307(c)(3)(B)(iii) of such Act. The Secretary shall disapprove a plan—

(A) if the lessee fails to demonstrate that he can comply with the requirements of this Act or other applicable Federal law, including the regulations prescribed by the Secretary pursuant to paragraph (8) of section 5(a) of this Act;

(B) if any of the activities described in detail in the plan for which a Federal license or permit is required and which affects any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) do not receive concurrence by such State with respect to the consistency certification accompanying such plan pursuant to section 307(c)(3)(B) (i) or (ii) of such Act and the Secretary of Commerce does not make the finding authorized by section 307(c)(3)(B)(iii) of such Act;

(C) if operations threaten national security or national defense; or

(D) if the Secretary determines, because of exceptional geological conditions in the lease areas, exceptional resource values in the marine or coastal environment, or other exceptional circumstances, that (i) implementation of the plan would prob-

ably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral deposits (in areas leased or not leased), to the national security or defense, or to the marine, coastal or human environments, (ii) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time, and (iii) the advantages of disapproving the plan outweigh the advantages of development and production.

(2)(A) If a plan is disapproved—

- (i) under subparagraph (A) of paragraph (1); or
- (ii) under subparagraph (B) of paragraph (1) with respect to a lease issued after approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972 (16 U.S.C. 1455),

the lessee shall not be entitled to compensation because of such disapproval.

(B) If a plan is disapproved—

- (i) under subparagraph (C) or (D) of paragraph (1); or
- (ii) under subparagraph (B) of paragraph (1) with respect to a lease issued before approval of a coastal zone management program pursuant to the Coastal Zone Management Act of 1972, and such approval occurs after the lessee has submitted a plan to the Secretary,

the term of the lease shall be duly extended, and at any time within five years after such disapproval, the lessee may reapply for approval of the same or a modified plan, and the Secretary shall approve, disapprove, or require modifications of such plan in accordance with this subsection.

(C) Upon expiration of the five-year period described in subparagraph (B) of this paragraph, or, in the Secretary's discretion, at an earlier time upon request of a lessee, if the Secretary has not approved a plan, the Secretary shall cancel the lease and the lessee shall be entitled to receive compensation in accordance with section 5(a)(2)(C) of this Act. The Secretary may, at any time within the five-year period described in subparagraph (B) of this paragraph, require the lessee to submit a development and production plan for approval, disapproval, or modification. If the lessee fails to submit a required plan expeditiously and in good faith, the Secretary shall find that the lessee has not been duly diligent in pursuing his obligations under the lease, and shall immediately initiate procedures to cancel such lease, without compensation, under the provisions of section 5(c) of this Act.

(3) The Secretary shall, from time to time, review each plan approved under this section. Such review shall be based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan. If the review indicates that the plan should be revised to meet the requirements of this subsection, the Secretary shall require such revision.

(i) The Secretary may approve any revision of an approved plan proposed by the lessee if he determines that such revision will lead to greater recovery of oil and natural gas, improve the efficiency, safety and environmental protection of the recovery operation, is the only means available to avoid substantial economic hardship to the lessee, or is otherwise not inconsistent with the

provisions of this Act, to the extent such revision is consistent with protection of the human, marine, and coastal environments. Any revision of an approved plan which the Secretary determines is significant shall be reviewed in accordance with subsections (d) through (f) of this section.

(j) Whenever the owner of any lease fails to submit a plan in accordance with regulations issued under this section, or fails to comply with an approved plan, the lease may be canceled in accordance with sections 5 (c) and (d). Termination of a lease because of failure to comply with an approved plan, including required modifications or revisions, shall not entitle a lessee to any compensation.

(k) If any development and production plan submitted to the Secretary pursuant to this section provides for the production and transportation of natural gas, the lessee shall contemporaneously submit to the Federal Energy Regulatory Commission that portion of such plan which relates to production of natural gas and the facilities for transportation of natural gas. The Secretary and the Federal Energy Regulatory Commission shall agree as to which of them shall prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 applicable to such portion of such plan, or conduct studies as to the effect on the environment of implementing it. Thereafter, the findings and recommendations by the agency preparing such environmental impact statement or conducting such studies pursuant to such agreement shall be adopted by the other agency, and such other agency shall not independently prepare another environmental impact statement or duplicate such studies with respect to such portion of such plan, but the Federal Energy Regulatory Commission, in connection with its review of an application for a certificate of public convenience and necessity applicable to such transportation facilities pursuant to section 7 of the Natural Gas Act (15 U.S.C. 717), may prepare such environmental studies or statement relevant to certification of such transportation facilities as have not been covered by an environmental impact statement or studies prepared by the Secretary. The Secretary, in consultation with the Federal Energy Regulatory Commission, shall promulgate rules to implement this subsection, but the Federal Energy Regulatory Commission shall retain sole authority with respect to rules and procedures applicable to the filing of any application with the Commission and to all aspects of the Commission's review of, and action on, any such application.

(l) The Secretary may require the provisions of this section to apply to an oil and gas lease issued or maintained under this Act, which is located in that area of the Gulf of Mexico which is adjacent to the State of Florida, as determined pursuant to section 4(a)(2) of this Act.

[43 U.S.C. 1351]

SEC. 26. OUTER CONTINENTAL SHELF OIL AND GAS INFORMATION PROGRAM.—(a)(1)(A) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Secretary access to all data and information (including processed, analyzed, and interpreted information) obtained from such activity and shall provide copies of

such data and information as the Secretary may request. Such data and information shall be provided in accordance with regulations which the Secretary shall prescribe.

(B) If an interpretation provided pursuant to subparagraph (A) of this paragraph is made in good faith by the lessee or permittee, such lessee or permittee shall not be held responsible for any consequence of the use of or reliance upon such interpretation.

(C) Whenever any data and information is provided to the Secretary, pursuant to subparagraph (A) of this paragraph—

(i) by a lessee, in the form and manner of processing which is utilized by such lessee in the normal conduct of his business, the Secretary shall pay the reasonable cost of reproducing such data and information;

(ii) by a lessee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay the reasonable cost of processing and reproducing such data and information;

(iii) by a permittee, in the form and manner of processing which is utilized by such permittee in the normal conduct of his business, the Secretary shall pay such permittee the reasonable cost of reproducing such data and information for the Secretary and shall pay at the lowest rate available to any purchaser for processing such data and information the costs attributable to such processing; and

(iv) by the permittee, in such other form and manner of processing as the Secretary may request, the Secretary shall pay such permittee the reasonable cost of processing and reproducing such data and information for the Secretary, pursuant to such regulations as he may prescribe.

(2) Each Federal department and agency shall provide the Secretary with any data obtained by such Federal department or agency pursuant to section 11 of this Act, and any other information which may be necessary or useful to assist him in carrying out the provisions of this Act.

(b)(1) Data and information provided to the Secretary pursuant to subsection (a) of this section shall be processed, analyzed, and interpreted by the Secretary for purposes of carrying out his duties under this Act.

(2) As soon as practicable after information provided to the Secretary pursuant to subsection (a) of this section is processed, analyzed, and interpreted, the Secretary shall make available to the affected States, and upon request, to any affected local government, a summary of data designed to assist them in planning for the onshore impacts of possible oil and gas development and production. Such summary shall include estimates of (A) the oil and gas reserves in areas leased or to be leased, (B) the size and timing of development if and when oil or gas, or both, is found, (C) the location of pipelines, and (D) the general location and nature of onshore facilities.

(c) The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information. Such regulations shall include a provision that no such information will be transmitted to any af-

affected State unless the lessee, or the permittee and all persons to whom such permittee has sold such information under promise of confidentiality, agree to such transmittal.

(d)(1) The Secretary shall transmit to any affected State—

(A) an index, and upon request copies of, all relevant actual or proposed programs, plans, reports, environmental impact statements, tract nominations (including negative nominations) and other lease sale information, any similar type of relevant information, and all modifications and revisions thereof and comments thereon, prepared or obtained by the Secretary pursuant to this Act, but no information transmitted by the Secretary under this subsection shall identify any particular tract with the name or names of any particular party so as not to compromise the competitive position of any party or parties participating in the nominations;

(B)(i) the summary of data prepared by the Secretary pursuant to subsection (b)(2) of this section, and (ii) any other processed, analyzed, or interpreted data prepared by the Secretary pursuant to subsection (b)(1) of this section, unless the Secretary determines that transmittal of such data prepared pursuant to such subsection (b)(1) would unduly damage the competitive position of the lessee or permittee who provided the Secretary with the information which the Secretary had processed, analyzed, or interpreted; and

(C) any relevant information received by the Secretary pursuant to subsection (a) of this section, subject to any applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(2) Notwithstanding the provisions of any regulation required pursuant to the second sentence of subsection (c) of this section, the Governor of any affected State may designate an appropriate State official to inspect, at a regional location which the Secretary shall designate, any privileged information received by the Secretary regarding any activity adjacent to such State, except that no such inspection shall take place prior to the sale of a lease covering the area in which such activity was conducted. Knowledge obtained by such State during such inspection shall be subject to applicable requirements as to confidentiality which are set forth in regulations prescribed under subsection (c) of this section.

(e) Prior to transmitting any privileged information to any State, or granting such State access to such information, the Secretary shall enter into a written agreement with the Governor of such State in which such State agrees, as a condition precedent to receiving or being granted access to such information, to waive the defenses set forth in subsection (f)(2) of this section, and to hold the United States harmless from any violations of the regulations prescribed pursuant to subsection (c) that the State or its employees may commit.

(f)(1) Whenever any employee of the Federal Government or of any State reveals information in violation of the regulations prescribed pursuant to subsection (c) of this section, the lessee or permittee who supplied such information to the Secretary or to any other Federal official, and any person to whom such lessee or permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate dis-

strict court of the United States against the Federal Government or such State, as the case may be.

(2) In any action commenced against the Federal Government or a State pursuant to paragraph (1) of this subsection, the Federal Government or such State, as the case may be, may not raise as a defense (A) any claim of sovereign immunity, or (B) any claim that the employee who revealed the privileged information which is the basis of such suit was acting outside the scope of his employment in revealing such information.

(g) Any provision of State or local law which provides for public access to any privileged information received or obtained by any person pursuant to this Act is expressly preempted by the provisions of this section, to the extent that it applies to such information.

(h) If the Secretary finds that any State cannot or does not comply with the regulations issued under subsection (c) of this section, he shall thereafter withhold transmittal and deny inspection of privileged information to such State until he finds that such State can and will comply with such regulations.

[43 U.S.C. 1352]

SEC. 27. FEDERAL PURCHASE AND DISPOSITION OF OIL AND GAS.—(a)(1) Except as may be necessary to comply with the provisions of sections 6 and 7 of this Act, all royalties or net profit shares, or both accruing to the United States under any oil and gas lease issued or maintained in accordance with this Act, shall, on demand of the Secretary, be paid in oil or gas.

(2) The United States shall have the right to purchase not to exceed $16\frac{2}{3}$ per centum by volume of the oil and gas produced pursuant to a lease issued or maintained in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the well head of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the United States as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(3) Title to any royalty, net profit share, or purchased oil or gas may be transferred, upon request, by the Secretary to the Secretary of Defense, to the Administrator of the General Services Administration, or to the Secretary of Energy, for disposal within the Federal Government.

(b)(1) The Secretary, except as provided in this subsection, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value, any part of the oil (A) obtained by the United States pursuant to any lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with the Secretary of Energy, the Secretary determines that small refiners do not have access to adequate supplies of oil at equitable prices, the Secretary may dispose of any oil which is taken as a royalty or net profit share accruing or reserved to the United States pursuant to any lease issued or maintained under this Act, or purchased by the United States pursuant to subsection (a)(2) of this section, by conducting a lottery for the sale of such oil, or may equitably allocate such oil among

the competitors for the purchase of such oil, at the regulated price, or if no regulated price applies, at its fair market value. The Secretary shall limit participation in any allocation or lottery sale to assure such access and shall publish notice of such allocation or sale, and the terms thereof, at least thirty days in advance. Such notice shall include qualifications for participation, the amount of oil to be sold, and any limitation in the amount of oil which any participant may be entitled to purchase.

(3) The Secretary may only sell or otherwise dispose of oil described in paragraph (1) of this subsection in accordance with any provision of law, or regulations issued in accordance with such provisions, which provide for the Secretary of Energy to allocate, transfer, exchange, or sell oil in amounts or at prices determined by such provision of law or regulations.

(c)(1) Except as provided in paragraph (2) of this subsection, the Secretary, pursuant to such terms as he determines, may offer to the public and sell by competitive bidding for not more than its regulated price, or, if no regulated price applies, not less than its fair market value any part of the gas (A) obtained by the United States pursuant to a lease as royalty or net profit share, or (B) purchased by the United States pursuant to subsection (a)(2) of this section.

(2) Whenever, after consultation with and advice from the Secretary of Energy, the Federal Energy Regulatory Commission determines that an emergency shortage of natural gas is threatening to cause severe economic or social dislocation in any region of the United States and that such region can be serviced in a practical, feasible, and efficient manner by royalty, net profit share, or purchased gas obtained pursuant to the provisions of this section, the Secretary of the Interior may allocate or conduct a lottery for the sale of such gas, and shall limit participation in any allocation or lottery sale of such gas to any person servicing such region, but he shall not sell any such gas for more than its regulated price, or, if no regulated price applies, less than its fair market value. Prior to selling or allocating any gas pursuant to this subsection, the Secretary shall consult with the Federal Energy Regulatory Commission.

(d) The lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Secretary, and which is not transferred pursuant to subsection (a)(3) of this section, and shall pay to the United States a cash amount equal to the regulated price, or, if no regulated price applies, the fair market value of the oil or gas so obtained.

(e) As used in this section—

(1) the term “regulated price” means the highest price—

(A) at which oil may be sold pursuant to the Emergency Petroleum Allocation Act of 1973 and any rule or order issued under such Act;

(B) at which natural gas Act, any other Act, regulations governing natural gas pricing, or any rule or order issued under any such Act or any such regulations; or

(C) at which either Federal oil or gas may be sold under any other provision of law or rule or order thereunder which sets a price (or manner for determining a price) for oil or gas; and

(2) the term “small refiner” has the meaning given such term by Small Business Administration Standards 128.3–8 (d) and (g), as in effect on the date of enactment of this section or as thereafter revised or amended.

(f) Nothing in this section shall prohibit the right of the United States to purchase any oil or gas produced on the outer Continental Shelf as provided by section 12(b) of this Act.

[43 U.S.C. 1353]

SEC. 28. LIMITATION ON EXPORT.—(a) Except as provided in subsection (d) of this section, any oil or gas produced from the outer Continental Shelf shall be subject to the requirements and provisions of the Export Administration Act of 1969 (50 App. U.S.C. 2401 et seq.).

(b) Before any oil or gas subject to this section may be exported under the requirements and provisions of the Export Administration Act of 1969, the President shall make and publish an express finding that such exports will not increase reliance on imported oil or gas, are in the national interest, and are in accord with the provisions of the Export Administration Act of 1969.

(c) The President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within such time period passes a concurrent resolution of disapproval stating disagreement with the President’s finding concerning the national interest, further exports made pursuant to such Presidential findings shall cease.

(d) The provisions of this section shall not apply to any oil or gas which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, or which is exchanged or exported pursuant to an existing international agreement.

[43 U.S.C. 1354]

SEC. 29. RESTRICTIONS ON EMPLOYMENT.—No full-time officer or employee of the Department of the Interior who directly or indirectly discharged duties or responsibilities under this Act, and who was at any time during the twelve months preceding the termination of his employment with the Department compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade GS–16 of the General Schedule shall—

(1) within two years after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before;

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to; or

(C) knowingly aid or assist in representing any other person (except the United States) in any formal or informal appearance before, any department, agency, or court of the United States, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, regulation, order, lease, permit, rulemaking, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility or in which he participated personally and substantially as an officer or employee; or

(2) within one year after his employment with the Department has ceased—

(A) knowingly act as agent or attorney for, or otherwise represent, any other person (except the United States) in any formal or informal appearance before; or

(B) with the intent to influence, make any oral or written communication on behalf of any other person (except the United States) to, the Department of the Interior, or any officer or employee thereof, in connection with any judicial, rulemaking, regulation, order, lease, permit, regulation, or other particular matter which is pending before the Department of the Interior or in which the Department has a direct and substantial interest.

[43 U.S.C. 1355]

SEC. 30. DOCUMENTATION, REGISTRY, AND MANNING REQUIREMENTS.—(a) Within six months after the date of enactment of this section, the Secretary of the Department in which the Coast Guard is operating shall issue regulations which require that any vessel, rig, platform, or other vehicle or structure—

(1) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this Act and which is built or rebuilt at any time after such one-year period, when required to be documented by the laws of the United States, be documented under the laws of the United States;

(2) which is used for activities pursuant to this Act, comply, except as provided in subsection (b), with such minimum standards of design, construction, alteration, and repair as the Secretary or the Secretary of the Department in which the Coast Guard is operating establishes; and

(3) which is used at any time after the one-year period beginning on the effective date of such regulations for activities pursuant to this Act, be manned or crewed, except as provided in subsection (c), by citizens of the United States or aliens lawfully admitted to the United States for permanent residence.

(b) The regulations issued under subsection (a)(2) of this section shall not apply to any vessel, rig, platform, or other vehicle or structure built prior to the date of enactment of this section, until such time after such date as such vehicle or structure is rebuilt.

(c) The regulations issued under subsection (a)(3) of this section shall not apply—

(1) to any vessel, rig, platform, or other vehicle or structure if—

(A) specific contractual provisions or national registry manning requirements in effect on the date of enactment of this section provide to the contrary;

(B) there are not a sufficient number of citizens of the United States, or aliens lawfully admitted to the United States for permanent residence, qualified and available for such work; or

(C) the President makes a specific finding, with respect to the particular vessel, rig, platform, or other vehicle or structure, that application would not be consistent with the national interest; and

(2) to any vessel, rig, platform, or other vehicle or structure, over 50 percent of which is owned by citizens of a foreign nation or with respect to which the citizens of a foreign nation have the right effectively to control, except to the extent and to the degree that the President determines that the government of such foreign nation or any of its political subdivisions has implemented, by statute, regulation, policy, or practice, a national manning requirement for equipment engaged in the exploration, development, or production of oil and gas in its off-shore areas.

[43 U.S.C. 1356]

SEC. 31. COASTAL IMPACT ASSISTANCE.

Nothing in this section shall be construed as a permanent authorization.

(a) DEFINITIONS.—When used in this section—

(1) The term “coastal political subdivision” means a county, parish, or any equivalent subdivision of a Producing Coastal State all or part of which subdivision lies within the coastal zone (as defined in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1))).

(2) The term “coastal population” means the population of all political subdivisions, as determined by the most recent official data of the Census Bureau, contained in whole or in part within the designated coastal boundary of a State as defined in a State’s coastal zone management program under the Coastal Zone Management Act (16 U.S.C. 1451 et seq.).

(3) The term “Coastal State” has the same meaning as provided by subsection 304(4) of the Coastal Zone Management Act (16 U.S.C. 1453(4)).

(4) The term “coastline” has the same meaning as the term “coast line” as defined in subsection 2(c) of the Submerged Lands Act (43 U.S.C. 1301(c)).

(5) The term “distance” means minimum great circle distance, measured in statute miles.

(6) The term “leased tract” means a tract maintained under section 6 or leased under section 8 for the purpose of drilling for, developing, and producing oil and natural gas resources.

(7) The term “Producing Coastal State” means a Coastal State with a coastal seaward boundary within 200 miles from the geographic center of a leased tract other than a leased tract within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

(8) The term “qualified Outer Continental Shelf revenues” means all amounts received by the United States from each leased tract or portion of a leased tract lying seaward of the zone defined and governed by section 8(g) of this Act, or lying within such zone but to which section 8(g) does not apply, the geographic center of which lies within a distance of 200 miles from any part of the coastline of any Coastal State, including bonus bids, rents, royalties (including payments for royalties taken in kind and sold), net profit share payments, and related late payment interest. Such term does not include any revenues from a leased tract or portion of a leased tract that is included within any area of the Outer Continental Shelf where a moratorium on new leasing was in effect as of January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

(9) The term “Secretary” means Secretary of Commerce.

(b) AUTHORIZATION.—For fiscal year 2001, \$150,000,000 is authorized to be appropriated for the purposes of this section.

(c) IMPACT ASSISTANCE PAYMENTS TO STATES AND POLITICAL SUBDIVISIONS.—The Secretary shall make payments from the amounts available under this section to Producing Coastal States with an approved Coastal Impact Assistance Plan, and to coastal political subdivisions as follows:

(1) ALLOCATIONS TO PRODUCING COASTAL STATES.—In each fiscal year, each Producing Coastal State’s allocable share shall be equal to the sum of the following:

(A) 60 percent of the amounts appropriated shall be equally divided among all Producing Coastal States;

(B) 40 percent of the amounts appropriated for the purposes of this section shall be divided among Producing Coastal States based on Outer Continental Shelf production, except that of such amounts no Producing Coastal State may receive more than 25 percent in any fiscal year.

(2) CALCULATION.—The amount for each Producing Coastal State under paragraph (1)(B) shall be calculated based on the ratio of qualified OCS revenues generated off the coastline of the Producing Coastal State to the qualified OCS revenues generated off the coastlines of all Producing Coastal States for the period beginning on January 1, 1995 and ending on December 31, 2000. Where there is more than one Producing Coastal State within 200 miles of a leased tract, the amount of each Producing Coastal State’s payment under paragraph (1)(B) for such leased tract shall be inversely proportional to the distance between the nearest point on the coastline of such State and the geographic center of each leased tract or portion of the leased tract (to the nearest whole mile) that is within 200 miles of that coastline, as determined by the Secretary. A leased tract or portion of a leased tract shall be excluded if the

tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

(3) PAYMENTS TO COASTAL POLITICAL SUBDIVISIONS.—Thirty-five percent of each Producing Coastal State's allocable share as determined under paragraph (1) shall be paid directly to the coastal political subdivisions by the Secretary based on the following formula, except that a coastal political subdivision in the State of California that has a coastal shoreline, that is not within 200 miles of the geographic center of a leased tract or portion of a leased tract, and in which there is located one or more oil refineries shall be eligible for that portion of the allocation described in paragraph (C) in the same manner as if that political subdivision were located within a distance of 50 miles from the geographic center of the closest leased tract with qualified Outer Continental Shelf revenues:

(A) 25 percent shall be allocated based on the ratio of such coastal political subdivision's coastal population to the coastal population of all coastal political subdivisions in the Producing Coastal State.

(B) 25 percent shall be allocated based on the ratio of such coastal political subdivision's coastline miles to the coastline miles of all coastal political subdivisions in the Producing Coastal State.

(C) 50 percent shall be allocated based on the relative distance of such coastal political subdivision from any leased tract used to calculate that Producing Coastal State's allocation using ratios that are inversely proportional to the distance between the point in the coastal political subdivision closest to the geographic center of each leased tract or portion, as determined by the Secretary. For purposes of the calculations under this subparagraph, a leased tract or portion of a leased tract shall be excluded if the leased tract or portion is located in a geographic area where a moratorium on new leasing was in effect on January 1, 2000, unless the lease was issued prior to the establishment of the moratorium and was in production on January 1, 2000.

(4) FAILURE TO HAVE PLAN APPROVED.—Any amount allocated to a Producing Coastal State or coastal political subdivision but not disbursed because of a failure to have an approved Coastal Impact Assistance Plan under this section shall be allocated equally by the Secretary among all other Producing Coastal States in a manner consistent with this subsection except that the Secretary shall hold in escrow such amount until the final resolution of any appeal regarding the disapproval of a plan submitted under this section. The Secretary may waive the provisions of this paragraph and hold a Producing Coastal State's allocable share in escrow if the Secretary determines that such State is making a good faith effort to develop and submit, or update, a Coastal Impact Assistance Plan.

(d) COASTAL IMPACT ASSISTANCE PLAN.—

(1) DEVELOPMENT AND SUBMISSION OF STATE PLANS.—The Governor of each Producing Coastal State shall prepare, and

submit to the Secretary, a Coastal Impact Assistance Plan. The Governor shall solicit local input and shall provide for public participation in the development of the plan. The plan shall be submitted to the Secretary by July 1, 2001. Amounts received by Producing Coastal States and coastal political subdivisions may be used only for the purposes specified in the Producing Coastal State's Coastal Impact Assistance Plan.

(2) APPROVAL.—The Secretary shall approve a plan under paragraph (1) prior to disbursement of amounts under this section. The Secretary shall approve the plan if the Secretary determines that the plan is consistent with the uses set forth in subsection (e) and if the plan contains each of the following:

(A) The name of the State agency that will have the authority to represent and act for the State in dealing with the Secretary for purposes of this section.

(B) A program for the implementation of the plan which describes how the amounts provided under this section will be used.

(C) A contact for each political subdivision and description of how coastal political subdivisions will use amounts provided under this section, including a certification by the Governor that such uses are consistent with the requirements of this section.

(D) Certification by the Governor that ample opportunity has been accorded for public participation in the development and revision of the plan.

(E) Measures for taking into account other relevant Federal resources and programs.

(3) PROCEDURE.—The Secretary shall approve or disapprove each plan or amendment within 90 days of its submission.

(4) AMENDMENT.—Any amendment to the plan shall be prepared in accordance with the requirements of this subsection and shall be submitted to the Secretary for approval or disapproval.

(e) AUTHORIZED USES.—Producing Coastal States and coastal political subdivisions shall use amounts provided under this section, including any such amounts deposited in a State or coastal political subdivision administered trust fund dedicated to uses consistent with this subsection, in compliance with Federal and State law and only for one or more of the following purposes:

(1) uses set forth in new section 32(c)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) proposed by the amendment to H.R. 701 of the 106th Congress as reported by the Senate Committee on Energy and Natural Resources;

(2) projects and activities for the conservation, protection or restoration of wetlands;

(3) mitigating damage to fish, wildlife or natural resources, including such activities authorized under subtitle B of title IV of the Oil Pollution Act of 1990 (33 U.S.C. 1321(c), (d));

(4) planning assistance and administrative costs of complying with the provisions of this section;

(5) implementation of Federally approved marine, coastal, or comprehensive conservation management plans; and

(6) mitigating impacts of Outer Continental Shelf activities through funding of (A) onshore infrastructure projects and (B) other public service needs intended to mitigate the environmental effects of Outer Continental Shelf activities: *Provided*, That funds made available under this paragraph shall not exceed 23 percent of the funds provided under this section.

(f) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that any expenditure made by a Producing Coastal State or coastal political subdivision is not consistent with the uses authorized in subsection (e), the Secretary shall not disburse any further amounts under this section to that Producing Coastal State or coastal political subdivision until the amounts used for the inconsistent expenditure have been repaid or obligated for authorized uses.

[43 U.S.C. 1356a]

**TITLE XVI OF THE ENERGY POLICY ACT OF 1992—
GLOBAL CLIMATE CHANGE**

**TITLE XVI OF THE ENERGY POLICY ACT OF 1992—
GLOBAL CLIMATE CHANGE**

TITLE XVI—GLOBAL CLIMATE CHANGE

SEC. 1601. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report to the Congress that includes an assessment of—

(1) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of stabilizing the generation of greenhouse gases in the United States by the year 2005;

(2) the recommendations made in chapter 9 of the 1991 National Academy of Sciences report entitled “Policy Implications of Greenhouse Warming”, including an analysis of the benefits and costs of each recommendation;

(3) the extent to which the United States is responding, compared with other countries, to the recommendations made in chapter 9 of the 1991 National Academy of Sciences report;

(4) the feasibility of reducing the generation of greenhouse gases;

(5) the feasibility and economic, energy, social, environmental, and competitive implications, including implications for jobs, of achieving a 20 percent reduction from 1988 levels in the generation of carbon dioxide by the year 2005 as recommended by the 1988 Toronto Scientific World Conference on the Changing Atmosphere;

(6) the potential economic, energy, social, environmental, and competitive implications, including implications for jobs, of implementing the policies necessary to enable the United States to comply with any obligations under the United Nations Framework Convention on Climate Change or subsequent international agreements.

[42 U.S.C. 13381]

SEC. 1602. LEAST-COST ENERGY STRATEGY.

(a) STRATEGY.—The first National Energy Policy Plan (in this title referred to as the “Plan”) under section 801 of the Department of Energy Organization Act (42 U.S.C. 7321) prepared and required to be submitted by the President to Congress after February 1, 1993, and each subsequent such Plan, shall include a least-cost energy strategy prepared by the Secretary. In developing the least-cost energy strategy, the Secretary shall take into consideration the economic, energy, social, environmental, and competitive costs and benefits, including costs and benefits for jobs, of his choices. Such strategy shall also take into account the report required under sec-

tion 1601 and relevant Federal, State, and local requirements. Such strategy shall be designed to achieve to the maximum extent practicable and at least-cost to the Nation—

(1) the energy production, utilization, and energy conservation priorities of subsection (d);

(2) the stabilization and eventual reduction in the generation of greenhouse gases;

(3) an increase in the efficiency of the Nation's total energy use by 30 percent over 1988 levels by the year 2010;

(4) an increase in the percentage of energy derived from renewable resources by 75 percent over 1988 levels by the year 2005; and

(5) a reduction in the Nation's oil consumption from the 1990 level of approximately 40 percent of total energy use to 35 percent by the year 2005.

(b) ADDITIONAL CONTENTS.—The least-cost energy strategy shall also include—

(1) a comprehensive inventory of available energy and energy efficiency resources and their projected costs, taking into account all costs of production, transportation, distribution, and utilization of such resources, including—

(A) coal, clean coal technologies, coal seam methane, and underground coal gasification;

(B) energy efficiency, including existing technologies for increased efficiency in production, transportation, distribution, and utilization of energy, and other technologies that are anticipated to be available through further research and development; and

(C) other energy resources, such as renewable energy, solar energy, nuclear fission, fusion, geothermal, biomass, fuel cells, hydropower, and natural gas;

(2) a proposed two-year program for ensuring adequate supplies of the energy and energy efficiency resources and technologies described in paragraph (1), and an identification of administrative actions that can be undertaken within existing Federal authority to ensure their adequate supply;

(3) estimates of life-cycle costs for existing energy production facilities;

(4) basecase forecasts of short-term and long-term national energy needs under low and high case assumptions of economic growth; and

(5) an identification of all applicable Federal authorities needed to achieve the purposes of this section, and of any inadequacies in those authorities.

(c) SECRETARIAL CONSIDERATION.—In developing the least-cost energy strategy, the Secretary shall give full consideration to—

(1) the relative costs of each energy and energy efficiency resource based upon a comparison of all direct and quantifiable net costs for the resource over its available life, including the cost of production, transportation, distribution, utilization, waste management, environmental compliance, and, in the case of imported energy resources, maintaining access to foreign sources of supply; and

(2) the economic, energy, social, environmental, and competitive consequences resulting from the establishment of any

particular order of Federal priority as determined under subsection (d).

(d) **PRIORITIES.**—The least-cost energy strategy shall identify Federal priorities, including policies that—

(1) implement standards for more efficient use of fossil fuels;

(2) increase the energy efficiency of existing technologies;

(3) encourage technologies, including clean coal technologies, that generate lower levels of greenhouse gases;

(4) promote the use of renewable energy resources, including solar, geothermal, sustainable biomass, hydropower, and wind power;

(5) affect the development and consumption of energy and energy efficiency resources and electricity through tax policy;

(6) encourage investment in energy efficient equipment and technologies; and

(7) encourage the development of energy technologies, such as advanced nuclear fission and nuclear fusion, that produce energy without greenhouse gases as a byproduct, and encourage the deployment of nuclear electric generating capacity.

(e) **ASSUMPTIONS.**—The Secretary shall include in the least-cost energy strategy an identification of all of the assumptions used in developing the strategy and priorities thereunder, and the reasons for such assumptions.

(f) **PREFERENCE.**—When comparing an energy efficiency resource to an energy resource, a higher priority shall be assigned to the energy efficiency resource whenever all direct and quantifiable net costs for the resource over its available life are equal to the estimated cost of the energy resource.

(g) **PUBLIC REVIEW AND COMMENT.**—The Secretary shall provide for a period of public review and comment of the least-cost energy strategy, for a period of at least 30 days, to be completed at least 60 days before the issuance of such strategy. The Secretary shall also provide for public review and comment before the issuance of any update to the least-cost energy strategy required under this section.

[42 U.S.C. 13382]

SEC. 1603. DIRECTOR OF CLIMATE PROTECTION.

Within 6 months after the date of the enactment of this Act, the Secretary shall establish, within the Department of Energy, a Director of Climate Protection (in this section referred to as the “Director”). The Director shall—

(1) in the absence of the Secretary, serve as the Secretary’s representative for interagency and multilateral policy discussions of global climate change, including the activities of the Committee on Earth and Environmental Sciences as established by the Global Change Research Act of 1990 (Public Law 101–606) and the Policy Coordinating Committee Working Group on Climate Change;

(2) monitor, in cooperation with other Federal agencies, domestic and international policies for their effects on the generation of greenhouse gases; and

(3) have the authority to participate in the planning activities of relevant Department of Energy programs.

[42 U.S.C. 13383]

SEC. 1604. ASSESSMENT OF ALTERNATIVE POLICY MECHANISMS FOR ADDRESSING GREENHOUSE GAS EMISSIONS.

Not later than 18 months after the date of the enactment of this Act, the Secretary shall transmit a report to Congress containing a comparative assessment of alternative policy mechanisms for reducing the generation of greenhouse gases. Such assessment shall include a short-run and long-run analysis of the social, economic, energy, environmental, competitive, and agricultural costs and benefits, including costs and benefits for jobs and competition, and the practicality of each of the following policy mechanisms:

(1) Various systems for controlling the generation of greenhouse gases, including caps for the generation of greenhouse gases from major sources and emissions trading programs.

(2) Federal standards for energy efficiency for major sources of greenhouse gases, including efficiency standards for power plants, industrial processes, automobile fuel economy, appliances, and buildings, and for emissions of methane.

(3) Various Federal and voluntary incentives programs.

[42 U.S.C. 13384]

SEC. 1605. NATIONAL INVENTORY AND VOLUNTARY REPORTING OF GREENHOUSE GASES.

(a) NATIONAL INVENTORY.—Not later than one year after the date of the enactment of this Act, the Secretary, through the Energy Information Administration, shall develop, based on data available to, and obtained by, the Energy Information Administration, an inventory of the national aggregate emissions of each greenhouse gas for each calendar year of the baseline period of 1987 through 1990. The Administrator of the Energy Information Administration shall annually update and analyze such inventory using available data. This subsection does not provide any new data collection authority.

(b) VOLUNTARY REPORTING.—

(1) ISSUANCE OF GUIDELINES.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall, after opportunity for public comment, issue guidelines for the voluntary collection and reporting of information on sources of greenhouse gases. Such guidelines shall establish procedures for the accurate voluntary reporting of information on—

(A) greenhouse gas emissions—

(i) for the baseline period of 1987 through 1990; and

(ii) for subsequent calendar years on an annual basis;

(B) annual reductions of greenhouse gas emissions and carbon fixation achieved through any measures, including fuel switching, forest management practices, tree planting, use of renewable energy, manufacture or use of vehicles with reduced greenhouse gas emissions, appliance efficiency, energy efficiency, methane recovery, cogeneration, chlorofluorocarbon capture and replacement, and power plant heat rate improvement;

(C) reductions in greenhouse gas emissions achieved as a result of—

- (i) voluntary reductions;
- (ii) plant or facility closings; and
- (iii) State or Federal requirements; and

(D) an aggregate calculation of greenhouse gas emissions by each reporting entity.

Such guidelines shall also establish procedures for taking into account the differential radiative activity and atmospheric lifetimes of each greenhouse gas.

(2) REPORTING PROCEDURES.—The Administrator of the Energy Information Administration shall develop forms for voluntary reporting under the guidelines established under paragraph (1), and shall make such forms available to entities wishing to report such information. Persons reporting under this subsection shall certify the accuracy of the information reported.

(3) CONFIDENTIALITY.—Trade secret and commercial or financial information that is privileged or confidential shall be protected as provided in section 552(b)(4) of title 5, United States Code.

(4) ESTABLISHMENT OF DATA BASE.—Not later than 18 months after the date of the enactment of this Act, the Secretary, through the Administrator of the Energy Information Administration, shall establish a data base comprised of information voluntarily reported under this subsection. Such information may be used by the reporting entity to demonstrate achieved reductions of greenhouse gases.

(c) CONSULTATION.—In carrying out this section, the Secretary shall consult, as appropriate, with the Administrator of the Environmental Protection Agency.

[42 U.S.C. 13385]

SEC. 1606. REPEAL.

Title III of the Energy Security Act (42 U.S.C. 7361 et seq.) is hereby repealed.

[42 U.S.C. 13386]

SEC. 1607. CONFORMING AMENDMENT.

The Secretary, through the Trade Promotion Coordinating Council, shall develop policies and programs to encourage the export and promotion of domestic energy resource technologies, including renewable energy, energy efficiency, and clean coal technologies, to developing countries.

[42 U.S.C. 13387]

SEC. 1608. INNOVATIVE ENVIRONMENTAL TECHNOLOGY TRANSFER PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, through the Agency for International Development, and in consultation with the interagency working group established under section 256(d) of the Energy Policy and Conservation Act (in this section referred to as the “interagency working group”¹, shall establish a technology transfer program to carry out the purposes described in subsection

¹ Probably should have closing parenthesis here.

(b). Within 150 days after the date of the enactment of this Act, the Secretary and the Administrator of the Agency for International Development shall enter into a written agreement to carry out this section. The agreement shall establish a procedure for resolving any disputes between the Secretary and the Administrator regarding the implementation of specific projects. With respect to countries not assisted by the Agency for International Development, the Secretary may enter into agreements with other appropriate Federal agencies. If the Secretary and the Administrator, or the Secretary and an agency described in the previous sentence, are unable to reach an agreement, each shall send a memorandum to the President outlining an appropriate agreement. Within 90 days after receipt of either memorandum, the President shall determine which version of the agreement shall be in effect. Any agreement entered into under this subsection shall be provided to the appropriate committees of the Congress and made available to the public.

(b) PURPOSES OF THE PROGRAM.—The purposes of the technology transfer program under this section are to—

(1) reduce the United States balance of trade deficit through the export of United States energy technologies and technological expertise;

(2) retain and create manufacturing and related service jobs in the United States;

(3) encourage the export of United States technologies, including services related thereto, to those countries that have a need for developmentally sound facilities to provide energy derived from technologies that substantially reduce environmental pollutants, including greenhouse gases;

(4) develop markets for United States technologies, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, that meet the energy and environmental requirements of foreign countries;

(5) better ensure that United States participation in energy-related projects in foreign countries includes participation by United States firms as well as utilization of United States technologies;

(6) ensure the introduction of United States firms and expertise in foreign countries;

(7) provide financial assistance by the Federal Government to foster greater participation by United States firms in the financing, ownership, design, construction, or operation of technologies or services that substantially reduce environmental pollutants, including greenhouse gases; and

(8) assist United States firms, especially firms that are in competition with firms in foreign countries, to obtain opportunities to transfer technologies to, or undertake projects in, foreign countries.

(c) IDENTIFICATION.—Pursuant to the agreements required by subsection (a), the Secretary, through the Agency for International Development, and after consultation with the interagency working group, United States firms, and representatives from foreign countries, shall develop mechanisms to identify potential energy projects in host countries that substantially reduce environmental pollutants, including greenhouse gases, and shall identify a list of

such projects within 240 days after the date of the enactment of this Act, and periodically thereafter.

(d) FINANCIAL MECHANISMS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall—

(A) establish appropriate financial mechanisms to increase the participation of United States firms in energy projects, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases in foreign countries;

(B) utilize available financial assistance authorized by this section to counterbalance assistance provided by foreign governments to non-United States firms; and

(C) provide financial assistance to support projects.

(2) The financial assistance authorized by this section may be—

(A) provided in combination with other forms of financial assistance, including non-Federal funding that may be available for the project; and

(B) utilized in conjunction with financial assistance programs available through other Federal agencies.

(3) United States obligations under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development shall be applicable to this section.

(e) SOLICITATIONS FOR PROJECT PROPOSALS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, within one year after the date of the enactment of this Act, and subsequently as appropriate thereafter, shall solicit proposals from United States firms for the design, construction, testing, and operation of the project or projects identified under subsection (c) which propose to utilize a United States technology or service. Each solicitation under this section shall establish a closing date for receipt of proposals.

(2) The solicitation under this subsection shall, to the extent appropriate, be modeled after the RFP No. DE-PS01-90FE62271 Clean Coal Technology IV, as administered by the Department of Energy.

(3) Any solicitation made under this subsection shall include the following requirements:

(A) The United States firm that submits a proposal in response to the solicitation shall have an equity interest in the proposed project.

(B) The project shall utilize a United States technology, including services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, in meeting the applicable energy and environmental requirements of the host country.

(C) Proposals for projects shall be submitted by and undertaken with a United States firm, although a joint venture or other teaming arrangement with a non-United States manufacturer or other non-United States entity is permissible.

(f) ASSISTANCE TO UNITED STATES FIRMS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the

interagency working group, shall establish a procedure to provide financial assistance to United States firms under this section for a project identified under subsection (c) where solicitations for the project are being conducted by the host country or by a multilateral lending institution.

(g) OTHER PROGRAM REQUIREMENTS.—Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, and in consultation with the interagency working group, shall—

(1) establish eligibility criteria for countries that will host projects;

(2) periodically review the energy needs of such countries and export opportunities for United States firms for the development of projects in such countries;

(3) consult with government officials in host countries and, as appropriate, with representatives of utilities or other entities in host countries, to determine interest in and support for potential projects; and

(4) determine whether each project selected under this section is developmentally sound, as determined under the criteria developed by the Development Assistance Committee of the Organization for Economic Cooperation and Development.

(h) ELIGIBLE TECHNOLOGIES.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall prepare a list of eligible technologies and services under this section. In preparing such a list, the Secretary shall consider fuel cell powerplants, aeroderivative gas turbines and catalytic combustion technologies for aeroderivative gas turbines, ocean thermal energy conversion technology, anaerobic digester and storage tanks, and other renewable energy and energy efficiency technologies.

(i) SELECTION OF PROJECTS.—(1) Pursuant to the agreements under subsection (a), the Secretary, through the Agency for International Development, shall, not later than 120 days after receipt of proposals in response to a solicitation under subsection (e), select one or more proposals under this section.

(2) In selecting a proposal under this section, the Secretary, through the Agency for International Development, shall consider—

(A) the ability of the United States firm, in cooperation with the host country, to undertake and complete the project;

(B) the degree to which the equipment to be included in the project is designed and manufactured in the United States;

(C) the long-term technical and competitive viability of the United States technology, and services related thereto, and the ability of the United States firm to compete in the development of additional energy projects using such technology in the host country and in other foreign countries;

(D) the extent of technical and financial involvement of the host country in the project;

(E) the extent to which the proposed project meets the purposes of this section;

(F) the extent of technical, financial, management, and marketing capabilities of the participants in the project, and the commitment of the participants to completion of a success-

ful project in a manner that will facilitate acceptance of the United States technology or service for future application; and
(G) such other criteria as may be appropriate.

(3) In selecting among proposed projects, the Secretary shall seek to ensure that, relative to otherwise comparable projects in the host country, a selected project will meet the following criteria:

(A) It will reduce environmental emissions, including greenhouse gases, to an extent greater than required by applicable provisions of law.

(B) It will be a more cost-effective technological alternative, based on life cycle capital and operating costs per unit of energy produced and, where applicable, costs per unit of product produced.

(C) It will increase the overall efficiency of energy use.

Priority in selection shall be given to those projects which, in the judgment of the Secretary, best meet these criteria.

(j) UNITED STATES-ASIA ENVIRONMENTAL PARTNERSHIP.—Activities carried out under this section shall be coordinated with the United States-Asia Environmental Partnership.

(k) BUY AMERICA.—In carrying out this section, the Secretary, through the Agency for International Development, and pursuant to the agreements under subsection (a), shall ensure—

(1) the maximum percentage, but in no case less than 50 percent, of the cost of any equipment furnished in connection with a project authorized under this section shall be attributable to the manufactured United States components of such equipment; and

(2) the maximum participation of United States firms.

In determining whether the cost of United States components equals or exceeds 50 percent, the cost of assembly of such United States components in the host country shall not be considered a part of the cost of such United States component.

(l) REPORT TO CONGRESS.—The Secretary and the Administrator of the Agency for International Development shall report annually to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives on the progress being made to introduce innovative energy technologies, and services related thereto, that substantially reduce environmental pollutants, including greenhouse gases, into foreign countries.

(m) DEFINITIONS.—For purposes of this section—

(1) the term “host country” means a foreign country which is—

(A) the participant in or the site of the proposed innovative energy technology project; and

(B) either—

(i) classified as a country eligible to participate in development assistance programs of the Agency for International Development pursuant to applicable law or regulation; or

(ii) a developing country; and

(2) the term “developing country” includes, but is not limited to, countries in Central and Eastern Europe or in the independent states of the former Soviet Union.

(n) AUTHORIZATION FOR PROGRAM.—There are authorized to be appropriated to the Secretary to carry out the program required by this section, \$100,000,000 for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998.

[42 U.S.C. 13387]

SEC. 1609. GLOBAL CLIMATE CHANGE RESPONSE FUND.

(a) ESTABLISHMENT OF THE FUND.—The Secretary of the Treasury, in consultation with the Secretary of State, shall establish a Global Climate Change Response Fund to act as a mechanism for United States contributions to assist global efforts in mitigating and adapting to global climate change.

(b) RESTRICTIONS ON DEPOSITS.—No deposits shall be made to the Global Climate Change Response Fund until the United States has ratified the United Nations Framework Convention on Climate Change.

(c) USE OF THE FUND.—Moneys deposited into the Fund shall be used by the President, to the extent authorized and appropriated under section 302 of the Foreign Assistance Act of 1961, solely for contributions to a financial mechanism negotiated pursuant to the United Nations Framework Convention on Climate Change, including all protocols or agreements related thereto.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for deposit in the Fund to carry out the purposes of this section, \$50,000,000 for fiscal year 1994 and such sums as may be necessary for fiscal years 1995 and 1996.

[42 U.S.C. 13388]

**TITLE XXX OF THE ENERGY POLICY ACT OF 1992—
MISCELLANEOUS**

**TITLE XXX OF THE ENERGY POLICY ACT OF 1992—
MISCELLANEOUS**

TITLE XXX—MISCELLANEOUS

* * * * *

**Subtitle B—Other Miscellaneous
Provisions**

* * * * *

SEC. 3013. GEOTHERMAL HEAT PUMPS.

The Secretary shall—

(1) encourage States, municipalities, counties, and townships to consider allowing the installation of geothermal heat pumps, and, where applicable, and consistent with public health and safety, to permit public and private water recipients to utilize the flow of water from, and back into, public and private water mains for the purpose of providing sufficient water supply for the operation of residential and commercial geothermal heat pumps; and

(2) not discourage any local authority which allows the use of geothermal heat pumps from—

(A) inspecting, at any reasonable time, geothermal heat pump connections to the water system to ensure the exclusive use of the public or private water supply to the geothermal heat pump system; and

(B) requiring that geothermal heat pump systems be designed and installed in a manner that eliminates any risk of contamination to the public water supply.

[42 U.S.C. 13551]

SEC. 3014. USE OF ENERGY FUTURES FOR FUEL PURCHASES.

(a) **FUEL STUDY.**—The Secretary shall conduct a study—

(1) to ascertain if the use of energy futures and options contracts could provide cost-effective protection for Government entities (including Government purchases for military purposes and for the Strategic Petroleum Reserve) and consumer cooperatives (or any organization whose purpose is to purchase fuel in bulk) from unanticipated surges in the price of fuel; and

(2) to ascertain how such Government entities or consumer cooperatives may be educated in the prudent use of energy futures and options contracts to maximize their purchasing effectiveness, protect themselves against unanticipated surges in the price of fuel, and minimize fuel costs.

(b) **PILOT PROGRAM.**—The Secretary shall conduct a pilot program, commencing not later than 30 days after the transmission of the study required in subsection (b), to educate such governmental entities, consumer cooperatives, or other organizations on the prudent and cost-effective use of energy futures and options contracts to increase their protection against unanticipated surges in the price of fuel and thereby increase the efficiency of their fuel purchase or assistance programs.

(c) **AUTHORIZATION.**—There are authorized to be appropriated such sums as may be necessary to carry out this section.

[42 U.S.C. 13552]

SEC. 3015. ENERGY SUBSIDY STUDY.

(a) **IN GENERAL.**—The Secretary shall contract with the National Academy of Sciences to conduct a study of energy subsidies that—

- (1) are in effect on the date of the enactment of this Act;
- or
- (2) have been in effect prior to the date of the enactment of this Act.

(b) **REPORT TO CONGRESS.**—Not later than 18 months after the date of the enactment of this Act, the Secretary shall transmit to the Congress, the results of such study to be accompanied by recommendations for legislation, if any.

(c) **CONTENTS.**—

(1) **IN GENERAL.**—The study shall identify and quantify the direct and indirect subsidies and other legal and institutional factors that influence decisions in the marketplace concerning fuels and energy technologies.

(2) **TOPICS FOR EXAMINATION.**—The study shall examine—

- (A) fuel and technology choices that are—
 - (i) available on the date of the enactment of this Act; or
 - (ii) reasonably foreseeable on the date of the enactment of this Act;
 - (B) production subsidies for the extraction of raw materials;
 - (C) subsidies encouraging investment in large capital projects;
 - (D) indemnification;
 - (E) fuel cycle subsidies, including waste disposal;
 - (F) government research and development support;
- and
- (G) other relevant incentives and disincentives.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section \$500,000 for each of the fiscal years 1993 and 1994.

[42 U.S.C. 13553]

SEC. 3016. TAR SANDS.

(a) **POLICY.**—It is the policy of the United States to promote the development and production, by all means consistent with sound engineering, economic, and environmental practices, of deposits of tar sands.

(b) DEFINITION.—(1) For purposes of this section, the term “tar sands” means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either—

(A) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise; or

(B) contains a hydrocarbonaceous material and is produced by mining or quarrying.

(2) Nothing in this section is intended or shall be construed to affect in any way the definition of the term tar sands under any other provision of Federal law.

(c) STUDY.—The Secretary, in consultation with the Secretary of the Interior, shall submit a study to the House of Representatives and the Committee on Energy and Natural Resources of the Senate within one year after the date of enactment of this Act. Such study shall identify and evaluate the development potential of sources of tar sands in the United States. The study shall also identify and evaluate processes for extracting oil from the identified tar sand sources, including existing tar sands waste tailings, and evaluate the environmental benefits of, and the potential for co-production of minerals and metals from, such processes.

(d) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 and 1994 to carry out this section.

[42 U.S.C. 13554]

* * * * *

SEC. 3019. STRATEGIC DIVERSIFICATION.

The Office of Barter within the United States Department of Commerce and the Interagency Group on Countertrade shall within six months from the date of enactment report to the President and the Congress on the feasibility of using barter, countertrade and other self-liquidating finance methods to facilitate the strategic diversification of United States oil imports through cooperation with the former Soviet Union in the development of its energy resources. The report shall consider among other relevant topics the feasibility of trading American grown food for Soviet produced oil, minerals or energy.

[42 U.S.C. 13551]

SEC. 3020. CONSULTATIVE COMMISSION ON WESTERN HEMISPHERE ENERGY AND ENVIRONMENT.

(a) FINDINGS.—The Congress finds that—

(1) there is growing mutual economic interdependence among the countries of the Western Hemisphere;

(2) energy and environmental issues are intrinsically linked and must be considered together when formulating policy on the broader issue of sustainable economic development for the Western Hemisphere as a whole;

(3) when developing their respective energy infrastructures, countries in the Western Hemisphere must consider existing and emerging environmental constraints, and do so in a way that results in sustainable long-term economic growth;

(4) the coordination of respective national energy and environmental policies of the governments of the Western Hemi-

sphere could be substantially improved through regular consultation among these countries;

(5) the development, production and consumption of energy can affect environmental quality, and the environmental consequences of energy-related activities are not confined within national boundaries, but are regional and global in scope;

(6) although the Western Hemisphere is richly endowed with indigenous energy resources, an insufficient energy supply would severely constrain future opportunities for sustainable economic development and growth in each of these member countries; and

(7) the energy markets of the United States are linked with those in other countries of the Western Hemisphere and the world.

(b) DEFINITION.—For purposes of this section, the term “Commission” means the Consultative Commission on Western Hemisphere Energy and Environment.

(c) NEGOTIATIONS.—The President is authorized to direct the United States representative to the Organization of American States to initiate negotiations with the Organization of American States for the establishment of a Consultative Commission on Western Hemisphere Energy and Environment under the auspices of the Organization of American States.

(d) THE COMMISSION.—In the course of the negotiations, the following shall be pursued:

(1) OBJECTIVES.—The objectives of the Commission shall be—

(A) to evaluate from the viewpoint of the Western Hemisphere as a whole the energy and environmental situations, trends, and policies of the countries of the participating governments necessary to support sustainable economic development;

(B) to recommend to the participating governments actions, policies, and institutional arrangements that will enhance cooperation and policy coordination among their respective countries in the future development and use of indigenous energy resources and technologies, and in the future development and implementation of measures to protect the environment of the Western Hemisphere; and

(C) to recommend to the participating governments actions and policies that will enhance energy and environmental cooperation and coordination among the countries of the Western Hemisphere and the world.

(2) COMPOSITION OF THE COMMISSION.—The Commission shall include representatives of—

(A) the respective foreign energy and environmental ministries or departments of the participating governments;

(B) the parliamentary or legislative bodies with legislative responsibilities for energy and environmental matters; and

(C) other governmental and non-governmental observers appointed by the heads of each participating government on the basis of their experience and expertise.

(3) SECRETARIAT.—A small secretariat shall be chosen by the participating governments for their expertise in the areas of energy and the environment.

(4) SUNSET PROVISION.—The Commission's authority—

(A) shall terminate five years from the date of the agreement under which it was created; and

(B) may be extended for a five-year term at the expiration of the previous term by agreement of the participating governments.

(e) REPORT.—The President shall, within one year after the date of enactment of this Act, report to the Committee on Energy and Commerce and the Committee on Foreign Affairs of the House of Representatives, and to the Committee on Energy and Natural Resources and the Committee on Foreign Relations of the Senate, on the progress toward the establishment of the Commission and achievement of the purposes of this section.

[42 U.S.C. 13555]

SEC. 3021. DISADVANTAGED BUSINESS ENTERPRISES.

(a) GENERAL RULE.—To the extent practicable, the head of each agency shall provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts by each agency under this Act and amendments made by this Act pursuant to competitive procedures within the meaning of either the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), or chapter 137 of title 10, United States Code, shall be expended either with—

(1) small business concerns controlled by socially and economically disadvantaged individuals or women;

(2) historically Black colleges and universities;

(3) colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans; or

(4) qualified HUBZone small business concerns.”; and

(b) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) The term “small business concern” has the meaning such term has under section 3 of the Small Business Act (15 U.S.C. 632). However, for purposes of contracts and subcontracts requiring engineering services the applicable size standard shall be that established for military and aerospace equipment and military weapons.

(2) The term “socially and economically disadvantaged individuals” has the meaning such term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations promulgated pursuant thereto.

(3) The term ‘qualified HUBZone small business concern’ has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(o)).

[42 U.S.C. 13556]

APPENDIX

INTERNATIONAL ENERGY AGREEMENT

AGREEMENT
ON AN
INTERNATIONAL ENERGY PROGRAM

THE GOVERNMENTS OF THE REPUBLIC OF AUSTRIA, THE KINGDOM OF BELGIUM, CANADA, THE KINGDOM OF DENMARK, THE FEDERAL REPUBLIC OF GERMANY, IRELAND, THE ITALIAN REPUBLIC, JAPAN, THE GRAND DUCHY OF LUXEMBOURG, THE KINGDOM OF THE NETHERLANDS, SPAIN, THE KINGDOM OF SWEDEN, THE SWISS CONFEDERATION, THE REPUBLIC OF TURKEY, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNITED STATES OF AMERICA,

DESIRING to promote secure oil supplies on reasonable and equitable terms,

DETERMINED TO TAKE COMMON EFFECTIVE MEASURES TO MEET OIL SUPPLY EMERGENCIES BY DEVELOPING AN EMERGENCY SELF-SUFFICIENCY IN OIL SUPPLIES, RESTRAINING DEMAND AND ALLOCATING AVAILABLE OIL AMONG THEIR COUNTRIES ON AN EQUITABLE BASIS,

DESIRING to promote co-operative relations with oil producing countries and with other oil consuming countries, including those of the developing world, through a purposeful dialogue, as well as through other forms of co-operation, to further the opportunities for a better understanding between consumer and producer countries,

MINDFUL of the interests of other oil consuming countries, including those of the developing world,

DESIRING to play a more active role in relation to the oil industry by establishing a comprehensive international information system and a permanent framework for consultation with oil companies,

DETERMINED to reduce their dependence on imported oil by undertaking long term co-operative efforts on conservation of energy, on accelerated development of alternative sources of energy, on research and development in the energy field and on uranium enrichment,

CONVINCED that these objectives can only be reached through continued cooperative efforts within effective organs,

EXPRESSING the intention that such organs be created within the framework of the Organisation for Economic Co-operation and Development,

RECOGNISING that other Member countries of the Organisation for Economic Co-operation and Development may desire to join in their efforts,

CONSIDERING the special responsibility of governments for energy supply,

CONCLUDE that it is necessary to establish an International Energy Program to be implemented through an International Energy Agency, and to that end,

HAVE agreed as follows:

Article I

1. The Participating Countries shall implement the International Energy Program as provided for in this Agreement through the International Energy Agency, described in Chapter IX, hereinafter referred to as the "Agency".
2. The term "Participating Countries" means States to which this Agreement applies provisionally and States for which the Agreement has entered into and remains in force.
3. The term "group" means the Participating Countries as a group.

Chapter I

EMERGENCY SELF-SUFFICIENCY

Article 2

1. The Participating Countries shall establish a common emergency self-sufficiency in oil supplies. To this end, each Participating Country shall maintain emergency reserves sufficient to sustain consumption for at least 60 days with no net oil imports. Both consumption and net oil imports shall be reckoned at the average daily level of the preceding calendar year.
2. The Governing Board shall, acting by special majority, not later than 1st July, 1975, decide the date from which the emergency reserve commitment of each Participating Country shall, for the purpose of calculating its supply right referred to in Article 7, be deemed to be raised to a level of 90 days. Each Participating Country shall increase its actual level of emergency reserves to 90 days and shall endeavour to do so by the date so decided.

3. The term “emergency reserve commitment” means the emergency reserves equivalent to 60 days of net oil imports as set out in paragraph 1 and, from the date to be decided according to paragraph 2, to 90 days of net oil imports as set out in paragraph 2.

Article 3

1. The emergency reserve commitment set out in Article 2 may be satisfied by:

- oil stocks,
- fuel switching capacity,
- stand-by oil production.

in accordance with the provisions of the Annex which forms an integral part of this Agreement.

2. The Governing Board shall, acting by majority, not later than 1st July, 1975, decide the extent to which the emergency reserve commitment may be satisfied by the elements mentioned in paragraph 1.

Article 4

1. The Standing Group on Emergency Questions shall, on a continuing basis, review the effectiveness of the measures taken by each Participating Country to meet its emergency reserve commitment.

2. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

Chapter 11

DEMAND RESTRAINT

Article 5

1. Each Participating Country shall at all times have ready a program of contingent oil demand restraint measures enabling it to reduce its rate of final consumption in accordance with Chapter IV.

2. The Standing Group on Emergency Questions shall, on a continuing basis, review and assess:

- each Participating Country’s program of demand restraint measures,

— the effectiveness of measures actually taken by each Participating Country.

3. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

Chapter III

ALLOCATION

Article 6

1. Each Participating Country shall take the measures in order that allocation of oil will be carried out pursuant to this Chapter and Chapter IV.

2. The Standing Group on emergency Questions shall, on a continuing basis, review and assess:

— each Participating Country's measures in order that allocation of oil will be carried out pursuant to this Chapter and Chapter IV,

— the effectiveness of measures actually taken by each Participating Country.

3. The Standing Group on Emergency Questions shall report to the Management Committee, which shall make proposals, as appropriate, to the Governing Board. The Governing Board may, acting by majority, adopt recommendations to Participating Countries.

4. The Governing Board shall, acting by majority, decide promptly on the practical procedures for the allocation of oil and on the procedures and modalities for the participation of oil companies therein within the framework of this Agreement.

Article 7

1. When allocation of oil is carried out pursuant to Article 13, 14, or 15, each Participating Country shall have a supply right equal to its permissible consumption less its emergency reserve drawdown obligation.

2. A Participating Country whose supply right exceeds the sum of its normal domestic production and actual net imports available during an emergency shall have an allocation right which entitles it to additional net imports equal to that excess.

3. A Participating Country in which the sum of normal domestic production and actual net imports available during an emergency exceeds its supply right shall have an allocation obligation which requires it to supply, directly or indirectly, the quantity of oil equal to that excess to other Participating Countries. This

would not preclude any Participating Country from maintaining exports of oil to non-participating countries.

4. The term “permissible consumption” means the average daily rate of final consumption allowed when emergency demand restraint at the applicable level has been activated; possible further voluntary demand restraint by any Participating Country shall not affect its allocation right or obligation.

5. The term “emergency reserve drawdown obligation” means the emergency reserve commitment of any Participating Country divided by the total emergency reserve commitment of the group and multiplied by the group supply shortfall.

6. The term “group supply shortfall” means the shortfall for the group as measured by the aggregate permissible consumption for the group minus the daily rate of oil supplies available to the group during an emergency.

7. The term “oil supplies available to the group” means

- all crude oil available to the group,
- all petroleum products imported from outside the group, and
- all finished products and refinery feedstocks which are produced in association with natural gas and crude oil and are available to the group.

8. The term “final consumption” means total domestic consumption of all finished petroleum products.

Article 8

1. When allocation of oil to a Participating Country is carried out pursuant to Article 17, that Participating Country shall

- sustain from its final consumption the reduction in its oil supplies up to a level equal to 7 per cent of its final consumption during the base period,
- have an allocation right equal to the reduction in its oil supplies which results in a reduction of its final consumption over and above that level.

2. The obligation to allocate this amount of oil is shared among the other Participating Countries on the basis of their final consumption during the base period.

3. The Participating Countries may meet their allocation obligations by any measures of their own choosing, including demand restraint measures or use of emergency reserves.

Article 9

1. For purposes of satisfying allocation rights and allocation obligations, the following elements will be included:

- all crude oil,
- all petroleum products,
- all refinery feedstocks, and
- all finished products produced in association with natural gas and crude Oil.

2. To calculate a Participating Country's allocation right, petroleum products normally imported by that Participating Country, whether from other Participating Countries or from non-participating countries, shall be expressed in crude oil equivalents and treated as though they were imports of crude oil to that Participating Country.

3. Insofar as possible, normal channels of supply will be maintained as well as the normal supply proportions between crude oil and products and among different categories of crude oil and products.

4. When allocation takes place, an objective of the Program shall be that available crude oil and products shall, insofar as possible, be shared within the refining and distributing industries as well as between refining and distributing companies in accordance with historical supply patterns.

Article 10

1. The objectives of the Program shall include ensuring fair treatment for all Participating Countries and basing the price for allocated oil on the price conditions prevailing for comparable commercial transactions.

2. Questions relating to the price of oil allocated during an emergency shall be examined by the Standing Group on Emergency Questions.

Article 11

1. It is not an objective of the Program to seek to increase, in an emergency, the share of world oil supply that the group had under normal market conditions. Historical oil trade patterns should be preserved as far as is reasonable, and due account should be taken of the position of individual non-participating countries.

2. In order to maintain the principles set out in paragraph 1, the Management Committee shall make proposals, as appropriate, to the Governing Board, which, acting by majority, shall decide on such proposals.

*Chapter IV***ACTIVATION**

ACTIVATION

Article 12

Whenever the group as a whole or any Participating Country sustains or reasonably be expected to sustain a reduction in its oil supplies, the emergency measures, which are the mandatory demand restraint referred to in Chapter II and the allocation of available oil referred to in Chapter III, shall be activated in accordance with this Chapter.

Article 13

Whenever the group sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies at least equal to 7 per cent of the average daily rate of its final consumption during the base period, each Participating Country shall implement demand restraint measures sufficient to reduce its final consumption by an amount equal to 7 per cent of its final consumption during the base period, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9, 10 and 11.

Article 14

Whenever the group sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies at least equal to 12 per cent of the average daily rate of its final consumption during the base period, each Participating Country shall implement demand restraint measures sufficient to reduce its final consumption by an amount equal to 10 per cent of its final consumption during the base period, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9, 10 and 11.

Article 15

When cumulative daily emergency reserve drawdown obligations as defined in Article 7 have reached 50 per cent of emergency reserve commitments, and a decision has been taken in accordance with Article 20, each Participating Country shall take the measures so decided, and allocation of available oil among the Participating Countries shall take place in accordance with Articles 7, 9, 10 and 11.

Article 16

When demand restraint is activated in accordance with this Chapter, a Participating Country may substitute for demand re-

straint, measures use of emergency reserves held in excess of its emergency reserve commitment as provided in the Program.

Article 17

1. Whenever any Participating Country sustains or can reasonably be expected to sustain a reduction in the daily rate of its oil supplies which results in a reduction of the daily rate of its final consumption by an amount exceeding 7 per cent of the average daily rate of its final consumption during the base period, allocation of available oil to that Participating Country shall take place in accordance with Articles 8 to 11.

2. Allocation of available oil shall also take place when the conditions in paragraph 1 are fulfilled in a major region of a Participating Country whose oil market is incompletely integrated. In this case, the allocation obligation of other Participating Countries shall be reduced by the theoretical allocation obligation of any other major region or regions of the Participating Country concerned.

Article 18

1. The term "base period" means the most recent four quarters with a delay of one quarter necessary to collect information. While emergency measures are applied with regard to the group or to a Participating Country, the base period shall remain fixed.

2. The Standing Group on Emergency Questions shall examine the base period set out in paragraph 1, taking into account in particular such factors as growth, seasonal variations in consumption and cyclical changes and shall, not later than 1st April, 1975, report to the Management Committee. The Management Committee shall make proposals, as appropriate, to the Governing Board, which, acting by majority, shall decide on these proposals not later than 1st July, 1975.

Article 19

1. The Secretariat shall make a finding when a reduction of oil supplies as mentioned in Article 13, 14 or 17 has occurred or can reasonably be expected to occur, and shall establish the amount of the reduction or expected reduction for each Participating Country and for the group. The Secretariat shall keep the Management Committee informed of its deliberations, and shall immediately report its finding to the members of the Committee and inform the Participating Countries thereof. The report shall include information on the nature of the reduction.

2. Within 48 hours of the Secretariat's reporting a finding, the Committee shall meet to review the accuracy of the data compiled and the information provided. The Committee shall report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee, including any regarding the handling of the emergency.

3. Within 48 hours of receiving the Management Committee's report, the Governing Board shall meet to review the finding of the Secretariat in the light of that report. The activation of emergency measures shall be considered confirmed and participating Countries shall implement such measures within 15 days of such confirmation unless the Governing Board, acting by special majority, decides within a further 48 hours not to activate the emergency measures, to activate them only in part or to fix another time limit for their implementation.

4. If, according to the finding of the Secretariat, the conditions of more than one of the Articles 14, 13 and 17 are fulfilled, any decision not to activate emergency measures shall be taken separately for each Article and in the above order. If the conditions in Article 17 are fulfilled with regard to more than one Participating Country any decision not to activate allocation shall be taken separately with respect to each Country.

5. Decisions pursuant to paragraphs 3 and 4 may at any time be reversed by the Governing Board, acting by majority.

6. In making its finding under this Article, the Secretariat shall consult with oil companies to obtain their views regarding the situation and the appropriateness of the measures to be taken.

7. An international advisory board from the oil industry shall be convened, not later than the activation of emergency measures, to assist the Agency in ensuring the effective operation of such measures.

Article 20

1. The Secretariat shall make a finding when cumulative daily emergency reserve drawdown obligations have reached or can reasonably be expected to reach 50 per cent of emergency reserve commitments. The Secretariat shall immediately report its finding to the members of the Management Committee and inform the Participating Countries thereof. The report shall include information on the oil situation.

2. Within 72 hours of the Secretariat's reporting such a finding, the Management Committee shall meet to review the data compiled and the information provided. On the basis of available information the Committee shall report to the Governing Board within a further 48 hours proposing measures required for meeting the necessities of the situation, including the increase in the level of mandatory demand restraint that may be necessary. The report shall set out the views expressed by the members of the Committee.

3. The Governing Board shall meet within 48 hours of receiving the Committee's report and proposal. The Governing Board shall review the finding of the Secretariat and the report of the Management Committee and shall within a further 48 hours, acting by special majority, decide on the measures required for meeting the

necessities of the situation, including the increase in the level of mandatory demand restraint that may be necessary.

Article 21

1. Any Participating Country may request the Secretariat to make a finding under Article 19 or 20.
2. If, within 72 hours of such request, the Secretariat does not make such a finding, the Participating Country may request the Management Committee to meet and consider the situation in accordance with the provisions of this Agreement.
3. The Management Committee shall meet within 48 hours of such request in order to consider the situation. It shall, at the request of any Participating Country, report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee and by the Secretariat, including any views regarding the handling of the situation.
4. The Governing Board shall meet within 48 hours of receiving the Management Committee's report. If it finds, acting by majority, that the conditions set out in Article 13, 14, 15 or 17 are fulfilled, emergency measures shall be activated accordingly.

Article 22

The Governing Board may at any time decide by unanimity to activate any appropriate emergency measures not provided for in this Agreement, if the situation so requires.

DEACTIVATION

Article 23

1. The Secretariat shall make a finding when a reduction of supplies as mentioned in Article 13, 14 or 17 has decreased or can reasonably be expected to decrease below the level referred to in the relevant Article. The Secretariat shall keep the Management Committee informed of its deliberations and shall immediately report its finding to the members of the Committee and inform the Participating Countries thereof.
2. Within 72 hours of the Secretariat's reporting a finding, the Management Committee shall meet to review the data compiled and the information provided. It shall report to the Governing Board within a further 48 hours. The report shall set out the views expressed by the members of the Committee, including any views regarding the handling of the emergency.
3. Within 48 hours of receiving the Committee's report, the Governing Board shall meet to review the finding of the Secretariat in the light of the report from the Management Committee. The deactivation of emergency measures or the applicable reduction of the demand restraint level shall be considered confirmed unless the

Governing Board, acting by special majority, decides within a further 48 hours to maintain the emergency measures or to deactivate them only in part.

4. In making its finding under this Article, the Secretariat shall consult with the international advisory board, mentioned in Article 19, paragraph 7, to obtain its views regarding the situation and the appropriateness of the measures to be taken.

5. Any Participating Country may request the Secretariat to make a finding under this Article.

Article 24

When emergency measures are in force, and the Secretariat has not made a finding under Article 23, the Governing Board, acting by special majority, may at any time decide to deactivate the measures either wholly or in part.

Chapter V

**INFORMATION SYSTEM ON THE
INTERNATIONAL OIL MARKET**

Article 25

1. The Participating Countries shall establish an Information System consisting of two sections:

- a General Section on the situation in the international oil market and activities of oil companies,
- a Special Section designed to ensure the efficient operation of the measures described in Chapters I to IV.

2. The System shall be operated on a permanent basis, both under normal conditions and during emergencies, and in a manner which ensures the confidentiality of the information made available.

3. The Secretariat shall be responsible for the operation of the Information System and shall make the information compiled available to the Participating Countries.

Article 26

The term “oil companies” means international companies, national companies, non-integrated companies and other entities which play a significant role in the international oil industry.

GENERAL SECTION

Article 27

1. Under the General Section of the Information System, the Participating Countries shall, on a regular basis, make available to the Secretariat information on the precise data identified in accordance with Article 29 on the following subjects relating to oil companies operating within their respective jurisdictions:

- (a) Corporate structure;
- (b) Financial structure, including balance sheets, profit and loss accounts, and taxes paid;
- (c) Capital investments realised;
- (d) Terms of arrangements for access to major sources of crude oil;
- (e) Current rates of production and anticipated changes therein;
- (f) Allocations of available crude supplies to affiliates and other customers (criteria and realisations);
- (g) Stocks;
- (h) Cost of crude oil and oil products;
- (i) Prices, including transfer prices to affiliates,
- (j) Other subjects, as decided by the Governing Board, acting by unanimity.

2. Each Participating Country shall take appropriate measures to ensure that all oil companies operating within its jurisdiction make such information available to it as is necessary to fulfil its obligations under paragraph 1, taking into account such relevant information as is already available to the public or to Governments.

3. Each Participating Country shall provide information on a non-proprietary basis and on a company and/or country basis as appropriate, and in such a manner and degree as will not prejudice competition or conflict with the legal requirements of any Participating Country relating to competition.

4. No Participating Country shall be entitled to obtain, through the General Section, any information on the activities of a company operating within its jurisdiction which could not be obtained by it from that company by application of its laws or through its institutions and customs if that company were operating solely within its jurisdiction.

Article 28

Information provided on a “non-proprietary basis” means information which does not constitute or relate to patents, trademarks, scientific or manufacturing processes or developments, individual sales, tax returns, customer lists or geological and geophysical information, including maps.

Article 29

1. Within 60 days of the first day of the provisional application of this Agreement, and as appropriate thereafter, the Standing Group on the Oil Market shall submit a report to the Management Committee identifying the precise data within the list of subjects in Article 27, paragraph 1, which are required for the efficient operation of the General Section, and specifying the procedures for obtaining such data on a regular basis.

2. The Management Committee shall review the report and make proposals to the Governing Board which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall take the decisions necessary for the establishment and efficient operation of the General Section.

Article 30

In preparing its reports under Article 29, the Standing Group on the Oil Market shall

- consult with oil companies to ensure that the System is compatible with industry operations;
- identify specific problems and issues which are of concern to Participating Countries;
- identify specific data which are useful and necessary to resolve such problems and issues;
- work out precise standards for the harmonization of the required information in order to ensure comparability of the data;
- work out procedures to ensure the confidentiality of the information.

Article 31

1. The Standing Group on the Oil Market shall on a continuing basis review the operation of the General Section.

2. In the event of changes in the conditions of the international oil market, the Standing Group on the Oil Market shall report to the Management Committee. The Committee shall make proposals

on appropriate changes to the Governing Board which, acting by majority, shall decide on such proposals.

SPECIAL SECTION

Article 32

1. Under the Special Section of the Information System, the Participating Countries shall make available to the Secretariat all information which is necessary to ensure the efficient operation of emergency measures.
2. Each Participating Country shall take appropriate measures to ensure that all oil companies operating within its jurisdiction make such information available to it as is necessary to enable it to fulfil its obligations under paragraph I and under Article 33.
3. The Secretariat shall, on the basis of this information and other information available, continuously survey the supply of oil to and the consumption of oil within the group and each Participating Country.

Article 33

Under the Special Section, the Participating Countries shall, on a regular basis, make available to the Secretariat information on the precise data identified in accordance with Article 34 on the following subjects:

- (a) Oil consumption and supply;
- (b) Demand restraint measures;
- (c) Levels of emergency reserves;
- (d) Availability and utilisation of transportation facilities;
- (e) Current and projected levels of international supply and demand;
- (f) Other subjects, as decided by the Governing Board, acting by unanimity.

Article 34

1. Within 30 days of the first day of the provisional application of this Agreement, the Standing Group on Emergency Questions shall submit a report to the Management Committee identifying the precise data within the list of subjects in Article 33 which are required under the Special Section to ensure the efficient operation of emergency measures and specifying the procedures for obtaining such data on a regular basis, including accelerated procedures in times of emergency.

2. The Management Committee shall review the report and make proposals to the Governing Board which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall take the decisions necessary for the establishment and efficient operation of the Special Section.

Article 35

In preparing its report under Article 34, the Standing Group on Emergency Questions shall

- consult with oil companies to ensure that the System is compatible with industry operations;
- work out precise standards for the harmonization of the required information in order to ensure comparability of the data;
- work out procedures to ensure the confidentiality of the information.

Article 36

The Standing Group on Emergency Questions shall on a continuing basis review the operation of the Special Section and shall, as appropriate, report to the Management Committee. The Committee shall make proposals on appropriate changes to the Governing Board, which, acting by majority, shall decide on such proposals.

Chapter VI

**FRAMEWORK FOR CONSULTATION
WITH OIL COMPANIES**

Article 37

1. The Participating Countries shall establish within the Agency a permanent framework for consultation within which one or more Participating Countries may, in an appropriate manner, consult with and request information from individual oil companies on all important aspects of the oil industry, and within which the Participating Countries may share among themselves on a co-operative basis the results of such consultations.

2. The framework for consultation shall be established under the auspices of the Standing Group on the Oil Market.

3. Within 60 days of the first day of the provisional application of this Agreement, and as appropriate thereafter, the Standing Group on the Oil Market, after consultation with oil companies, shall submit a report to the Management Committee on the proce-

dures for such consultations. The Management Committee shall review the report and make proposals to the Governing Board, which, within 30 days of the submission of the report to the Management Committee, and acting by majority, shall decide on such procedures.

Article 38

1. The Standing Group on the Oil Market shall present a report to the Management Committee on consultations held with any oil company within 30 days thereof.
2. The Management Committee shall consider the report and may make proposals on appropriate co-operative action to the Governing Board, which shall decide on such proposals.

Article 39

1. The Standing Group on the Oil Market shall, on a continuing basis, evaluate the results of the consultations with and the information collected from oil companies.
2. On the basis of these evaluations, the Standing Group may examine and assess the international oil situation and the position of the oil industry and shall report to the Management Committee.
3. The Management Committee shall review such reports and make proposals on appropriate co-operative action to the Governing Board, which shall decide on such proposals.

Article 40

The Standing Group on the Oil Market shall submit annually a general report to the Management Committee on the functioning of the framework for consultation with oil companies.

Chapter VII

LONG TERM CO-OPERATION ON ENERGY

Article 41

1. The Participating Countries are determined to reduce over the longer term their dependence on imported oil for meeting their total energy requirements.
2. To this end, the Participating Countries will undertake national programs and promote the adoption of co-operative programs, including, as appropriate, the sharing of means and efforts, while concerting national policies, in the areas set out in Article 42.

Article 42

1. The Standing Group on Long Term Co-operation shall examine and report to the Management Committee on co-operative action. The following areas shall in particular be considered:

- (a) Conservation of energy, including co-operative programs on
 - exchange of national experiences and information on energy conservation;
 - ways and means for reducing the growth of energy consumption through conservation.
- (b) Development of alternative sources of energy such as domestic oil, coal, natural gas, nuclear energy and hydroelectric power, including cooperative programs on
 - exchange of information on such matters as resources, supply and demand, price and taxation;
 - ways and means for reducing the growth of consumption of imported oil through the development of alternative sources of energy;
 - concrete projects, including jointly financed projects;
 - criteria, quality objectives and standards for environmental protection.
- (c) Energy research and development, including as a matter of priority co-operative programs on
 - coal technology;
 - solar energy;
 - radioactive waste management;
 - controlled thermonuclear fusion;
 - production of hydrogen from water; nuclear safety;
 - waste heat utilisation;
 - conservation of energy;
 - municipal and industrial waste utilisation for energy conservation; overall energy system analysis and general studies.
- (d) Uranium enrichment, including co-operative programs
 - to monitor developments in natural and enriched uranium supply;

- to facilitate development of natural uranium resources and enrichment services;
 - to encourage such consultations as may be required to deal with international issues that may arise in relation to the expansion of enriched uranium supply;
 - to arrange for the requisite collection, analysis and dissemination of data related to the planning of enrichment services.
2. In examining the areas of co-operative action, the Standing Group shall take due account of ongoing activities elsewhere.
3. Programs developed under paragraph 1 may be jointly financed. Such joint financing may take place in accordance with Article 64, paragraph 2.

Article 43

1. The Management Committee shall review the reports of the Standing Group and make appropriate proposals to the Governing Board, which shall decide on these proposals not later than 1st July, 1975.
2. The Governing Board shall take into account possibilities for co-operation within a broader framework.

Chapter VII

**RELATIONS WITH PRODUCER COUNTRIES AND
WITH OTHER CONSUMER COUNTRIES**

Article 44

The Participating Countries will endeavour to promote co-operative relations with oil producing countries and with other oil consuming countries, including developing countries. They will keep under review developments in the energy field with a view to identifying opportunities for and promoting a purposeful dialogue, as well as other forms of co-operation, with producer countries and with other consumer countries.

Article 45

To achieve the objectives set out in Article 44, the Participating Countries will give full consideration to the needs and interests of other oil consuming countries, particularly those of the developing countries.

Article 46

The Participating Countries will, in the context of the Program, exchange views on their relations with oil producing countries. To this end, the Participating Countries should inform each other of co-operative action on their part with producer countries which is relevant to the objectives of the Program.

Article 47

The Participating Countries will, in the context of the Program

— seek, in the light of their continuous review of developments in the international energy situation and its effect on the world economy, opportunities and means of encouraging stable international trade in oil and of promoting secure oil supplies on reasonable and equitable terms for each Participating Country;

— consider, in the light of work going on in other international organisations, other possible fields of co-operation including the prospects for co-operation in accelerated industrialisation and socio-economic development in the principal producing areas and the implications of this for international trade and investment;

— keep under review the prospects for co-operation with oil producing countries on energy questions of mutual interest, such as conservation of energy, the development of alternative sources, and research and development.

Article 48

1. The Standing Group on Relations with Producer and other Consumer Countries will examine and report to the Management Committee on the matters described in this Chapter.

2. The Management Committee may make proposals on appropriate cooperative action regarding these matters to the Governing Board, which shall decide on such proposals.

*Chapter IX***INSTITUTIONAL AND GENERAL PROVISIONS***Article 49*

1. The Agency shall have the following organs;
 - a Governing Board
 - a Management Committee
 - Standing Groups on

-
- Emergency Questions
 - The Oil Market
 - Long Term Co-operation
 - Relations with Producer and Other Consumer Countries.
2. The Governing Board or the Management Committee may, acting by majority, establish any other organ necessary for the implementation of the Program.
 3. The Agency shall have a Secretariat to assist the organs mentioned in paragraphs 1 and 2.

GOVERNING BOARD

Article 50

1. The Governing Board shall be composed of one or more ministers or their delegates from each Participating Country.
2. The Governing Board, acting by majority, shall adopt its own rules of procedure. Unless otherwise decided in the rules of procedure, these rules shall also apply to the Management Committee and the Standing Groups.
3. The Governing Board, acting by majority, shall elect its Chairman and Vice-Chairmen.

Article 51

1. The Governing Board shall adopt decisions and make recommendations which are necessary for the proper functioning of the Program.
2. The Governing Board shall review periodically and take appropriate action concerning developments in the international energy situation, including problems relating to the oil supplies of any Participating Country or Countries, and the economic and monetary implications of these developments. In its activities concerning the economic and monetary implications of developments in the international energy situation, the Governing Board shall take into account the competence and activities of international institutions responsible for overall economic and monetary questions.
3. The Governing Board, acting by majority, may delegate any of its functions to any other organ of the Agency.

Article 52

1. Subject to Article 61, paragraph 2, and Article 65, decisions adopted pursuant to this Agreement by the Governing Board or by

any other organ by delegation from the Board shall be binding on the Participating Countries.

2. Recommendations shall not be binding.

MANAGEMENT COMMITTEE

Article 53

1. The Management Committee shall be composed of one or more senior representatives of the Government of each Participating Country.
2. The Management Committee shall carry out the functions assigned to it in this Agreement and any other function delegated to it by the Governing Board.
3. The Management Committee may examine and make proposals to the Governing Board, as appropriate, on any matter within the scope of this Agreement.
4. The Management Committee shall be convened upon the request of any Participating Country.
5. The Management Committee, acting by majority, shall elect its Chairman and Vice-Chairmen.

STANDING GROUPS

Article 54

1. Each Standing Group shall be composed of one or more representatives of the Government of each Participating Country.
2. The Management Committee, acting by majority, shall elect the Chairmen and Vice-Chairmen of the Standing Groups.

Article 55

1. The Standing Group on Emergency Questions shall carry out the functions assigned to it in Chapters I to V and the Annex and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapters I to V and the Annex.
3. The Standing Group may consult with oil companies on any matter within its competence.

Article 56

1. The Standing Group on the Oil Market shall carry out the functions assigned to it in Chapters V and VI and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapters V and VI.
3. The Standing Group may consult with oil companies on any matter within its competence.

Article 57

1. The Standing Group on Long Term Co-operation shall carry out the functions assigned to it in Chapter VII and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapter VII.

Article 58

1. The Standing Group on Relations with Producer and other Consumer Countries shall carry out the functions assigned to it in Chapter VIII and any other function delegated to it by the Governing Board.
2. The Standing Group may review and report to the Management Committee on any matter within the scope of Chapter VIII.
3. The Standing Group may consult with oil companies on any matter within its competence.

SECRETARIAT

Article 59

1. The Secretariat shall be composed of an Executive Director and such staff as is necessary.
2. The Executive Director shall be appointed by the Governing Board.
3. In the performance of their duties under this Agreement the Executive Director and the staff shall be responsible to and report to the organs of the Agency.
4. The Governing Board, acting by majority, shall take all decisions necessary for the establishment and the functioning of the Secretariat.

Article 60

1. The Secretariat shall carry out the functions assigned to it in this Agreement and any other function assigned to it by the Governing Board.

VOTING

Article 61

1. The Governing Board shall adopt decisions and recommendations for which no express voting provision is made in this Agreement, as follows:

(a) by majority:

- decisions on the management of the Program, including decisions applying provisions of this Agreement which already impose specific obligations on Participating Countries
- decisions on procedural questions
- recommendations

(b) by unanimity:

- all other decisions, including in particular decisions which impose on Participating Countries new obligations not already specified in this Agreement.

2. Decisions mentioned in paragraph 1 (b) may provide:

- (a) that they shall not be binding on one or more Participating Countries;
- (b) that they shall be binding only under certain conditions.

Article 62

1. Unanimity shall require all of the votes of the Participating Countries present and voting. Countries abstaining shall be considered as not voting.

2. When majority or special majority is required, the Participating Countries shall have the following voting weights:

| | General voting weights | Oil consumption voting weights | Combined voting weights |
|---------------|------------------------|--------------------------------|-------------------------|
| Austria | 3 | 1 | 4 |
| Belgium | 3 | 2 | 5 |
| Canada | 3 | 5 | 8 |
| Denmark | 3 | 1 | 4 |
| Germany | 3 | 8 | 11 |

| | General voting weights | Oil consumption voting weights | Combined voting weights |
|-----------------------|------------------------|--------------------------------|-------------------------|
| Ireland | 3 | 0 | 3 |
| Italy | 3 | 6 | 9 |
| Japan | 3 | 15 | 18 |
| Luxembourg | 3 | 0 | 3 |
| The Netherlands | 3 | 2 | 5 |
| Spain | 3 | 2 | 5 |
| Sweden | 3 | 2 | 5 |
| Switzerland | 3 | 1 | 4 |
| Turkey | 3 | 1 | 4 |
| United Kingdom | 3 | 6 | 9 |
| United States | 3 | 48 | 51 |
| Totals | 48 | 100 | 148 |

3. Majority shall require 60 per cent of the total combined voting weights and 50 per cent of the general voting weights cast.

4. Special majority shall require:

(a) 60 per cent of the total combined voting weights and 36 general voting weights for:

- the decision under Article 2, paragraph 2, relating to the increase in the emergency reserve commitment;
- decisions under Article 19, paragraph 3, not to activate the emergency measures referred to in Articles 13 and 14;
- decisions under Article 20, paragraph 3, on the measures required for meeting the necessities of the situation;
- decisions under Article 23, paragraph 3, to maintain the emergency measures referred to in Articles 13 and 14;
- decisions under Article 24 to deactivate the emergency measures referred to in Articles 13 and 14.

(b) 42 general voting weights for:

- decisions under Article 19, paragraph 3, not to activate the emergency measures referred to in Article 17;
- decisions under Article 23, paragraph 3, to maintain the emergency measures referred to in Article 17;
- decisions under Article 24 to deactivate the emergency measures referred to in Article 17.

5. The Governing Board, acting by unanimity, shall decide on the necessary increase, decrease, and redistribution of the voting weights referred to in paragraph 2, as well as on amendment of the

voting requirements set out in paragraphs 3 and 4 in the event that

— a Country accedes to this Agreement in accordance with Article 71, or

— a Country withdraws from this Agreement in accordance with Article 68, paragraph 2, or Article 69, paragraph 2.

6. The Governing Board shall review annually the number and distribution of voting weights specified in paragraph 2, and, on the basis of such review, acting by unanimity, shall decide whether such voting weights should be increased or decreased, or redistributed, or both, because a change in any Participating Country's share in total oil consumption has occurred or for any other reason.

7. Any change in paragraph 2, 3 or 4 shall be based on the concepts underlying those paragraphs and paragraph 6.

RELATIONS WITH OTHER ENTITIES

Article 63

In order to achieve the objectives of the Program, the Agency may establish appropriate relations with non-participating countries, international organisations, whether governmental or non-governmental, other entities and individuals.

FINANCIAL ARRANGEMENTS

Article 64

1. The expenses of the Secretariat and all other common expenses shall be shared among all Participating Countries according to a scale of contributions elaborated according to the principles and rules set out in the Annex to the "OECD Resolution of the Council on Determination of the Scale of Contributions by Member Countries to the Budget of the Organisation" of 10th December, 1963. After the first year of application of this Agreement, the Governing Board shall review this scale of contributions and, acting by unanimity, shall decide upon any appropriate changes in accordance with Article 73.

2. Special expenses incurred in connection with special activities carried out pursuant to Article 65 shall be shared by the Participating Countries taking part in such special activities in such proportions as shall be determined by unanimous agreement between them.

3. The Executive Director shall, in accordance with the financial regulations adopted by the Governing Board and not later than 1st October of each year, submit to the Governing Board a draft budget including personnel requirements. The Governing Board, acting by majority, shall adopt the budget.

4. The Governing Board, acting by majority, shall take all other necessary decisions regarding the financial administration of the Agency.

5. The financial year shall begin on 1st January and end on 31st December of each year. At the end of each financial year, revenues and expenditures shall be submitted to audit.

SPECIAL ACTIVITIES

Article 65

1. Any two or more Participating Countries may decide to carry out within the scope of this Agreement special activities, other than activities which are required to be carried out by all Participating Countries under Chapters I to V. Participating Countries which do not wish to take part in such special activities shall abstain from taking part in such decisions and shall not be bound by them. Participating Countries carrying out such activities shall keep the Governing Board informed thereof.

2. For the implementation of such special activities, the Participating Countries concerned may agree upon voting procedures other than those provided for in Articles 61 and 62.

IMPLEMENTATION OF THE AGREEMENT

Article 66

Each Participating Country shall take the necessary measures, including any necessary legislative measures, to implement this Agreement and decisions taken by the Governing Board.

Chapter X

FINAL PROVISIONS

Article 67

1. Each Signatory State shall, not later than 1st May, 1975, notify the Government of the Kingdom of Belgium that, having complied with its constitutional procedures, it consents to be bound by this Agreement.

2. On the tenth day following the day on which at least six States holding at least 60 per cent of the combined voting weights mentioned in Article 62 have deposited a notification of consent to be bound or an instrument of accession, this Agreement shall enter into force for such States.

3. For each Signatory State which deposits its notification thereafter, this Agreement shall enter into force on the tenth day following the day of deposit.

4. The Governing Board, acting by majority, may upon request from any Signatory State decide to extend, with respect to that State, the time limit for notification beyond 1st May, 1975.

Article 68

1. Notwithstanding the provisions of Article 67, this Agreement shall be applied provisionally by all Signatory States, to the extent possible not inconsistent with their legislation, as from 18th November, 1974 following the first meeting of the Governing Board.

2. Provisional application of the Agreement shall continue until:

— the Agreement enters into force for the State concerned in accordance with Article 67, or

— 60 days after the Government of the Kingdom of Belgium receives notification that the State concerned will not consent to be bound by the Agreement, or

— the time limit for notification of consent by the State concerned referred to in Article 67 expires.

Article 69

1. This Agreement shall remain in force for a period of ten years from the date of its entry into force and shall continue in force, thereafter unless and until the Governing Board, acting by majority, decides on its termination.

2. Any Participating Country may terminate the application of this Agreement for its part upon twelve months' written notice to the Government of the Kingdom of Belgium to that effect, given not less than three years after the first day of the provisional application of this Agreement.

Article 70

1. Any State may, at the time of signature, notification of consent to be bound in accordance with Article 67, accession or at any later date, declare by notification addressed to the Government of the Kingdom of Belgium that this Agreement shall apply to all or any of the territories for whose international relations it is responsible, or to any territories within its frontiers for whose oil supplies it is legally responsible.

2. Any declaration made pursuant to paragraph 1 may, in retrospect of any territory mentioned in such declaration, be withdrawn in accordance with the provisions of Article 69, paragraph 2.

Article 71

1. This Agreement shall be open for accession by any Member of the Organisation for Economic Co-operation and Development which is able and willing to meet the requirements of the Program. The Governing Board, acting by majority, shall decide on any request for accession.

2. This Agreement shall enter into force for any State whose request for accession has been granted on the tenth day following the deposit of its instrument of accession with the Government of the Kingdom of Belgium, or on the date of entry into force of the Agreement pursuant to Article 67, paragraph 2, whichever is the later.

3. Until 1st May, 1975, accession may take place on a provisional basis under the conditions set out in Article 68.

Article 72

1. This Agreement shall be open for accession by the European Communities.

2. This Agreement shall not in any way impede the further implementation of the treaties establishing the European Communities.

Article 73

This Agreement may at any time be amended by the Governing Board, acting by unanimity. Such amendment shall come into force in a manner determined by the Governing Board, acting by unanimity and making provision for Participating Countries to comply with their respective constitutional procedures.

Article 74

This Agreement shall be subject to a general review after 1st May, 1980.

Article 75

The Government of the Kingdom of Belgium shall notify all Participating Countries of the deposit of each notification of consent to be bound in accordance with Article 67, and of each instrument of accession, of the entry into force of this Agreement or any amendment thereto, of any denunciation thereof, and of any other declaration or notification received.

Article 76

The original of this Agreement, of which the English, French and German texts are equally authentic, shall be deposited with the Government of the Kingdom of Belgium, and a certified copy

thereof shall be furnished to each other Participating Country by the Government of the Kingdom of Belgium.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

(Public Law 91–190)

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, That this Act may be cited as the “National Environmental Policy Act of 1969”.

[42 U.S.C. 4321 note]

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

[42 U.S.C. 4321]

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) The Congress, recognizing the profound impact of man’s activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

[42 U.S.C. 4331]

SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(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 decision-making which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special exper-

tise 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 official, 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 action or 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.

(E) study, develop, and describe appropriate alternatives to recommended 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.

SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

[42 U.S.C. 4333]

SEC. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

[42 U.S.C. 4334]

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

[42 U.S.C. 4335]

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

[42 U.S.C. 4341]

SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure,

by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

[42 U.S.C. 4342]

SEC. 203. (a) 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).

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

[42 U.S.C. 4343]

SEC. 204. 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 U.S.C. 4344]

SEC. 205. In exercising its power, functions, and duties under this Act, the Council shall—

(1) consult with the Citizen's Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

[42 U.S.C. 4345]

SEC. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

[42 U.S.C. 4346]

ACCEPTANCE OF TRAVEL REIMBURSEMENT

SEC. 207. 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.

[42 U.S.C. 4346a]

EXPENDITURES FOR INTERNATIONAL TRAVEL

SEC. 208. 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 U.S.C. 4346b]

SEC. 209. 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.

[42 U.S.C. 4347]

**TITLE 5—ADMINISTRATIVE PROCEDURE AND JUDICIAL
REVIEW**

CHAPTER 5—ADMINISTRATIVE PROCEDURE

SUBCHAPTER I—GENERAL PROVISIONS

- Sec. 500. Administrative practice; general provisions.
- 501. Advertising practice; restrictions.
- 502. Administrative practice; Reserves and National Guardsmen.
- 503. Witness fees and allowances.
- 504. Costs and fees of parties.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

- 551. Definitions.
- 552. Public information; agency rules, opinions, orders, records, and proceedings.
- 552a. Records maintained on individuals.
- 552b. Open meetings.
- 553. Rule making.
- 554. Adjudications.
- 555. Ancillary matters.
- 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.
- 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record.
- 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses.
- 559. Effect on other laws; effect of subsequent statute.

SUBCHAPTER III—NEGOTIATED RULEMAKING PROCEDURE ¹

- Sec. 561. Purpose.
- Sec. 562. Definitions.
- Sec. 563. Determination of need for negotiated rulemaking committee.
- Sec. 564. Publication of notice; applications for membership on committee. ²
- Sec. 565. Establishment of committee.
- Sec. 566. Conduct of committee activity.
- Sec. 567. Termination of committee.
- Sec. 568. Services, facilities, and payment of committee member expenses.
- 569. Encouraging negotiated rulemaking.
- Sec. 570. Judicial review.
- 570a. Authorization of appropriations.

SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS ¹

- Sec. 571. Definitions.
- Sec. 572. General authority.
- Sec. 573. Neutrals.
- Sec. 574. Confidentiality.
- Sec. 575. Authorization of arbitration.
- Sec. 576. Enforcement of arbitration agreements.
- Sec. 577. Arbitrators.
- Sec. 578. Authority of the arbitrator.
- Sec. 579. Arbitration proceedings.
- Sec. 580. Arbitration awards.
- Sec. 581. Judicial review.

¹The items relating to sections 561–596 generally were added by section 4 of P.L. 102–354 (106 Stat. 945). These items probably should not have “Sec.” at the beginning. The items relating to sections 569 and 570a were added by sections 11(b)(2) and 11(d)(2), respectively, of P.L. 104–320 (110 Stat. 3873, 3874). These items conform with the style of this table of sections.

²Does not match section catchline.

[Sec. 582. Repealed.]
Sec. 583. Support services.
584. Authorization of appropriations.

SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES¹

Sec. 591. Purpose.
Sec. 592. Definitions.
Sec. 593. Administrative Conference of the United States.
Sec. 594. Powers and duties of the Conference.
Sec. 595. Organization of the Conference.
Sec. 596. Authorization of appropriations.

SUBCHAPTER I—GENERAL PROVISIONS

§ 500. Administrative practice; general provisions

- (a) For the purpose of this section—
- (1) “agency” has the meaning given it by section 551 of this title; and
 - (2) “State” means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.
- (b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.
- (c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.
- (d) This section does not—
- (1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;
 - (2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;
 - (3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or
 - (4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.
- (e) Subsections (b)–(d) of this section do not apply to practice before the United States Patent and Trademark Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.
- (f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of

¹The items relating to sections 561–596 generally were added by section 4 of P.L. 102–354 (106 Stat. 945). These items probably should not have “Sec.” at the beginning. The item relating to section 584 was added by section 10(b) of P.L. 104–320 (110 Stat. 3873). This item conforms with the style of this table of sections.

this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.

§ 501. Advertising practice; restrictions

An individual, firm, or corporation practicing before an agency of the United States may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the business.

§ 502. Administrative practice; Reserves and National Guardsmen

Membership in a reserve component of the armed forces or in the National Guard does not prevent an individual from practicing his civilian profession or occupation before, or in connection with, an agency of the United States.

§ 503. Witness fees and allowances

(a) For the purpose of this section, “agency” has the meaning given it by section 5721 of this title.

(b) A witness is entitled to the fees and allowances allowed by statute for witnesses in the courts of the United States when—

- (1) he is subpoenaed under section 304(a) of this title; or
- (2) he is subpoenaed to and appears at a hearing before an agency authorized by law to hold hearings and subpoena witnesses to attend the hearings.

§ 504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the agency was not substantially justified. When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal

or until the underlying merits of the case have been finally determined pursuant to the appeal.

(3) The adjudicative officer of the agency may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the adjudicative officer of the agency under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis therefor. The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section.

(4) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

(b)(1) For the purposes of this section—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of \$125 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

(B) "party" means a party, as defined in section 551(3) of this title, who is (i) an individual whose net worth did not exceed \$2,000,000 at the time the adversary adjudication was initiated, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of

such organization or cooperative association or for purposes of subsection (a)(4), a small entity as defined in section 601;

(C) “adversary adjudication” means (i) an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license, (ii) any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607), (iii) any hearing conducted under chapter 38 of title 31, and (iv) the Religious Freedom Restoration Act of 1993;

(D) “adjudicative officer” means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication;

(E) “position of the agency” means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based; except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings; and

(F) “demand” means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(2) Except as otherwise provided in paragraph (1), the definitions provided in section 551 of this title apply to this section.

(c)(1) After consultation with the Chairman of the Administrative Conference of the United States, each agency shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to section 2412(d)(3) of title 28, United States Code.

(2) If a party other than the United States is dissatisfied with a determination of fees and other expenses made under subsection (a), that party may, within 30 days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court’s determination on any appeal heard under this paragraph shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

(d) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advo-

cacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards. Each agency shall provide the Chairman with such information as is necessary for the Chairman to comply with the requirements of this subsection.

(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

§ 551. Definitions

For the purpose of this subchapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; 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 an agency;

(3) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) “rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of 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 a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) “adjudication” means agency process for the formulation of an order;

(8) “license” includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) “licensing” includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) “sanction” includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license;

or

(G) taking other compulsory or restrictive action;

(11) “relief” includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) “agency proceeding” 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.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as

to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(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, quar-

terly 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, 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.

(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 non-

commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and (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.

(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.

(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.

(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 (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(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.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted 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 or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 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.

(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 setting 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. 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 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.

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

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b 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) 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 the 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 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 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), 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 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;

(E) the median number of days taken by the agency to process different types of requests;

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

(G) 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) 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.

(3) 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.

(4) 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.

(5) 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 (in-

cluding 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 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.

(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.

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) the term “agency” means agency as defined in section 552(e)¹ 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;

(8) the term “matching program”—

(A) means any computerized comparison of—

¹Reference probably should be to “552(f)”. Section 1802(b) of P.L. 99–570 (100 Stat. 3207–49) redesignated subsection (e) of section 552 as (f).

(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;

(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, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (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; 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;

(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; or

(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));

(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;

(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;

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

(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 part 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 of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make rea-

sonable 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) 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, 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)(1) CIVIL REMEDIES.—Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to 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)(1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

- (1) maintained by the Central Intelligence Agency; or
- (2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of 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, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

- (1) subject to the provisions of section 552(b)(1) of this title;
- (2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;
- (4) required by statute to be maintained and used solely as statistical records;
- (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held

in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1)(1) ARCHIVAL RECORDS.—Each agency record which is accepted by the 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, 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 con-

tractor, 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 financed 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 Data 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 biennially 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.

(t)(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(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.

(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 to 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 pro-

posed 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 an oversight of the implementation of this section by agencies.

§ 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 deliberations required or permitted by subsection (d) or (e); and

(3) the term “member” 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 to any portion of an 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 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 interests 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 a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) 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 international 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 subsection (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 change 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 rollcall 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 opportunity for written comment 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 subsection (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.

(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.

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§ 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 a¹ 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 hearings;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

¹ So in original. Probably should be “an”.

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.

§ 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 non-public 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.

§ 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 or 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;
- (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 proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. 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 proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any 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 com-

prising 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 proceeding 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 it 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.

§ 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.

§ 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.

SUBCHAPTER III—NEGOTIATED RULEMAKING PROCEDURE

§ 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.

§ 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 “rule making” as that term is defined in section 551(5) of this title.

§ 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 persons 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.

(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.

§ 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) APPLICATION FOR MEMBERSHIP ON 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.

§ 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 negotiating¹ 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.

§ 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

¹ So in original. Probably should be “negotiated”.

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.

§ 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.

§ 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 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 provisions 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 determine for purposes of sections 202 through 209 of title 18 whether that member is an employee of the United States Government.

§ 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.

§ 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.

§ 570a. Authorization of appropriations

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

SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE
RESOLUTION IN THE ADMINISTRATIVE PROCESS

§ 571. Definitions

For the purposes of this subchapter, the term—

(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

(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.

§ 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 decisions 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.

§ 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

(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.

§ 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

(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 subsection (a) or (b),¹ 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 for 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.

¹ So in law. Comma probably is unnecessary.

(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.

(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).

§ 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.

§ 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.

§ 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.

§ 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
- (4) make awards.

§ 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.

§ 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.

§ 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(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

¹Section 8(b) of the Administrative Dispute Resolution Act of 1996 (P.L. 104-320; 110 Stat. 3872) amended section “581(d)” of title 5 by striking “(1)” after “(b)” and by striking paragraph (2). The amendment probably should have been made to section 581(b).

shall be committed to the discretion of the agency and shall not be subject to judicial review.

【§ 582. Repealed. Pub. L. 104-320, § 4(b)(1), Oct. 19, 1996, 110 Stat. 3871.】

§ 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, 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.

§ 584. Authorization of appropriations

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

SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE
UNITED STATES

§ 591. Purpose

It is the purpose of this subchapter to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

§ 592. Definitions

For the purpose of this subchapter—

(1) “administrative program” includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter, except that it does not include a military or foreign affairs function of the United States;

(2) “administrative agency” means an authority as defined by section 551(1) of this title; and

(3) “administrative procedure” means procedure used in carrying out an administrative program and is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

§ 593. Administrative Conference of the United States

(a) The Administrative Conference of the United States consists of not more than 101 nor less than 75 members appointed as set forth in subsection (b) of this section.

(b) The Conference is composed of—

(1) a full-time Chairman appointed for a 5-year term by the President, by and with the advice and consent of the Senate. The Chairman is entitled to pay at the highest rate established by statute for the chairman of an independent regulatory board or commission, and may continue to serve until his successor is appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or an individual designated by the board or commission;

(3) the head of each Executive department or other administrative agency which is designated by the President, or an individual designated by the head of the department or agency;

(4) when authorized by the Council referred to in section 595(b) of this title, one or more appointees from a board, commission, department, or agency referred to in this subsection, designated by the head thereof with, in the case of a board or commission, the approval of the board or commission;

(5) individuals appointed by the President to membership on the Council who are not otherwise members of the Conference; and

(6) not more than 40 other members appointed by the Chairman, with the approval of the Council, for terms of 2 years, except that the number of members appointed by the Chairman may at no time be less than one-third nor more than two-fifths of the total number of members. The Chairman shall select the members in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference, except the Chairman, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of this title for individuals serving without pay.

§ 594. Powers and duties of the Conference

To carry out the purpose of this subchapter, the Administrative Conference of the United States may—

(1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the United States, in connection therewith, as it considers appropriate;

(2) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure;

(3) collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure;

(4) enter into arrangements with any administrative agency or major organizational unit within an administrative agency pursuant to which the Conference performs any of the functions described in this section; and

(5)¹ provide assistance in response to requests relating to the improvement of administrative procedure in foreign countries, subject to the concurrence of the Secretary of State, the

¹Public Law 102-403 added paragraph (5) "at the end" of section 594. It probably should have been added after paragraph (4), as shown here.

Administrator of the Agency for International Development, or the Director of the United States Information Agency, as appropriate, except that—

(A) such assistance shall be limited to the analysis of issues relating to administrative procedure, the provision of training of foreign officials in administrative procedure, and the design or improvement of administrative procedure, where the expertise of members of the Conference is indicated; and

(B) such assistance may only be undertaken on a fully reimbursable basis, including all direct and indirect administrative costs.

Payment for services provided by the Conference pursuant to paragraph (4) shall be credited to the operating account for the Conference and shall remain available until expended.

§ 595. Organization of the Conference

(a) The membership of the Administrative Conference of the United States meeting in plenary session constitutes the Assembly of the Conference. The Assembly has ultimate authority over all activities of the Conference. Specifically, it has the power to—

(1) adopt such recommendations as it considers appropriate for improving administrative procedure. A member who disagrees with a recommendation adopted by the Assembly is entitled to enter a dissenting opinion and an alternate proposal in the record of the Conference proceedings, and the opinion and proposal so entered shall accompany the Conference recommendation in a publication or distribution thereof; and

(2) adopt bylaws and regulations not inconsistent with this subchapter for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference includes a Council composed of the Chairman of the Conference, who is Chairman of the Council, and 10 other members appointed by the President, of whom not more than one-half shall be employees of Federal regulatory agencies or Executive departments. The President may designate a member of the Council as Vice Chairman. During the absence or incapacity of the Chairman, or when that office is vacant, the Vice Chairman shall serve as Chairman. The term of each member, except the Chairman, is 3 years. When the term of a member ends, he may continue to serve until a successor is appointed. However, the service of any member ends when a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment. The Council has the power to—

(1) determine the time and place of plenary sessions of the Conference and the agenda for the sessions. The Council shall call at least one plenary session each year;

(2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(3) make recommendations to the Conference or its committees on a subject germane to the purpose of the Conference;

(4) receive and consider reports and recommendations of committees of the Conference and send them to members of the Conference with the views and recommendations of the Council;

(5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman;

(6) designate such additional officers of the Conference as it considers desirable;

(7) approve or revise the budgetary proposals of the Chairman; and

(8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman is the chief executive of the Conference. In that capacity he has the power to—

(1) make inquiries into matters he considers important for Conference consideration, including matters proposed by individuals inside or outside the Federal Government;

(2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to carry out the recommendations of the Conference;

(3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law;

(4) recommend to the Council appropriate subjects for action by the Conference;

(5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference;

(6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference;

(7) appoint and fix the pay of employees, define their duties and responsibilities, and direct and supervise their activities;

(8) rent office space in the District of Columbia;

(9) provide necessary services for the Assembly, the Council, and the committees of the Conference;

(10) organize and direct studies ordered by the Assembly or the Council, to contract for the performance of such studies with any public or private persons, firm, association, corporation, or institution under title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251–260), and to use from time to time, as appropriate, experts and consultants who may be employed in accordance with section 3109 of this title at rates not in excess of the maximum rate of pay for grade GS–15 as provided in section 5332 of this title;

(11) utilize, with their consent, the services and facilities of Federal agencies and of State and private agencies and instrumentalities with or without reimbursement;

(12) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the work of the Conference. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairman. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States;

(13) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(14) on request of the head of an agency, furnish assistance and advice on matters of administrative procedure;

(15) exercise such additional authority as the Council or Assembly delegates to him; and

(16) request any administrative agency to notify the Chairman of its intent to enter into any contract with any person outside the agency to study the efficiency, adequacy, of fairness of an agency proceeding (as defined in section 551(12) of this title).

The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman, on behalf of the Conference, shall transmit to the President and Congress an annual report and such interim reports as he considers desirable.

§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this subchapter not more than \$2,000,000 for fiscal year 1990, \$2,100,000 for fiscal year 1991, \$2,200,000 for fiscal year 1992, \$2,300,000 for fiscal year 1993, and \$2,400,000 for fiscal year 1994. Of any amounts appropriated under this section, not more than \$1,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

SECTION 1905 OF TITLE 18, UNITED STATES CODE

SECTION 1905 OF TITLE 18, UNITED STATES CODE

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

FEDERAL ADVISORY COMMITTEE ACT

FEDERAL ADVISORY COMMITTEE ACT

PUBLIC LAW 92-463

AN ACT To authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Federal Advisory Committee Act”.

FINDINGS AND PURPOSES

SEC. 2. (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.

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) The term “Director” means the Director of the Office of Management and Budget.

(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, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

(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.

APPLICABILITY

SEC. 4. (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.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

SEC. 5. (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.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 6. (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.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 7. (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after the enactment of this Act, 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 it should be abolished.

The Director 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 Director'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 Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the required by this subsection.

(c) The Director 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 Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Director, after study and consultation with the Civil Service Commission, 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 U.S.C. 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 Director 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.

RESPONSIBILITIES OF AGENCY HEADS

SEC. 8. (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 Director under section 7 and section 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 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

SEC. 9. (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 Director, 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 Director, 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.

ADVISORY COMMITTEE PROCEDURES

SEC. 10. (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 Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting 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 Director 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 Presi-

dent, 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 so 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.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. (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.

FISCAL AND ADMINISTRATIVE PROVISIONS

SEC. 12. (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.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 13. Subject to section 552 of title 5, United States Code, the Director 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.

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. (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 a 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.

REQUIREMENTS RELATING TO THE NATIONAL ACADEMY OF SCIENCES
AND THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

SEC. 15. (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 Amend-

ments of 1997¹, 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 com-

¹The date of enactment for the Federal Advisory Committee Act Amendments of 1997 (P.L. 105-153) was December 17, 1997.

mittee 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.

EFFECTIVE DATE

SEC. 16. Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

PAPERWORK REDUCTION ACT

PAPERWORK REDUCTION ACT

(As Contained in Subchapter I of Chapter 35 of Title 44, United States Code)

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

SUBCHAPTER I—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.

* * * * *

SUBCHAPTER I—FEDERAL INFORMATION POLICY

§ 3501. Purposes

The purposes of this subchapter 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 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 decisionmaking, 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 the Computer Security Act of 1987 (Public Law 100–235); 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 subchapter.

§ 3502. Definitions

As used in this subchapter—

(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—

(A) the General Accounting 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 Board, 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 Rate Commission, the Securities and Exchange Commission, 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 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401) but does not include national security systems as defined in section 5142 of that Act (40 U.S.C. 1452);

(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.

§ 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 subchapter, 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.

§ 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
- (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 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; and

(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.

(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, 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 with the information resources management policies, principles, standards, and guidelines established under this subchapter;
 - (2) review compliance by agencies with—
 - (A) the requirements of chapters 29, 31, and 33 of this title; 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;
 - (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 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441), and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and
 - (3) require Federal agencies, consistent with the the standards and guidelines promulgated under section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) and sections 5 and 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.
- (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 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441);

(2) monitor the effectiveness of, and compliance with, directives issued under division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.) and directives issued under section 110 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757);

(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.

§ 3505. Assignment of tasks and deadlines

(a) In carrying out the functions under this subchapter, 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, 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; 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.

§ 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 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.

(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. 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, including the reduction of information collection burdens on the public. The Chief Informa-

tion 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.

(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; 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, to—

- (A) review each collection of information before submission to the Director for review under this subchapter, 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; 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), 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)), 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); and

(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—

(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.

(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 redisseminations of public information by the public;
 - (C) charge fees or royalties for resale or redisseminations 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;
 - (2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

(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.

§ 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

(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;

(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.

(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

(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;

(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—

(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.

§ 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.

§ 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.

§ 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 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.

§ 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;

(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 U.S.C. 431 et seq.).

§ 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—

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not 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.

§ 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.

§ 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

(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;

(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.

§ 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.

§ 3516. Rules and regulations

The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this subchapter.

§ 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, 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.

§ 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 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 section 5131 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441) and the Computer Security Act of 1987 (40 U.S.C. 759 note) 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.

§ 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.

§ 3520. Authorization of appropriations

There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this subchapter, and for no other purpose, \$8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, 2000, and 2001.

* * * * *