(B) encouraging and facilitating—

(i) the use of scientifically valid test methods and strategies that reduce or replace the use of vertebrate animals while providing information of equivalent or better scientific quality and relevance that will support regulatory decisions under this subchapter;

(ii) the grouping of 2 or more chemical substances into scientifically appropriate categories in cases in which testing of a chemical substance would provide scientifically valid and useful information on other chemical substances in the category; and

(iii) the formation of industry consortia to jointly conduct testing to avoid unnecessary duplication of tests, provided that such consortia make all information from such testing available to the Administrator.

(2) Implementation of alternative testing methods

To promote the development and timely incorporation of new scientifically valid test methods and strategies that are not based on vertebrate animals, the Administrator shall—

(A) not later than 2 years after June 22, 2016, develop a strategic plan to promote the development and implementation of alternative test methods and strategies to reduce, refine, or replace vertebrate animal testing and provide information of equivalent or better scientific quality and relevance for assessing risks of injury to health or the environment of chemical substances or mixtures through, for example—

(i) computational toxicology and bioinformatics;

(ii) high-throughput screening methods;

(iii) testing of categories of chemical substances;

(iv) tiered testing methods;

(v) in vitro studies;

(vi) systems biology;

(vii) new or revised methods identified by validation bodies such as the Interagency Coordinating Committee on the Validation of Alternative Methods or the Organization for Economic Co-operation and Development; or

(viii) industry consortia that develop information submitted under this subchapter;

(B) as practicable, ensure that the strategic plan developed under subparagraph (A) is reflected in the development of requirements for testing under this section;

(C) include in the strategic plan developed under subparagraph (A) a list, which the Administrator shall update on a regular basis, of particular alternative test methods or strategies the Administrator has identified that do not require new vertebrate animal testing and are scientifically reliable, relevant, and capable of providing information of equivalent or better scientific reliability and quality to that which would be obtained from vertebrate animal testing;

(D) provide an opportunity for public notice and comment on the contents of the plan developed under subparagraph (A), including the criteria for considering scientific reliability and relevance of the test methods and strategies that may be identified pursuant to subparagraph (C);

(E) beginning on the date that is 5 years after June 22, 2016, and every 5 years thereafter, submit to Congress a report that describes the progress made in implementing the plan developed under subparagraph (A) and goals for future alternative test methods and strategies implementation; and

(F) prioritize and, to the extent consistent with available resources and the Administrator's other responsibilities under this subchapter, carry out performance assessment, validation, and translational studies to accelerate the development of scientifically valid test methods and strategies that reduce, refine, or replace the use of vertebrate animals, including minimizing duplication, in any testing under this subchapter.

(3) Voluntary testing

(A) In general

Any person developing information for submission under this subchapter on a voluntary basis

and not pursuant to any request or requirement by the Administrator shall first attempt to develop the information by means of an alternative test method or strategy identified by the Administrator pursuant to paragraph (2)(C), if the Administrator has identified such a test method or strategy for the development of such information, before conducting new vertebrate animal testing.

(B) Effect of paragraph

Nothing in this paragraph shall, under any circumstance, limit or restrict the submission of any existing information to the Administrator.

(C) Relationship to other law

A violation of this paragraph shall not be a prohibited act under section 2614 of this title.

(D) Review of means

This paragraph authorizes, but does not require, the Administrator to review the means by which a person conducted testing described in subparagraph (A).

(Pub. L. 94–469, title I, §4, Oct. 11, 1976, 90 Stat. 2006; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §§4, 19(d), June 22, 2016, 130 Stat. 449, 505.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–182, §4(2)(B)(x), in concluding provisions, inserted ", or, in the case of a chemical substance or mixture described in subparagraph (A)(i), by rule, order, or consent agreement," after "shall by rule", substituted "information" for "data" in two places, and substituted "and which is relevant" for "and which are relevant".

Pub. L. 114–182, §4(2)(B)(v), substituted "such information" for "such data" in two places.

Pub. L. 114–182, §4(2)(B)(iii), substituted "there is insufficient information" for "there are insufficient data" in two places.

Pub. L. 114–182, §4(2)(A), substituted "(1) If the Administrator finds" for "If the Administrator finds".

Subsec. (a)(1)(A)(i)(I). Pub. L. 114–182, §4(2)(B)(i), substituted "(A)(i)(I)" for "(1)(A)(i)".

Subsec. (a)(1)(A)(i)(II). Pub. L. 114–182, §4(2)(B)(ii), substituted "(II)" for "(ii)".

Subsec. (a)(1)(A)(i)(III). Pub. L. 114–182, §4(2)(B)(iv), substituted "(III)" for "(iii)".

Subsec. (a)(1)(A)(ii)(I). Pub. L. 114–182, §4(2)(B)(viii), which directed amendment of subsec. (a)(1) by substituting "(bb)" for "(II)", was executed by making the substitution in text of subsec. (a)(1)(A)(ii)(I) after "quantities or", to reflect the probable intent of Congress.

Pub. L. 114–182, §4(2)(B)(vii), which directed amendment of subsec. (a)(1) by substituting "(aa)" for "(I)", was executed by making the substitution in text of subsec. (a)(1)(A)(ii)(I) after "quantities, and", to reflect the probable intent of Congress.

Pub. L. 114–182, §4(2)(B)(vi), substituted "(ii)(I)" for "(B)(i)".

Subsec. (a)(1)(A)(ii)(II). Pub. L. 114–182, §4(2)(B)(ii), substituted "(II)" for "(ii)".

Subsec. (a)(1)(A)(ii)(III). Pub. L. 114–182, §4(2)(B)(iv), substituted "(III)" for "(iii)".

Subsec. (a)(1)(B). Pub. L. 114–182, §4(2)(B)(ix), substituted "(B)" for "(2)". Former subpar. (B) redesignated subpar. (A)(ii).

Subsec. (a)(2) to (4). Pub. L. 114–182, §4(2)(C), added pars. (2) to (4). Former par. (2) redesignated par. (1)(B).

Subsec. (b). Pub. L. 114–182, §19(d)(1)(A)(i), which directed amendment of subsec. (b)(1) by inserting ", order, or consent agreement" at end of paragraph heading, was executed by making the insertion at end of subsec. (b) heading to reflect the probable intent of Congress.

Pub. L. 114–182, §4(1), substituted "protocols and methodologies" for "standards" wherever appearing except after "various test" in concluding provisions of par. (1).

Subsec. (b)(1). Pub. L. 114–182, §19(d)(1)(A)(ii), substituted "rule, order, or consent agreement" for "rule" wherever appearing.

Pub. L. 114–182, §4(3)(A)(iii), substituted "information" for "data" in concluding provisions.

Subsec. (b)(1)(B). Pub. L. 114–182, §4(3)(A)(i), substituted "information" for "test data".

Subsec. (b)(1)(C). Pub. L. 114–182, §4(3)(A)(ii), substituted "information" for "data".

Subsec. (b)(2)(A). Pub. L. 114–182, §4(3)(B)(i), inserted "Protocols and methodologies for the development of information may also be prescribed for the assessment of exposure or exposure potential to humans or the environment." after "health or the environment." and substituted "information may be" for "test data may be" and "tiered testing" for "hierarchical tests".

Subsec. (b)(2)(B). Pub. L. 114–182, §19(d)(1)(B), substituted "rules, orders, and consent agreements" for "rules".

Pub. L. 114–182, §4(3)(B)(ii), substituted "information" for "data".

Subsec. (b)(3). Pub. L. 114–182, §4(3)(C)(i), substituted "information" for "data" wherever appearing in subpars. (A) and (B).

Subsec. (b)(3)(A). Pub. L. 114–182, §19(d)(1)(C), substituted "rule or order" for "rule".

Pub. L. 114–182, §4(3)(C)(ii), inserted "or (C), as applicable," after "subparagraph (B)".

Subsec. (b)(3)(B). Pub. L. 114–182, §4(3)(C)(iv), substituted "subsection (a)(1)" for "subsection (a)" in introductory provisions.

Pub. L. 114–182, §4(3)(C)(iii), substituted "(a)(1)(A)(i)(II) or (a)(1)(A)(ii)(II)" for "(a)(1)(A)(ii) or (a)(1)(B)(ii)" in cls. (i) to (iii).

Subsec. (b)(3)(C). Pub. L. 114–182, §4(3)(C)(v), added subpar. (C).

Subsec. (b)(4). Pub. L. 114–182, §19(d)(1)(D), substituted "rule, order, or consent agreement under subsection (a)" for "rule under subsection (a)" in two places, "repeals the rule or order or modifies the consent agreement to terminate the requirement" for "repeals the rule" in two places, and "repeals or modifies the application of the rule, order, or consent agreement" for "repeals the application of the rule".

Pub. L. 114–182, §4(3)(D), substituted "of information" for "of data" in two places and "to information" for "to test data" in two places.

Subsec. (b)(5). Pub. L. 114–182, §4(3)(E), struck out par. (5) which read as follows: "Rules issued under subsection (a) (and any substantive amendment thereto or repeal thereof) shall be promulgated pursuant to section 553 of title 5 except that (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (B) a transcript shall be made of any oral presentation; and (C) the Administrator shall make and publish with the rule the findings described in paragraph (1)(A) or (1)(B) of subsection (a) and, in the case of a rule respecting a mixture, the finding described in paragraph (2) of such subsection."

Subsec. (c)(1). Pub. L. 114–182, §19(d)(2)(A), substituted "rule or order" for "rule".

Pub. L. 114–182, §4(4)(A), substituted "information" for "data".

Subsec. (c)(2). Pub. L. 114–182, §19(d)(2)(B)(iii), substituted "the rule or order" for "the rule" in concluding provisions.

Pub. L. 114–182, §4(4)(B), substituted "information" for "data" wherever appearing.

Subsec. (c)(2)(A). Pub. L. 114–182, §19(d)(2)(B)(i), substituted "a rule, order, or consent agreement under subsection (a) or for which information is being developed pursuant to such a rule, order, or consent agreement" for "a rule under subsection (a) or for which data is being developed pursuant to such a rule". Amendment was executed as if the amendment by Pub. L. 114–182, §4(4)(B), had not applied, to reflect the probable intent of Congress. See above.

Subsec. (c)(2)(B). Pub. L. 114–182, §19(d)(2)(B)(ii), substituted "such rule, order, or consent agreement or which is being developed pursuant to such rule, order, or consent agreement" for "such rule or which is being developed pursuant to such rule".

Subsec. (c)(3)(A). Pub. L. 114–182, §4(4)(C)(i), substituted "information" for "test data" wherever appearing.

Subsec. (c)(3)(A)(i). Pub. L. 114–182, §4(4)(C), substituted "submitted such information" for "submitted such test data" and "submit such information" for "submit such data".

Subsec. (c)(3)(B). Pub. L. 114–182, §4(4)(C)(i), substituted "information" for "test data" in introductory provisions.

Subsec. (c)(3)(B)(i). Pub. L. 114–182, §19(d)(2)(C), substituted "rule, order, or consent agreement" for "rule promulgated".

Pub. L. 114–182, §4(4)(C)(ii), substituted "such information" for "such data".

Subsec. (c)(3)(B)(ii)(II). Pub. L. 114–182, §4(4)(C)(ii), substituted "such information" for "such data".

Subsec. (c)(4). Pub. L. 114–182, §19(d)(2)(D)(i), (ii), substituted "pursuant to a rule, order, or consent

agreement" for "pursuant to a rule promulgated" in two places and "such rule, order, or consent agreement" for "such rule" wherever appearing.

Pub. L. 114–182, §4(4)(D), substituted "information" for "test data" wherever appearing.

Subsec. (c)(4)(B). Pub. L. 114–182, §19(d)(2)(D)(iii), substituted "the rule or order" for "the rule".

Subsec. (d). Pub. L. 114–182, §19(d)(3), substituted "rule, order, or consent agreement" for "rule".

Pub. L. 114–182, §4(5), substituted "any information" for "any test data", "development of information" for "development of test data", "nature of the information" for "nature of the test data", and "for which information has" for "for which data have", and substituted "such information" for "such data" in two places.

Pub. L. 114–182, §4(1), substituted "protocols and methodologies" for "standards".

Subsec. (e)(1)(A). Pub. L. 114–182, §4(6)(A)(i)(I), substituted "development of information" for "promulgation of a rule" in introductory provisions.

Subsec. (e)(1)(A)(vi), (vii). Pub. L. 114–182, §4(6)(A)(i)(II), substituted "information" for "data".

Subsec. (e)(1)(B). Pub. L. 114–182, §4(6)(A)(ii), substituted "issue an order, enter into a consent agreement, or initiate a rulemaking proceeding under subsection (a), or, if such an order or consent agreement is not issued or such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not issuing such an order, entering into such a consent agreement, or initiating such a proceeding" for "either initiate a rulemaking proceeding under subsection (a) or if such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not initiating such a proceeding".

Subsec. (e)(2)(A). Pub. L. 114–182, §4(6)(B)(i), substituted "ten members" for "eight members" in introductory provisions.

Subsec. (e)(2)(A)(ix), (x). Pub. L. 114–182, §4(6)(B)(ii), added cls. (ix) and (x).

Subsec. (f). Pub. L. 114–182, §4(7)(B), in concluding provisions, struck out "or will present" after "mixture presents" and "from cancer, gene mutations, or birth defects" after "human beings", substituted "applicable" for "appropriate", and inserted ", made without consideration of costs or other nonrisk factors," after "publish in the Federal Register a finding".

Subsec. (f)(1). Pub. L. 114–182, §4(7)(A), substituted "information" for "test data".

Subsec. (g). Pub. L. 114–182, §19(d)(4), substituted "rule, order, or consent agreement" for "rule".

Pub. L. 114–182, §4(8), substituted "Petition for protocols and methodologies for the development of information" for "Petition for standards for the development of test data" in heading and "submit information" for "submit data" and "development of information" for "development of test data" in text.

Pub. L. 114–182, §4(1), substituted "protocols and methodologies" for "standards" in two places.

Subsec. (h). Pub. L. 114–182, §4(9), added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, except as provided in subsec. (f) of this section, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

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

§2604. Manufacturing and processing notices

(a) In general

(1)(A) Except as provided in subparagraph (B) of this paragraph and subsection (h), no person may—

(i) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 2607(b) of this title, or

(ii) manufacture or process any chemical substance for a use which the Administrator has determined, in accordance with paragraph (2), is a significant new use.

(B) A person may take the actions described in subparagraph (A) if—

(i) such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d), of such person's intention to manufacture

or process such substance and such person complies with any applicable requirement of, or imposed pursuant to, subsection (b), (e), or (f); and

(ii) the Administrator—

(I) conducts a review of the notice; and

(II) makes a determination under subparagraph (A), (B), or (C) of paragraph (3) and takes the actions required in association with that determination under such subparagraph within the applicable review period.

(2) A determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of a chemical substance,

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

(3) REVIEW AND DETERMINATION.—Within the applicable review period, subject to section 2617 of this title, the Administrator shall review such notice and determine—

(A) that the relevant chemical substance or significant new use presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, in which case the Administrator shall take the actions required under subsection (f);

(B) that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the relevant chemical substance or significant new use; or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator; or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

in which case the Administrator shall take the actions required under subsection (e); or

(C) that the relevant chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, in which case the submitter of the notice may commence manufacture of the chemical substance or manufacture or processing for a significant new use.

(4) FAILURE TO RENDER DETERMINATION.—

(A) FAILURE TO RENDER DETERMINATION.—If the Administrator fails to make a determination on a notice under paragraph (3) by the end of the applicable review period and the

notice has not been withdrawn by the submitter, the Administrator shall refund to the submitter all applicable fees charged to the submitter for review of the notice pursuant to section 2625(b) of this title, and the Administrator shall not be relieved of any requirement to make such determination.

(B) LIMITATIONS.—(i) A refund of applicable fees under subparagraph (A) shall not be made if the Administrator certifies that the submitter has not provided information required under subsection (b) or has otherwise unduly delayed the process such that the Administrator is unable to render a determination within the applicable review period.

(ii) A failure of the Administrator to render a decision shall not be deemed to constitute a withdrawal of the notice.

(iii) Nothing in this paragraph shall be construed as relieving the Administrator or the submitter of the notice from any requirement of this section.

(5) ARTICLE CONSIDERATION.—The Administrator may require notification under this section for the import or processing of a chemical substance as part of an article or category of articles under paragraph (1)(A)(ii) if the Administrator makes an affirmative finding in a rule under paragraph (2) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification.

(b) Submission of information

(1)(A) If (i) a person is required by subsection (a)(1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and (ii) such person is required to submit information for such substance pursuant to a rule, order, or consent agreement under section 2603 of this title before the submission of such notice, such person shall submit to the Administrator such information in accordance with such rule, order, or consent agreement at the time notice is submitted in accordance with subsection (a)(1).

(B) If—

(i) a person is required by subsection (a)(1) to submit a notice to the Administrator, and

(ii) such person has been granted an exemption under section 2603(c) of this title from the requirements of a rule or order under section 2603 of this title before the submission of such notice,

such person may not, before the expiration of the 90 day period which begins on the date of the submission in accordance with such rule of the information the submission or development of which was the basis for the exemption, manufacture such substance if such person is subject to subsection (a)(1)(A)(i) or manufacture or process such substance for a significant new use if the person is subject to subsection (a)(1)(A)(ii).

(2)(A) If a person—

(i) is required by subsection (a)(1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance listed under paragraph (4), and

(ii) is not required by a rule, order, or consent agreement under section 2603 of this title before the submission of such notice to submit information for such substance,

such person may submit to the Administrator information prescribed by subparagraph (B) at the time notice is submitted in accordance with subsection (a)(1).

(B) Information submitted pursuant to subparagraph (A) shall be information which the person submitting the information believes shows that—

(i) in the case of a substance with respect to which notice is required under subsection (a)(1)(A)(i), the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such activities will not present an unreasonable risk of injury to health or the environment, or

(ii) in the case of a chemical substance with respect to which notice is required under subsection (a)(1)(A)(ii), the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment.

(3) Information submitted under paragraph (1) or (2) of this subsection or under subsection (e) shall be made available, subject to section 2613 of this title, for examination by interested persons.

(4)(A)(i) The Administrator may, by rule, compile and keep current a list of chemical substances with respect to which the Administrator finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such activities presents or may present an unreasonable risk of injury to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to such substance; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to such substance.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, by rule under subsection (a)(2), would constitute a significant new use of such substance.

(C) Any rule under subparagraph (A), and any substantive amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in section 553 of title 5.

(c) Extension of review period

The Administrator may for good cause extend for additional periods (not to exceed in the aggregate 90 days) the period, prescribed by subsection (a) or (b). Subject to section 2613 of this title, such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(d) Content of notice; publications in the Federal Register

(1) The notice required by subsection (a) shall include—

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable, the information described in subparagraphs (A), (B), (C), (D), (F), and (G) of section 2607(a)(2) of this title, and

(B) in such form and manner as the Administrator may prescribe, any information in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such substance, or of any combination of such activities, on health or the environment, and

(C) a description of any other information concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

Such a notice shall be made available, subject to section 2613 of this title, for examination by interested persons.

(2) Subject to section 2613 of this title, not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a) or of information under subsection (b), the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or information has been received;

(B) lists the uses of such substance identified in the notice; and

(C) in the case of the receipt of information under subsection (b), describes the nature of the tests performed on such substance and any information which was developed pursuant to subsection (b) or a rule, order, or consent agreement under section 2603 of this title.

A notice under this paragraph respecting a chemical substance shall identify the chemical

substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(3) At the beginning of each month the Administrator shall publish a list in the Federal Register of (A) each chemical substance for which notice has been received under subsection (a) and for which the applicable review period has not expired, and (B) each chemical substance for which such period has expired since the last publication in the Federal Register of such list.

(e) Regulation pending development of information

(1) [1] (A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use; or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator shall issue an order, to take effect on the expiration of the applicable review period, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, including while any required information is being developed, only in compliance with the order.

(B) An order may not be issued under subparagraph (A) respecting a chemical substance (i) later than 45 days before the expiration of the applicable review period, and (ii) unless the Administrator has, on or before the issuance of the order, notified, in writing, each manufacturer or processor, as the case may be, of such substance of the determination which underlies such order.

(f) Protection against unreasonable risks

(1) If the Administrator determines that a chemical substance or significant new use with respect to which notice is required by subsection (a) presents an unreasonable risk of injury to health or environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use, the Administrator shall, before the expiration of the applicable review period, take the action authorized by paragraph (2) or (3) to the extent necessary to protect against such risk.

(2) The Administrator may issue a proposed rule under section 2605(a) of this title to apply to a chemical substance with respect to which a finding was made under paragraph (1)—

(A) a requirement limiting the amount of such substance which may be manufactured, processed, or distributed in commerce,

(B) a requirement described in paragraph (2), (3), (4), (5), (6), or (7) of section 2605(a) of this title, or

(C) any combination of the requirements referred to in subparagraph (B).

Such a proposed rule shall be effective upon its publication in the Federal Register. Section 2605(d)(3)(B) of this title shall apply with respect to such rule.

(3)(A) The Administrator may issue an order to prohibit or limit the manufacture, processing, or

distribution in commerce of a substance with respect to which a finding was made under paragraph (1). Such order shall take effect on the expiration of the applicable review period.

(B) The provisions of subparagraph (B) of subsection (e)(1) shall apply with respect to an order issued under subparagraph (A).

(4) TREATMENT OF NONCONFORMING USES.—Not later than 90 days after taking an action under paragraph (2) or (3) or issuing an order under subsection (e) relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B), the Administrator shall consider whether to promulgate a rule pursuant to subsection (a)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance that does not conform to the restrictions imposed by the action or order, and, as applicable, initiate such a rulemaking or publish a statement describing the reasons of the Administrator for not initiating such a rulemaking.

(5) WORKPLACE EXPOSURES.—To the extent practicable, the Administrator shall consult with the Assistant Secretary of Labor for Occupational Safety and Health prior to adopting any prohibition or other restriction relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B) to address workplace exposures.

(g) Statement on Administrator finding

If the Administrator finds in accordance with subsection (a)(3)(C) that a chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment, then notwithstanding any remaining portion of the applicable review period, the submitter of the notice may commence manufacture of the chemical substance or manufacture or processing for the significant new use, and the Administrator shall make public a statement of the Administrator's finding. Such a statement shall be submitted for publication in the Federal Register as soon as is practicable before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published.

(h) Exemptions

(1) The Administrator may, upon application, exempt any person from any requirement of subsection (a) or (b) to permit such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance, and that any combination of such activities, for such purposes will not present any unreasonable risk of injury to health or the environment, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator for the specific conditions of use identified in the application, and

(B) under such restrictions as the Administrator considers appropriate.

(2)(A) The Administrator may, upon application, exempt any person from the requirement of subsection (b)(2) to submit information for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance with respect to which such application was submitted is equivalent to a chemical substance for which information has been submitted to the Administrator as required by subsection (b)(2), and

(ii) submission of information by the applicant on such substance would be duplicative of information which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from the requirement to submit such information on such substance. No exemption which is granted under this subparagraph with respect to the submission of information for a chemical substance may take effect before the beginning of the reimbursement period applicable to such information.

(B) If the Administrator exempts any person, under subparagraph (A), from submitting information required under subsection (b)(2) for a chemical substance because of the existence of previously submitted information and if such exemption is granted during the reimbursement period for such information, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted the information on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (b)(2) to submit such information, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. For purposes of judicial review, an order under this subparagraph shall be considered final agency action.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted information for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the person who submitted such information to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such information,

whichever is later.

(3) The requirements of subsections (a) and (b) do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) scientific experimentation or analysis, or

(B) chemical research on, or analysis of such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

(4) The Administrator may, upon application and by rule, exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or that any combination of such activities, will not present an unreasonable risk of injury to health or the environment, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator under the conditions of use.

(5) The Administrator may, upon application, make the requirements of subsections (a) and (b) inapplicable with respect to the manufacturing or processing of any chemical substance (A) which

exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and (B) to which there is no, and will not be, human or environmental exposure.

(6) Immediately upon receipt of an application under paragraph (1) or (5) the Administrator shall publish in the Federal Register notice of the receipt of such application. The Administrator shall give interested persons an opportunity to comment upon any such application and shall, within 45 days of its receipt, either approve or deny the application. The Administrator shall publish in the Federal Register notice of the approval or denial of such an application.

(i) Definitions

(1) For purposes of this section, the terms "manufacture" and "process" mean manufacturing or processing for commercial purposes.

(2) For purposes of this chapter, the term "requirement" as used in this section shall not displace any statutory or common law.

(3) For purposes of this section, the term "applicable review period" means the period starting on the date the Administrator receives a notice under subsection (a)(1) and ending 90 days after that date, or on such date as is provided for in subsection (b)(1) or (c).

(Pub. L. 94–469, title I, §5, Oct. 11, 1976, 90 Stat. 2012; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §§5, 19(e), June 22, 2016, 130 Stat. 454, 506.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–182, §5(1)(A), designated existing provisions as subpar. (A) and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively; substituted "Except as provided in subparagraph (B) of this paragraph and" for "Except as provided in" in introductory provisions; substituted "significant new use." for "significant new use," at end of cl. (ii); struck out concluding provisions "unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d), of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of subsection (b)."; and added subpar. (B).

Subsec. (a)(3) to (5). Pub. L. 114–182, §5(1)(B), added pars. (3) to (5).

Subsec. (b). Pub. L. 114–182, §5(2)(A), substituted "information" for "test data" in heading.

Subsec. (b)(1)(A). Pub. L. 114–182, §19(e)(1)(A), substituted "a rule, order, or consent agreement" for "a rule promulgated" and "such rule, order, or consent agreement" for "such rule".

Pub. L. 114–182, §5(2)(B)(i), substituted "submit information" for "submit test data" and "such information" for "such data".

Subsec. (b)(1)(B). Pub. L. 114–182, §5(2)(B)(ii), in concluding provisions, substituted "information" for "test data", "subsection (a)(1)(A)(i)" for "subsection (a)(1)(A)", and "subsection (a)(1)(A)(ii)" for "subsection (a)(1)(B)".

Subsec. (b)(1)(B)(ii). Pub. L. 114–182, §19(e)(1)(B), substituted "rule or order" for "rule promulgated".

Subsec. (b)(2)(A). Pub. L. 114–182, §5(2)(C)(i)(II), (III), in concluding provisions, substituted "may" for "shall" and "information prescribed" for "data prescribed".

Subsec. (b)(2)(A)(ii). Pub. L. 114–182, §19(e)(1)(C), substituted "rule, order, or consent agreement" for "rule promulgated".

Pub. L. 114–182, §5(2)(C)(i)(I), substituted "information" for "test data".

Subsec. (b)(2)(B). Pub. L. 114–182, §5(2)(C)(ii)(I)–(III), in introductory provisions, substituted "Information" for "Data", "be information" for "be data", "the information" for "the data", and "shows" for "show".

Subsec. (b)(2)(B)(i). Pub. L. 114–182, §5(2)(C)(ii)(IV), substituted "subsection (a)(1)(A)(i)" for "subsection (a)(1)(A)".

Subsec. (b)(2)(B)(ii). Pub. L. 114–182, §5(2)(C)(ii)(V), substituted "subsection (a)(1)(A)(ii)" for "subsection (a)(1)(B)".

Subsec. (b)(3). Pub. L. 114–182, §5(2)(D), substituted "Information" for "Data" and "paragraph (1) or (2) of this subsection or under subsection (e)" for "paragraph (1) or (2)".

Subsec. (b)(4)(A)(i). Pub. L. 114–182, §5(2)(E)(i), inserted ", without consideration of costs or other

nonrisk factors" after "health or the environment".

Subsec. (b)(4)(C). Pub. L. 114–182, §5(2)(E)(ii), struck out ", except that (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions, (ii) a transcript shall be kept of any oral presentation, and (iii) the Administrator shall make and publish with the rule the finding described in subparagraph (A)" before period at end.

Subsec. (c). Pub. L. 114–182, §5(3), substituted "review" for "notice" in heading and struck out "before which the manufacturing or processing of a chemical substance subject to such subsection may begin" after "subsection (a) or (b)" in text.

Subsec. (d)(1)(B). Pub. L. 114–182, §5(4)(A), substituted "information" for "test data".

Subsec. (d)(1)(C). Pub. L. 114–182, §5(4)(B), substituted "information" for "data".

Subsec. (d)(2). Pub. L. 114–182, §5(4)(B), substituted "information" for "data" wherever appearing.

Subsec. (d)(2)(B). Pub. L. 114–182, §5(4)(C), substituted "uses of such substance identified in the notice" for "uses or intended uses of such substance".

Subsec. (d)(2)(C). Pub. L. 114–182, §19(e)(2), substituted "rule, order, or consent agreement" for "rule".

Subsec. (d)(3). Pub. L. 114–182, §5(4)(D), substituted "for which the applicable review period" for "for which the notification period prescribed by subsection (a), (b), or (c)" and "such period" for "such notification period".

Subsec. (e)(1)(A). Pub. L. 114–182, §5(5)(A)(iii)(III), inserted before period at end of concluding provisions "to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, including while any required information is being developed, only in compliance with the order".

Pub. L. 114–182, §5(5)(A)(iii)(II), which directed substitution of "applicable review period" for "notification period applicable to the manufacturing or processing of such substance under subsection (a), (b), (c)" in concluding provisions, was executed by making the substitution for "notification period applicable to the manufacturing or processing of such substance under subsection (a), (b), or (c)" to reflect the probable intent of Congress.

Pub. L. 114–182, §5(5)(A)(iii)(I), substituted "shall issue an order" for "may issue a proposed order" in concluding provisions.

Subsec. (e)(1)(A)(i). Pub. L. 114–182, §5(5)(A)(i), substituted "; or" for "; and" at end.

Subsec. (e)(1)(A)(ii)(I). Pub. L. 114–182, §5(5)(A)(ii), inserted "without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use;" after "health or the environment,".

Subsec. (e)(1)(B). Pub. L. 114–182, §5(5)(B)(iii), substituted "of the order" for "of the proposed order".

Pub. L. 114–182, §5(5)(B)(ii), which directed substitution of "applicable review period" for "notification period applicable to the manufacture or processing of such substance under subsection (a), (b), (c)", was executed by making the substitution for "notification period applicable to the manufacture or processing of such substance under subsection (a), (b), or (c)" to reflect the probable intent of Congress.

Pub. L. 114–182, §5(5)(B)(i), substituted "An order" for "A proposed order".

Subsec. (e)(1)(C). Pub. L. 114–182, §5(5)(C), struck out subpar. (C) which read as follows: "If a manufacturer or processor of a chemical substance to be subject to a proposed order issued under subparagraph (A) files with the Administrator (within the 30-day period beginning on the date such manufacturer or processor received the notice required by subparagraph (B)(ii)) objections specifying with particularity the provisions of the order deemed objectionable and stating the grounds therefor, the proposed order shall not take effect."

Subsec. (e)(2). Pub. L. 114–182, §5(5)(D), struck out par. (2) which related to injunctions to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance.

Subsec. (f)(1). Pub. L. 114–182, §5(6)(A), substituted "determines that a chemical substance or significant new use with" for "finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance with", ", without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use," for "before a rule promulgated under section 2605 of this title can protect against such risk," and "applicable review period" for "notification period applicable under subsection (a), (b), or (c) to the manufacturing or processing of such substance" and struck out ", or that any combination of such activities," after "required by subsection (a)" and "or will present" after "presents".

Subsec. (f)(2). Pub. L. 114–182, §5(6)(B), substituted "Section 2605(d)(3)(B)" for "Section 2605(d)(2)(B)" in concluding provisions.

Subsec. (f)(3)(A). Pub. L. 114–182, §5(6)(C)(i), substituted "Administrator may" for "Administrator may—", struck out cl. (i) designation before "issue", substituted "an order to prohibit or limit the" for "a proposed order to prohibit the" and "under paragraph (1). Such order shall take effect on the expiration of the applicable review period." for "under paragraph (1), or", and struck out cl. (ii) and concluding provisions which read as follows:

"(ii) apply, through attorneys of the Environmental Protection Agency, to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer, or processor, as the case may be, of such substance, is found, resides, or transacts business for an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance.
A proposed order issued under clause (i) respecting a chemical substance shall take effect on the expiration of the notification period applicable under subsection (a), (b), or (c) to the manufacture or processing of such substance."

Subsec. (f)(3)(B), (C). Pub. L. 114–182, §5(6)(C)(ii), (iii), redesignated subpar. (C) as (B), substituted "subparagraph (B)" for "subparagraphs (B) and (C)", struck out "clause (i) of" after "order issued under" and "; and the provisions of subparagraph (C) of subsection (e)(2) shall apply with respect to an injunction issued under subparagraph (B)" after "subparagraph (A)", and struck out former subpar. (B) which read as follows: "If the district court of the United States to which an application has been made under subparagraph (A)(ii) finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance with respect to which such application was made, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment before a rule promulgated under section 2605 of this title can protect against such risk, the court shall issue an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance or to prohibit any combination of such activities."

Subsec. (f)(3)(D). Pub. L. 114–182, §5(6)(C)(iv), struck out subpar. (D) which read as follows: "If the Administrator issues an order pursuant to subparagraph (A)(i) respecting a chemical substance and objections are filed in accordance with subsection (e)(1)(C), the Administrator shall seek an injunction under subparagraph (A)(ii) respecting such substance unless the Administrator determines, on the basis of such objections, that such substance does not or will not present an unreasonable risk of injury to health or the environment."

Subsec. (f)(4), (5). Pub. L. 114–182, §5(6)(D), added pars. (4) and (5).

Subsec. (g). Pub. L. 114–182, §5(7), amended subsec. (g) generally. Prior to amendment, text read as follows: "If the Administrator has not initiated any action under this section or section 2605 or 2606 of this title to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, with respect to which notification or data is required by subsection (a)(1)(B) or (b), before the expiration of the notification period applicable to the manufacturing or processing of such substance, the Administrator shall publish a statement of the Administrator's reasons for not initiating such action. Such a statement shall be published in the Federal Register before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published."

Subsec. (h)(1)(A). Pub. L. 114–182, §5(8)(A), inserted ", including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator for the specific conditions of use identified in the application" after "health or the environment".

Subsec. (h)(2). Pub. L. 114–182, §5(8)(B), substituted "information" for "data" wherever appearing.

Subsec. (h)(4). Pub. L. 114–182, §5(8)(C), substituted "environment, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator under the conditions of use" for "environment. A rule promulgated under this paragraph (and any substantive amendment to, or repeal of, such a rule) shall be promulgated in accordance with paragraphs (2) and (3) of section 2605(c) of this title".

Subsec. (i). Pub. L. 114–182, §5(9), amended subsec. (i) generally. Prior to amendment, text read as follows: "For purposes of this section, the terms 'manufacture' and 'process' mean manufacturing or processing for commercial purposes."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

[1] *So in original. There is no par. (2).*

§2605. Prioritization, risk evaluation, and regulation of chemical substances and mixtures

(a) Scope of regulation

If the Administrator determines in accordance with subsection (b)(4)(A) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Administrator shall by rule and subject to section 2617 of this title, and in accordance with subsection (c)(2), apply one or more of the following requirements to such substance or mixture to the extent necessary so that the chemical substance or mixture no longer presents such risk:

(1) A requirement (A) prohibiting or otherwise restricting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting or otherwise restricting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate minimum warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such minimum warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture or monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6)(A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such determination to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such determination, and (C) to replace or repurchase such substance or mixture as elected by the person to which the requirement is directed.

Any requirement (or combination of requirements) imposed under this subsection may be limited

in application to specified geographic areas.

(b) Risk evaluations

(1) Prioritization for risk evaluations

(A) Establishment of process

Not later than 1 year after June 22, 2016, the Administrator shall establish, by rule, a risk-based screening process, including criteria for designating chemical substances as high-priority substances for risk evaluations or low-priority substances for which risk evaluations are not warranted at the time. The process to designate the priority of chemical substances shall include a consideration of the hazard and exposure potential of a chemical substance or a category of chemical substances (including consideration of persistence and bioaccumulation, potentially exposed or susceptible subpopulations and storage near significant sources of drinking water), the conditions of use or significant changes in the conditions of use of the chemical substance, and the volume or significant changes in the volume of the chemical substance manufactured or processed.

(B) Identification of priorities for risk evaluation

(i) High-priority substances

The Administrator shall designate as a high-priority substance a chemical substance that the Administrator concludes, without consideration of costs or other nonrisk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator.

(ii) Low-priority substances

The Administrator shall designate a chemical substance as a low-priority substance if the Administrator concludes, based on information sufficient to establish, without consideration of costs or other nonrisk factors, that such substance does not meet the standard identified in clause (i) for designating a chemical substance a high-priority substance.

(C) Information request and review and proposed and final prioritization designation

The rulemaking required in subparagraph (A) shall ensure that the time required to make a priority designation of a chemical substance be no shorter than nine months and no longer than 1 year, and that the process for such designations includes—

(i) a requirement that the Administrator request interested persons to submit relevant information on a chemical substance that the Administrator has initiated the prioritization process on, before proposing a priority designation for the chemical substance, and provide 90 days for such information to be provided;

(ii) a requirement that the Administrator publish each proposed designation of a chemical substance as a high- or low-priority substance, along with an identification of the information, analysis, and basis used to make the proposed designations, and provide 90 days for public comment on each such proposed designation; and

(iii) a process by which the Administrator may extend the deadline in clause (i) for up to three months in order to receive or evaluate information required to be submitted in accordance with section 2603(a)(2)(B) of this title, subject to the limitation that if the information available to the Administrator at the end of such an extension remains insufficient to enable the designation of the chemical substance as a low-priority substance, the Administrator shall designate the chemical substance as a high-priority substance.

(2) Initial risk evaluations and subsequent designations of high- and low-priority substances

(A) Initial risk evaluations

Not later than 180 days after June 22, 2016, the Administrator shall ensure that risk evaluations are being conducted on 10 chemical substances drawn from the 2014 update of the

TSCA Work Plan for Chemical Assessments and shall publish the list of such chemical substances during the 180 day period.

(B) Additional risk evaluations

Not later than three and one half years after June 22, 2016, the Administrator shall ensure that risk evaluations are being conducted on at least 20 high-priority substances and that at least 20 chemical substances have been designated as low-priority substances, subject to the limitation that at least 50 percent of all chemical substances on which risk evaluations are being conducted by the Administrator are drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments.

(C) Continuing designations and risk evaluations

The Administrator shall continue to designate priority substances and conduct risk evaluations in accordance with this subsection at a pace consistent with the ability of the Administrator to complete risk evaluations in accordance with the deadlines under paragraph (4)(G).

(D) Preference

In designating high-priority substances, the Administrator shall give preference to—

(i) chemical substances that are listed in the 2014 update of the TSCA Work Plan for Chemical Assessments as having a Persistence and Bioaccumulation Score of 3; and

(ii) chemical substances that are listed in the 2014 update of the TSCA Work Plan for Chemical Assessments that are known human carcinogens and have high acute and chronic toxicity.

(E) Metals and metal compounds

In identifying priorities for risk evaluation and conducting risk evaluations of metals and metal compounds, the Administrator shall use the Framework for Metals Risk Assessment of the Office of the Science Advisor, Risk Assessment Forum, and dated March 2007, or a successor document that addresses metals risk assessment and is peer reviewed by the Science Advisory Board.

(3) Initiation of risk evaluations; designations

(A) Risk evaluation initiation

Upon designating a chemical substance as a high-priority substance, the Administrator shall initiate a risk evaluation on the substance.

(B) Revision

The Administrator may revise the designation of a low-priority substance based on information made available to the Administrator.

(C) Ongoing designations

The Administrator shall designate at least one high-priority substance upon the completion of each risk evaluation (other than risk evaluations for chemical substances designated under paragraph (4)(C)(ii)).

(4) Risk evaluation process and deadlines

(A) In general

The Administrator shall conduct risk evaluations pursuant to this paragraph to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.

(B) Establishment of process

Not later than 1 year after June 22, 2016, the Administrator shall establish, by rule, a process

to conduct risk evaluations in accordance with subparagraph (A).

(C) Requirement

The Administrator shall conduct and publish risk evaluations, in accordance with the rule promulgated under subparagraph (B), for a chemical substance—

(i) that has been identified under paragraph (2)(A) or designated under paragraph (1)(B)(i); and

(ii) subject to subparagraph (E), that a manufacturer of the chemical substance has requested, in a form and manner and using the criteria prescribed by the Administrator in the rule promulgated under subparagraph (B), be subjected to a risk evaluation.

(D) Scope

The Administrator shall, not later than 6 months after the initiation of a risk evaluation, publish the scope of the risk evaluation to be conducted, including the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations the Administrator expects to consider, and, for each designation of a high-priority substance, ensure not less than 12 months between the initiation of the prioritization process for the chemical substance and the publication of the scope of the risk evaluation for the chemical substance, and for risk evaluations conducted on chemical substances that have been identified under paragraph (2)(A) or selected under subparagraph (E)(iv)(II) of this paragraph, ensure not less than 3 months before the Administrator publishes the scope of the risk evaluation.

(E) Limitation and criteria

(i) Percentage requirements

The Administrator shall ensure that, of the number of chemical substances that undergo a risk evaluation under clause (i) of subparagraph (C), the number of chemical substances undergoing a risk evaluation under clause (ii) of subparagraph (C) is—

(I) not less than 25 percent, if sufficient requests are made under clause (ii) of subparagraph (C); and

(II) not more than 50 percent.

(ii) Requested risk evaluations

Requests for risk evaluations under subparagraph (C)(ii) shall be subject to the payment of fees pursuant to section 2625(b) of this title, and the Administrator shall not expedite or otherwise provide special treatment to such risk evaluations.

(iii) Preference

In deciding whether to grant requests under subparagraph (C)(ii), the Administrator shall give preference to requests for risk evaluations on chemical substances for which the Administrator determines that restrictions imposed by 1 or more States have the potential to have a significant impact on interstate commerce or health or the environment.

(iv) Exceptions

(I) Chemical substances for which requests have been granted under subparagraph (C)(ii) shall not be subject to section 2617(b) of this title.

(II) Requests for risk evaluations on chemical substances which are made under subparagraph (C)(ii) and that are drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments shall be granted at the discretion of the Administrator and not be subject to clause (i)(II).

(F) Requirements

In conducting a risk evaluation under this subsection, the Administrator shall—

(i) integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed or susceptible subpopulations identified as relevant by the Administrator;

(ii) describe whether aggregate or sentinel exposures to a chemical substance under the conditions of use were considered, and the basis for that consideration;

(iii) not consider costs or other nonrisk factors;

(iv) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use of the chemical substance; and

(v) describe the weight of the scientific evidence for the identified hazard and exposure.

(G) Deadlines

The Administrator—

(i) shall complete a risk evaluation for a chemical substance as soon as practicable, but not later than 3 years after the date on which the Administrator initiates the risk evaluation under subparagraph (C); and

(ii) may extend the deadline for a risk evaluation for not more than 6 months.

(H) Notice and comment

The Administrator shall provide no less than 30 days public notice and an opportunity for comment on a draft risk evaluation prior to publishing a final risk evaluation.

(c) Promulgation of subsection (a) rules

(1) Deadlines

If the Administrator determines that a chemical substance presents an unreasonable risk of injury to health or the environment in accordance with subsection (b)(4)(A), the Administrator—

(A) shall propose in the Federal Register a rule under subsection (a) for the chemical substance not later than 1 year after the date on which the final risk evaluation regarding the chemical substance is published;

(B) shall publish in the Federal Register a final rule not later than 2 years after the date on which the final risk evaluation regarding the chemical substance is published; and

(C) may extend the deadlines under this paragraph for not more than 2 years, subject to the condition that the aggregate length of extensions under this subparagraph and subsection (b)(4)(G)(ii) does not exceed 2 years, and subject to the limitation that the Administrator may not extend a deadline for the publication of a proposed or final rule regarding a chemical substance drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments or a chemical substance that, with respect to persistence and bioaccumulation, scores high for 1 and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals Methods Document published by the Administrator in February 2012 (or a successor scoring system), without adequate public justification that demonstrates, following a review of the information reasonably available to the Administrator, that the Administrator cannot complete the proposed or final rule without additional information regarding the chemical substance.

(2) Requirements for rule

(A) Statement of effects

In proposing and promulgating a rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement based on reasonably available information with respect to—

(i) the effects of the chemical substance or mixture on health and the magnitude of the exposure of human beings to the chemical substance or mixture;

(ii) the effects of the chemical substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;

(iii) the benefits of the chemical substance or mixture for various uses; and

(iv) the reasonably ascertainable economic consequences of the rule, including consideration of—

(I) the likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health;

(II) the costs and benefits of the proposed and final regulatory action and of the 1 or

more primary alternative regulatory actions considered by the Administrator; and

(III) the cost effectiveness of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

(B) Selecting requirements

In selecting among prohibitions and other restrictions, the Administrator shall factor in, to the extent practicable, the considerations under subparagraph (A) in accordance with subsection (a).

(C) Consideration of alternatives

Based on the information published under subparagraph (A), in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use of a chemical substance or mixture, and in setting an appropriate transition period for such action, the Administrator shall consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment, compared to the use so proposed to be prohibited or restricted, will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect.

(D) Replacement parts

(i) In general

The Administrator shall exempt replacement parts for complex durable goods and complex consumer goods that are designed prior to the date of publication in the Federal Register of the rule under subsection (a), unless the Administrator finds that such replacement parts contribute significantly to the risk, identified in a risk evaluation conducted under subsection (b)(4)(A), to the general population or to an identified potentially exposed or susceptible subpopulation.

(ii) Definitions

In this subparagraph—

(I) the term "complex consumer goods" means electronic or mechanical devices composed of multiple manufactured components, with an intended useful life of 3 or more years, where the product is typically not consumed, destroyed, or discarded after a single use, and the components of which would be impracticable to redesign or replace; and

(II) the term "complex durable goods" means manufactured goods composed of 100 or more manufactured components, with an intended useful life of 5 or more years, where the product is typically not consumed, destroyed, or discarded after a single use.

(E) Articles

In selecting among prohibitions and other restrictions, the Administrator shall apply such prohibitions or other restrictions to an article or category of articles containing the chemical substance or mixture only to the extent necessary to address the identified risks from exposure to the chemical substance or mixture from the article or category of articles so that the substance or mixture does not present an unreasonable risk of injury to health or the environment identified in the risk evaluation conducted in accordance with subsection (b)(4)(A).

(3) Procedures

When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also—

(A) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule;

(B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available;

(C) promulgate a final rule based on the matter in the rulemaking record; and

(D) make and publish with the rule the determination described in subsection (a).

(d) Effective date

(1) IN GENERAL.—In any rule under subsection (a), the Administrator shall—

(A) specify the date on which it shall take effect, which date shall be as soon as practicable;

(B) except as provided in subparagraphs (C) and (D), specify mandatory compliance dates for all of the requirements under a rule under subsection (a), which shall be as soon as practicable, but not later than 5 years after the date of promulgation of the rule, except in a case of a use exempted under subsection (g);

(C) specify mandatory compliance dates for the start of ban or phase-out requirements under a rule under subsection (a), which shall be as soon as practicable, but not later than 5 years after the date of promulgation of the rule, except in the case of a use exempted under subsection (g);

(D) specify mandatory compliance dates for full implementation of ban or phase-out requirements under a rule under subsection (a), which shall be as soon as practicable; and

(E) provide for a reasonable transition period.

(2) VARIABILITY.—As determined by the Administrator, the compliance dates established under paragraph (1) may vary for different affected persons.

(3)(A) The Administrator may declare a proposed rule under subsection (a) to be effective, and compliance with the proposed requirements to be mandatory, upon publication in the Federal Register of the proposed rule and until the compliance dates applicable to such requirements in a final rule promulgated under section 2605(a) of this title or until the Administrator revokes such proposed rule, in accordance with subparagraph (B), if—

(i) the Administrator determines that—

(I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date without consideration of costs or other non-risk factors; and

(II) making such proposed rule so effective is necessary to protect the public interest; and

(ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an action under section 2606 of this title granted relief with respect to such risk associated with such substance or mixture.

Such a proposed rule which is made so effective shall not, for purposes of judicial review, be considered final agency action.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action in accordance with subsection (c), and either promulgate such rule (as proposed or with modifications) or revoke it.

(e) Polychlorinated biphenyls

(1) Within six months after January 1, 1977, the Administrator shall promulgate rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2)(A) Except as provided under subparagraph (B), effective one year after January 1, 1977, no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term "totally enclosed manner" means any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3)(A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after January 1, 1977, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after October 11, 1976.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraph (3) of subsection (c).

(5) This subsection does not limit the authority of the Administrator, under any other provision of this chapter or any other Federal law, to take action respecting any polychlorinated biphenyl.

(f) Mercury

(1) Prohibition on sale, distribution, or transfer of elemental mercury by Federal agencies

Except as provided in paragraph (2), effective beginning on October 14, 2008, no Federal agency shall convey, sell, or distribute to any other Federal agency, any State or local government agency, or any private individual or entity any elemental mercury under the control or jurisdiction of the Federal agency.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a transfer between Federal agencies of elemental mercury for the sole purpose of facilitating storage of mercury to carry out this chapter; or

(B) a conveyance, sale, distribution, or transfer of coal.

(3) Leases of Federal coal

Nothing in this subsection prohibits the leasing of coal.

(g) Exemptions

(1) Criteria for exemption

The Administrator may, as part of a rule promulgated under subsection (a), or in a separate rule, grant an exemption from a requirement of a subsection (a) rule for a specific condition of use of a chemical substance or mixture, if the Administrator finds that—

(A) the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure;

(B) compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or

(C) the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

(2) Exemption analysis and statement

In proposing an exemption under this subsection, the Administrator shall analyze the need for the exemption, and shall make public the analysis and a statement describing how the analysis was taken into account.

(3) Period of exemption

The Administrator shall establish, as part of a rule under this subsection, a time limit on any exemption for a time to be determined by the Administrator as reasonable on a case-by-case basis, and, by rule, may extend, modify, or eliminate an exemption if the Administrator determines, on the basis of reasonably available information and after adequate public justification, the exemption warrants extension or modification or is no longer necessary.

(4) Conditions

As part of a rule promulgated under this subsection, the Administrator shall include conditions, including reasonable recordkeeping, monitoring, and reporting requirements, to the extent that the Administrator determines the conditions are necessary to protect health and the environment while achieving the purposes of the exemption.

(h) Chemicals that are persistent, bioaccumulative, and toxic

(1) Expedited action

Not later than 3 years after June 22, 2016, the Administrator shall propose rules under subsection (a) with respect to chemical substances identified in the 2014 update of the TSCA Work Plan for Chemical Assessments—

(A) that the Administrator has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the TSCA Work Plan Chemicals Methods Document published by the Administrator in February 2012 (or a successor scoring system), and are not a metal or a metal compound, and for which the Administrator has not completed a Work Plan Problem Formulation, initiated a review under section 5, or entered into a consent agreement under section 2603 of this title, prior to June 22, 2016; and

(B) exposure to which under the conditions of use is likely to the general population or to a potentially exposed or susceptible subpopulation identified by the Administrator, or the environment, on the basis of an exposure and use assessment conducted by the Administrator.

(2) No risk evaluation required

The Administrator shall not be required to conduct risk evaluations on chemical substances that are subject to paragraph (1).

(3) Final rule

Not later than 18 months after proposing a rule pursuant to paragraph (1), the Administrator shall promulgate a final rule under subsection (a).

(4) Selecting restrictions

In selecting among prohibitions and other restrictions promulgated in a rule under subsection (a) pursuant to paragraph (1), the Administrator shall address the risks of injury to health or the environment that the Administrator determines are presented by the chemical substance and shall reduce exposure to the substance to the extent practicable.

(5) Relationship to subsection (b)

If, at any time prior to the date that is 90 days after June 22, 2016, the Administrator makes a designation under subsection (b)(1)(B)(i), or receives a request under subsection (b)(4)(C)(ii), such chemical substance shall not be subject to this subsection, except that in selecting among prohibitions and other restrictions promulgated in a rule pursuant to subsection (a), the Administrator shall both ensure that the chemical substance meets the rulemaking standard under subsection (a) and reduce exposure to the substance to the extent practicable.

(i) Final agency action

Under this section and subject to section 2617 of this title—

(1) a determination by the Administrator under subsection (b)(4)(A) that a chemical substance does not present an unreasonable risk of injury to health or the environment shall be issued by order and considered to be a final agency action, effective beginning on the date of issuance of the order; and

(2) a final rule promulgated under subsection (a), including the associated determination by the Administrator under subsection (b)(4)(A) that a chemical substance presents an unreasonable risk of injury to health or the environment, shall be considered to be a final agency action, effective beginning on the date of promulgation of the final rule.

(j) Definition

For the purposes of this chapter, the term "requirement" as used in this section shall not displace statutory or common law.

(Pub. L. 94–469, title I, §6, Oct. 11, 1976, 90 Stat. 2020; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 109–364, div. A, title III, §317(a), Oct. 17, 2006, 120 Stat. 2142; Pub. L. 110–414, §3, Oct. 14, 2008, 122 Stat. 4342; Pub. L. 114–182, title I, §6, June 22, 2016, 130 Stat. 460.)

EDITORIAL NOTES

AMENDMENTS

2016—Pub. L. 114–182, §6(1), substituted "Prioritization, risk evaluation, and regulation of chemical substances and mixtures" for "Regulation of hazardous chemical substances and mixtures" in section catchline.

Subsec. (a). Pub. L. 114–182, §6(2)(A)–(D), in introductory provisions, substituted "determines in accordance with subsection (b)(4)(A)" for "finds that there is a reasonable basis to conclude" and "so that the chemical substance or mixture no longer presents such risk" for "to protect adequately against such risk using the least burdensome requirements", struck out "or will present" after "presents", and inserted "and subject to section 2617 of this title, and in accordance with subsection (c)(2)," after "shall by rule".

Subsec. (a)(1)(A), (2)(A). Pub. L. 114–182, §6(2)(E), inserted "or otherwise restricting" after "prohibiting".

Subsec. (a)(3). Pub. L. 114–182, §6(2)(F), inserted "minimum" before "warnings" in two places.

Subsec. (a)(4). Pub. L. 114–182, §6(2)(G), substituted "or monitor or conduct tests" for "and monitor or conduct tests".

Subsec. (a)(7). Pub. L. 114–182, §6(2)(H), substituted "such determination" for "such unreasonable risk of injury" in subpar. (A) and for "such risk of injury" in subpar. (B).

Subsec. (b). Pub. L. 114–182, §6(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to quality control procedures in the manufacturing or processing of a chemical substance or mixture to prevent unreasonable risk of injury to health or the environment.

Subsec. (c). Pub. L. 114–182, §6(4), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to promulgation of subsection (a) rules.

Subsec. (d)(1), (2). Pub. L. 114–182, §6(5)(B), added pars. (1) and (2) and struck out former par. (1) which read as follows: "The Administrator shall specify in any rule under subsection (a) the date on which it shall take effect, which date shall be as soon as feasible." Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 114–182, §6(5)(A), redesignated par. (2) as (3).

Subsec. (d)(3)(A). Pub. L. 114–182, §6(5)(C)(i)(I), in introductory provisions, substituted ", and compliance with the proposed requirements to be mandatory, upon publication in the Federal Register of the proposed rule

and until the compliance dates applicable to such requirements in a final rule promulgated under section 2605(a) of this title or until the Administrator revokes such proposed rule, in accordance with subparagraph (B), if" for "upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if".

Subsec. (d)(3)(A)(i)(I). Pub. L. 114–182, §6(5)(C)(i)(II), inserted "without consideration of costs or other non-risk factors" after "effective date".

Subsec. (d)(3)(B). Pub. L. 114–182, §6(5)(C)(ii), substituted "in accordance with subsection (c), and either promulgate such rule (as proposed or with modifications) or revoke it." for ", provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c), for a hearing on such rule, and either promulgate such rule (as proposed or with modifications) or revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of the conclusion of the hearing, either promulgate such rule (as proposed or with modifications) or revoke it."

Subsec. (e)(4). Pub. L. 114–182, §6(6), substituted "paragraph (3)" for "paragraphs (2), (3), and (4)".

Subsecs. (g) to (j). Pub. L. 114–182, §6(7), added subsecs. (g) to (j).

2008—Subsec. (f). Pub. L. 110–414 added subsec. (f).

2006—Subsec. (e)(3)(A). Pub. L. 109–364, §317(a)(1), (b), temporarily substituted "subparagraphs (B), (C), and (D)" for "subparagraphs (B) and (C)" in introductory provisions. See Termination Date of 2006 Amendment note below.

Subsec. (e)(3)(B). Pub. L. 109–364, §317(a)(2), (b), temporarily substituted "but not more than 1 year from the date it is granted, except as provided in subparagraph (D)" for "but not more than one year from the date it is granted" in concluding provisions. See Termination Date of 2006 Amendment note below.

Subsec. (e)(3)(D). Pub. L. 109–364, §317(a)(3), (b), temporarily added subpar. (D) which read as follows: "The Administrator may extend an exemption granted pursuant to subparagraph (B) that has not yet expired for a period not to exceed 60 days for the purpose of authorizing the Secretary of Defense and the Secretaries of the military departments to provide for the transportation into the customs territory of the United States of polychlorinated biphenyls generated by or under the control of the Department of Defense for purposes of their disposal, treatment, or storage in the customs territory of the United States if those polychlorinated biphenyls are already in transit from their storage locations but the Administrator determines, in the sole discretion of the Administrator, they would not otherwise arrive in the customs territory of the United States within the period of the original exemption. The Administrator shall promptly publish notice of such extension in the Federal Register." See Termination Date of 2006 Amendment note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title III, §317(b), Oct. 17, 2006, 120 Stat. 2142, provided that: "The amendments made by subsection (a) [amending this section] shall cease to have effect on September 30, 2012. The termination of the authority to grant exemptions pursuant to such amendments shall not effect the validity of any exemption granted prior to such date."

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2606. Imminent hazards

(a) Actions authorized and required

(1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b)) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a determination under section 2604 or 2605 of this title, a rule under section 2603, 2604, or 2605 of this title or subchapter IV, an order under section 2603, 2604, or 2605 of this title or subchapter IV, or a consent agreement under section 2603 of this title, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this chapter.

(2) If the Administrator has not made a rule under section 2605(a) of this title immediately effective (as authorized by section 2605(d)(3)(A)(i) of this title) with respect to an imminently hazardous chemical substance or mixture, the Administrator shall commence in a district court of the United States with respect to such substance or mixture or article containing such substance or mixture a civil action described in subparagraph (A), (B), or (C) of paragraph (1).

(b) Relief authorized

(1) The district court of the United States in which an action under subsection (a) is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk (as identified by the Administrator without consideration of costs or other nonrisk factors) associated with the chemical substance, mixture, or article involved in such action.

(2) In the case of an action under subsection (a) brought against a person who manufactures, processes, or distributes in commerce a chemical substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Venue and consolidation

(1)(A) An action under subsection (a) against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection (a) against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(C) Subpeonas [1] requiring attendance of witnesses in an action brought under subsection (a) may be served in any judicial district.

(2) Whenever proceedings under subsection (a) involving identical chemical substances, mixtures, or articles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) Action under section 2605

Where appropriate, concurrently with the filing of an action under subsection (a) or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 2605(a) of this title.

(e) Representation

Notwithstanding any other provision of law, in any action under subsection (a), the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) "Imminently hazardous chemical substance or mixture" defined

For the purposes of subsection (a), the term "imminently hazardous chemical substance or mixture" means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment, without consideration of costs or other nonrisk factors. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 2605 of this title can protect against such risk.

(Pub. L. 94–469, title I, §7, Oct. 11, 1976, 90 Stat. 2026; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(1), Oct. 28, 1992, 106 Stat. 3923; Pub. L. 114–182, title I, §§7, 19(f), June 22, 2016, 130 Stat. 470, 507.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–182, §19(f)(1), in concluding provisions, substituted "a determination under section 2604 or 2605 of this title, a rule under section 2603, 2604, or 2605 of this title or subchapter IV, an order under section 2603, 2604, or 2605 of this title or subchapter IV, or a consent agreement under section 2603 of this title" for "a rule under section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV or an order under section 2604 of this title or subchapter IV".

Subsec. (a)(2). Pub. L. 114–182, §19(f)(2), substituted "section 2605(d)(3)(A)(i)" for "section 2605(d)(2)(A)(i)".

Subsec. (b)(1). Pub. L. 114–182, §7(1), inserted "(as identified by the Administrator without consideration of costs or other nonrisk factors)" after "from the unreasonable risk".

Subsec. (f). Pub. L. 114–182, §7(2), inserted ", without consideration of costs or other nonrisk factors" after "widespread injury to health or the environment".

1992—Subsec. (a)(1). Pub. L. 102–550 substituted "section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV" for "section 2603, 2604, or 2605 of this title" in last sentence.

Pub. L. 102–550, which directed the insertion of "or subchapter IV" after "2604", was executed by making the insertion after "2604" the second time appearing in last sentence, to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

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

§2607. Reporting and retention of information

(a) Reports

(1) The Administrator shall promulgate rules under which—

(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii)) shall maintain such records, and shall submit to the

Administrator such reports, as the Administrator may reasonably require, and

(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process—

(i) a mixture, or

(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this chapter.

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of such reports, or both, is necessary for the effective enforcement of this chapter. For purposes of the compilation of the list of chemical substances required under subsection (b), the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after January 1, 1977.

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each such substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing information concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

(3)(A)(i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b).

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture—

(I) subject to a rule proposed or promulgated under section 2603, 2604(b)(4), or 2605 of this title,,[1] an order in effect under section 2603 or 2604(e) of this title, or a consent agreement under section 2603 of this title, or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 2604 or 2606 of this title,

to maintain such records on such substance or mixture, and to submit to the Administrator such

reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(C) Not later than 180 days after June 22, 2016, and not less frequently than once every 10 years thereafter, the Administrator, after consultation with the Administrator of the Small Business Administration, shall—

(i) review the adequacy of the standards prescribed under subparagraph (B); and

(ii) after providing public notice and an opportunity for comment, make a determination as to whether revision of the standards is warranted.

(4) CONTENTS.—The rules promulgated pursuant to paragraph (1)—

(A) may impose differing reporting and recordkeeping requirements on manufacturers and processors; and

(B) shall include the level of detail necessary to be reported, including the manner by which use and exposure information may be reported.

(5) ADMINISTRATION.—In carrying out this section, the Administrator shall, to the extent feasible—

(A) not require reporting which is unnecessary or duplicative;

(B) minimize the cost of compliance with this section and the rules issued thereunder on small manufacturers and processors; and

(C) apply any reporting obligations to those persons likely to have information relevant to the effective implementation of this subchapter.

(6) NEGOTIATED RULEMAKING.—(A) The Administrator shall enter into a negotiated rulemaking pursuant to subchapter III of chapter 5 of title 5 to develop and publish, not later than 3 years after June 22, 2016, a proposed rule providing for limiting the reporting requirements, under this subsection, for manufacturers of any inorganic byproducts, when such byproducts, whether by the byproduct manufacturer or by any other person, are subsequently recycled, reused, or reprocessed.

(B) Not later than 3 and one-half years after June 22, 2016, the Administrator shall publish a final rule resulting from such negotiated rulemaking.

(7) PFAS DATA.—Not later than January 1, 2023, the Administrator shall promulgate a rule in accordance with this subsection requiring each person who has manufactured a chemical substance that is a perfluoroalkyl or polyfluoroalkyl substance in any year since January 1, 2011, to submit to the Administrator a report that includes, for each year since January 1, 2011, the information described in subparagraphs (A) through (G) of paragraph (2).

(b) Inventory

(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 2604 of this title or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1). In the case of a chemical substance for which a notice is submitted in accordance with section 2604 of this title, such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufactured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after January 1, 1977. The Administrator shall not include in such list any chemical substance which is manufactured or

processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this chapter, the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(3) NOMENCLATURE.—

(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall—

(i) maintain the use of Class 2 nomenclature in use on June 22, 2016;

(ii) maintain the use of the Soap and Detergent Association Nomenclature System, published in March 1978 by the Administrator in section 1 of addendum III of the document entitled "Candidate List of Chemical Substances", and further described in the appendix A of volume I of the 1985 edition of the Toxic Substances Control Act Substances Inventory (EPA Document No. EPA–560/7–85–002a); and

(iii) treat the individual members of the categories of chemical substances identified by the Administrator as statutory mixtures, as defined in Inventory descriptions established by the Administrator, as being included on the list established under paragraph (1).

(B) MULTIPLE NOMENCLATURE LISTINGS.—If a manufacturer or processor demonstrates to the Administrator that a chemical substance appears multiple times on the list published under paragraph (1) under different CAS numbers, the Administrator may recognize the multiple listings as a single chemical substance.

(4) CHEMICAL SUBSTANCES IN COMMERCE.—

(A) RULES.—

(i) IN GENERAL.—Not later than 1 year after June 22, 2016, the Administrator, by rule, shall require manufacturers, and may require processors, subject to the limitations under subsection (a)(5)(A), to notify the Administrator, by not later than 180 days after the date on which the final rule is published in the Federal Register, of each chemical substance on the list published under paragraph (1) that the manufacturer or processor, as applicable, has manufactured or processed for a nonexempt commercial purpose during the 10-year period ending on the day before June 22, 2016.

(ii) ACTIVE SUBSTANCES.—The Administrator shall designate chemical substances for which notices are received under clause (i) to be active substances on the list published under paragraph (1).

(iii) INACTIVE SUBSTANCES.—The Administrator shall designate chemical substances for which no notices are received under clause (i) to be inactive substances on the list published under paragraph (1).

(iv) LIMITATION.—No chemical substance on the list published under paragraph (1) shall be removed from such list by reason of the implementation of this subparagraph, or be subject to section 2604(a)(1)(A)(i) of this title by reason of a change to active status under paragraph (5)(B).

(B) CONFIDENTIAL CHEMICAL SUBSTANCES.—In promulgating a rule under subparagraph (A), the Administrator shall—

(i) maintain the list under paragraph (1), which shall include a confidential portion and a nonconfidential portion consistent with this section and section 2613 of this title;

(ii) require any manufacturer or processor of a chemical substance on the confidential portion of the list published under paragraph (1) that seeks to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance as confidential pursuant to section 2613 of this title to submit a notice under subparagraph (A) that includes such request;

(iii) require the substantiation of those claims pursuant to section 2613 of this title and in

accordance with the review plan described in subparagraph (C); and

(iv) move any active chemical substance for which no request was received to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance as confidential from the confidential portion of the list published under paragraph (1) to the nonconfidential portion of that list.

(C) REVIEW PLAN.—Not later than 1 year after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A), the Administrator shall promulgate a rule that establishes a plan to review all claims to protect the specific chemical identities of chemical substances on the confidential portion of the list published under paragraph (1) that are asserted pursuant to subparagraph (B).

(D) REQUIREMENTS OF REVIEW PLAN.—In establishing the review plan under subparagraph (C), the Administrator shall—

(i) require, at a time specified by the Administrator, all manufacturers or processors asserting claims under subparagraph (B) to substantiate the claim, in accordance with section 2613 of this title, unless the manufacturer or processor has substantiated the claim in a submission made to the Administrator during the 5-year period ending on the last day of the of the time period specified by the Administrator; and

(ii) in accordance with section 2613 of this title—

(I) review each substantiation—

(aa) submitted pursuant to clause (i) to determine if the claim qualifies for protection from disclosure; and

(bb) submitted previously by a manufacturer or processor and relied on in lieu of the substantiation required pursuant to clause (i), if the substantiation has not been previously reviewed by the Administrator, to determine if the claim warrants protection from disclosure;

(II) approve, approve in part and deny in part, or deny each claim; and

(III) except as provided in this section and section 2613 of this title, protect from disclosure information for which the Administrator approves such a claim for a period of 10 years, unless, prior to the expiration of the period—

(aa) the person notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall not protect the information from disclosure; or

(bb) the Administrator otherwise becomes aware that the information does not qualify for protection from disclosure, in which case the Administrator shall take the actions described in section 2613(g)(2) of this title.

(E) TIMELINE FOR COMPLETION OF REVIEWS.—

(i) IN GENERAL.—The Administrator shall implement the review plan so as to complete reviews of all claims specified in subparagraph (C) not later than 5 years after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A).

(ii) CONSIDERATIONS.—

(I) IN GENERAL.—The Administrator may extend the deadline for completion of the reviews for not more than 2 additional years, after an adequate public justification, if the Administrator determines that the extension is necessary based on the number of claims needing review and the available resources.

(II) ANNUAL REVIEW GOAL AND RESULTS.—At the beginning of each year, the Administrator shall publish an annual goal for reviews and the number of reviews completed in the prior year.

(5) ACTIVE AND INACTIVE SUBSTANCES.—

(A) IN GENERAL.—The Administrator shall keep designations of active substances and inactive substances on the list published under paragraph (1) current.

(B) CHANGE TO ACTIVE STATUS.—

(i) IN GENERAL.—Any person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance shall notify the Administrator before the date on which the inactive substance is manufactured or processed.

(ii) CONFIDENTIAL CHEMICAL IDENTITY.—If a person submitting a notice under clause (i) for an inactive substance on the confidential portion of the list published under paragraph (1) seeks to maintain an existing claim for protection against disclosure of the specific chemical identity of the inactive substance as confidential, the person shall, consistent with the requirements of section 2613 of this title—

(I) in the notice submitted under clause (i), assert the claim; and

(II) by not later than 30 days after providing the notice under clause (i), substantiate the claim.

(iii) ACTIVE STATUS.—On receiving a notification under clause (i), the Administrator shall—

(I) designate the applicable chemical substance as an active substance;

(II) pursuant to section 2613 of this title, promptly review any claim and associated substantiation submitted pursuant to clause (ii) for protection against disclosure of the specific chemical identity of the chemical substance and approve, approve in part and deny in part, or deny the claim;

(III) except as provided in this section and section 2613 of this title, protect from disclosure the specific chemical identity of the chemical substance for which the Administrator approves a claim under subclause (II) for a period of 10 years, unless, prior to the expiration of the period—

(aa) the person notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall not protect the information from disclosure; or

(bb) the Administrator otherwise becomes aware that the information does not qualify for protection from disclosure, in which case the Administrator shall take the actions described in section 2613(g)(2) of this title; and

(IV) pursuant to section 2605(b) of this title, review the priority of the chemical substance as the Administrator determines to be necessary.

(C) CATEGORY STATUS.—The list of inactive substances shall not be considered to be a category for purposes of section 2625(c) of this title.

(6) INTERIM LIST OF ACTIVE SUBSTANCES.—Prior to the promulgation of the rule required under paragraph (4)(A), the Administrator shall designate the chemical substances reported under part 711 of title 40, Code of Federal Regulations (as in effect on June 22, 2016), during the reporting period that most closely preceded June 22, 2016, as the interim list of active substances for the purposes of section 2605(b) of this title.

(7) PUBLIC INFORMATION.—Subject to this subsection and section 2613 of this title, the Administrator shall make available to the public—

(A) each specific chemical identity on the nonconfidential portion of the list published under paragraph (1) along with the Administrator's designation of the chemical substance as an active or inactive substance;

(B) the unique identifier assigned under section 2613 of this title, accession number, generic name, and, if applicable, premanufacture notice case number for each chemical substance on the confidential portion of the list published under paragraph (1) for which a claim of confidentiality was received; and

(C) the specific chemical identity of any active substance for which—

(i) a claim for protection against disclosure of the specific chemical identity of the active

substance was not asserted, as required under this subsection or section 2613 of this title;

(ii) all claims for protection against disclosure of the specific chemical identity of the active substance have been denied by the Administrator; or

(iii) the time period for protection against disclosure of the specific chemical identity of the active substance has expired.

(8) LIMITATION.—No person may assert a new claim under this subsection or section 2613 of this title for protection from disclosure of a specific chemical identity of any active or inactive substance for which a notice is received under paragraph (4)(A)(i) or (5)(B)(i) that is not on the confidential portion of the list published under paragraph (1).

(9) CERTIFICATION.—Under the rules promulgated under this subsection, manufacturers and processors, as applicable, shall be required—

(A) to certify that each notice or substantiation the manufacturer or processor submits complies with the requirements of the rule, and that any confidentiality claims are true and correct; and

(B) to retain a record documenting compliance with the rule and supporting confidentiality claims for a period of 5 years beginning on the last day of the submission period.

(10) MERCURY.—

(A) DEFINITION OF MERCURY.—In this paragraph, notwithstanding section 2602(2)(B) of this title, the term "mercury" means—

(i) elemental mercury; and

(ii) a mercury compound.

(B) PUBLICATION.—Not later than April 1, 2017, and every 3 years thereafter, the Administrator shall carry out and publish in the Federal Register an inventory of mercury supply, use, and trade in the United States.

(C) PROCESS.—In carrying out the inventory under subparagraph (B), the Administrator shall—

(i) identify any manufacturing processes or products that intentionally add mercury; and

(ii) recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use.

(D) REPORTING.—

(i) IN GENERAL.—To assist in the preparation of the inventory under subparagraph (B), any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process shall make periodic reports to the Administrator, at such time and including such information as the Administrator shall determine by rule promulgated not later than 2 years after June 22, 2016.

(ii) COORDINATION.—To avoid duplication, the Administrator shall coordinate the reporting under this subparagraph with the Interstate Mercury Education and Reduction Clearinghouse.

(iii) EXEMPTION.—Clause (i) shall not apply to a person engaged in the generation, handling, or management of mercury-containing waste, unless that person manufactures or recovers mercury in the management of that waste.

(c) Records

Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records

of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) Health and safety studies

The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator—

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person, or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this chapter; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(e) Notice to Administrator of substantial risks

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

(f) "Manufacture" and "process" defined

For purposes of this section, the terms "manufacture" and "process" mean manufacture or process for commercial purposes.

(Pub. L. 94–469, title I, §8, Oct. 11, 1976, 90 Stat. 2027; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §§8, 19(g), June 22, 2016, 130 Stat. 470, 507; Pub. L. 116–92, div. F, title LXXIII, §7351, Dec. 20, 2019, 133 Stat. 2289.)

EDITORIAL NOTES

AMENDMENTS

2019—Subsec. (a)(7). Pub. L. 116–92 added par. (7).

2016—Subsec. (a)(2). Pub. L. 114–182, §8(a)(1)(A), struck out concluding provisions which read as follows: "To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative."

Subsec. (a)(2)(E). Pub. L. 114–182, §19(g)(1), substituted "information" for "data".

Subsec. (a)(3)(A)(ii)(I). Pub. L. 114–182, §19(g)(2), substituted ", an order in effect under section 2603 or 2604(e) of this title, or a consent agreement under section 2603 of this title" for "or an order in effect under section 2604(e) of this title".

Subsec. (a)(3)(C). Pub. L. 114–182, §8(a)(1)(B), added subpar. (C).

Subsec. (a)(4) to (6). Pub. L. 114–182, §8(a)(1)(C), added pars. (4) to (6).

Subsec. (b)(3) to (9). Pub. L. 114–182, §8(a)(2), added pars. (3) to (9).

Subsec. (b)(10). Pub. L. 114–182, §8(b), added par. (10).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

ASBESTOS INFORMATION

Pub. L. 100–577, Oct. 31, 1988, 102 Stat. 2901, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Asbestos Information Act of 1988'.

"SEC. 2. SUBMISSION OF INFORMATION BY MANUFACTURERS.

"Within 90 days after the date of the enactment of this Act [Oct. 31, 1988], any person who manufactured or processed, before the date of the enactment of this Act, asbestos or asbestos-containing material that was prepared for sale for use as surfacing material, thermal system insulation, or miscellaneous material in buildings (or whose corporate predecessor manufactured or processed such asbestos or material) shall submit to the Administrator of the Environmental Protection Agency the years of manufacture, the types or classes of product, and, to the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material. Such person also may submit to the Administrator protocols for samples of asbestos and asbestos-containing material.

"SEC. 3. PUBLICATION OF INFORMATION.

"Within 30 days after the date of the enactment of this Act [Oct. 31, 1988], the Administrator shall publish a notice in the Federal Register that explains how, when, and where the information specified in section 2 is to be submitted. The Administrator shall receive and organize the information submitted under section 2 and, within 180 days after the date of the enactment of this Act, shall publish the information. In carrying out this section, the Administrator may not—

"(1) review the information submitted under section 2 for accuracy, or

"(2) analyze such information to determine whether it is reasonably necessary to identify or distinguish the particular asbestos or asbestos-containing material.

"SEC. 4. DEFINITIONS.

"In this Act:

"(1) The term 'asbestos' means—

"(A) chrysotile, amosite, or crocidolite, or

"(B) in fibrous form, tremolite, anthophyllite, or actinolite.

"(2) The term 'asbestos-containing material' means any material containing more than one percent asbestos by weight.

"(3) The term 'identifying characteristics' means a description of asbestos or asbestos-containing material, including—

"(A) the mineral or chemical constituents (or both) of the asbestos or material by weight or volume (or both),

"(B) the types or classes of the product in which the asbestos or material is contained,

"(C) the designs, patterns, or textures of the product in which the asbestos or material is contained, and

"(D) the means by which the product in which the asbestos or material is contained may be distinguishable from other products containing asbestos or asbestos-containing material.

"(4) The term 'miscellaneous material' means building material on structural components, structural members, or fixtures, such as floor and ceiling tiles. The term does not include surfacing material or thermal system insulation.

"(5) The term 'protocol' means any procedure for taking, handling, and preserving samples of asbestos and asbestos-containing material and for testing and analyzing such samples for the purpose of determining the person who manufactured or processed for sale such samples and the identifying characteristics of such samples.

"(6) The term 'surfacing material' means material in a building that is sprayed on surfaces, troweled on surfaces, or otherwise applied to surfaces for acoustical, fireproofing, or other purposes, such as acoustical plaster on ceilings and fireproofing material on structural members.

"(7) The term 'thermal system insulation' means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other structural components to prevent heat loss or gain or water condensation, or for other purposes."

[1] *So in original.*

§2608. Relationship to other Federal laws

(a) Laws not administered by the Administrator

(1) If the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator, under the conditions of use, and determines, in the Administrator's discretion, that such risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by the Administrator, the Administrator shall submit to the agency which administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

(A)(i) to determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and

(ii) if the agency determines that such risk may be so prevented or reduced, to issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and

(B) to respond to the Administrator with respect to the matters described in subparagraph (A).

Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register. The agency receiving a request under such a report shall make the requested determination, issue the requested order, and make the requested response within such time as the Administrator specifies in the request, but such time specified may not be less than 90 days from the date the request was made. The response of an agency shall be accompanied by a detailed statement of the findings and conclusions of the agency and shall be published in the Federal Register.

(2) If the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which such report was made either—

(A) issues an order, within the time period specified by the Administrator in the report, declaring that the activity or combination of activities specified in the description of the risk described in the report does not present the risk described in the report, or

(B) responds within the time period specified by the Administrator in the report and initiates, within 90 days of the publication in the Federal Register of the response of the agency under paragraph (1), action under the law (or laws) administered by such agency to protect against such risk associated with such activity or combination of activities,

the Administrator may not take any action under section 2605(a) or 2606 of this title with respect to such risk.

(3) The Administrator shall take the actions described in paragraph (4) if the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which the report was made does not—

(A) issue the order described in paragraph (2)(A) within the time period specified by the Administrator in the report; or

(B)(i) respond under paragraph (1) within the timeframe specified by the Administrator in the report; and

(ii) initiate action within 90 days of publication in the Federal Register of the response described in clause (i).

(4) If an agency to which a report is submitted under paragraph (1) does not take the actions described in subparagraph (A) or (B) of paragraph (3), the Administrator shall—

(A) initiate or complete appropriate action under section 2605(a) of this title; or

(B) take any action authorized or required under section 2606 of this title, as applicable.

(5) This subsection shall not relieve the Administrator of any obligation to take any appropriate action under section 2605(a) or 2606 of this title to address risks from the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of those activities, that are not identified in a report issued by the Administrator under paragraph (1).

(6) If the Administrator has initiated action under section 2605(a) or 2606 of this title with respect to a risk associated with a chemical substance or mixture which was the subject of a report made to an agency under paragraph (1), such agency shall before taking action under the law (or laws) administered by it to protect against such risk consult with the Administrator for the purpose of avoiding duplication of Federal action against such risk.

(b) Laws administered by the Administrator

(1) The Administrator shall coordinate actions taken under this chapter with actions taken under other Federal laws administered in whole or in part by the Administrator. If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this chapter. This subsection shall not be construed to relieve the Administrator of any requirement imposed on the Administrator by such other Federal laws.

(2) In making a determination under paragraph (1) that it is in the public interest for the Administrator to take an action under this subchapter with respect to a chemical substance or mixture rather than under another law administered in whole or in part by the Administrator, the Administrator shall consider, based on information reasonably available to the Administrator, all relevant aspects of the risk described in paragraph (1) and a comparison of the estimated costs and efficiencies of the action to be taken under this subchapter and an action to be taken under such other law to protect against such risk.

(c) Occupational safety and health

In exercising any authority under this chapter, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(d) Coordination

In administering this chapter, the Administrator shall consult and coordinate with the Secretary of Health and Human Services and the heads of any other appropriate Federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the Federal Government for the purpose of achieving the maximum enforcement of this chapter while imposing the least burdens of duplicative requirements on those subject to the chapter and for other purposes. The Administrator shall, in the report required by section 2629 of this title, report annually to the Congress on actions taken to coordinate with such other Federal departments, agencies, or instrumentalities, and on actions taken to coordinate the authority under this chapter with the authority granted under other Acts referred to in subsection (b).

(e) Exposure information

In addition to the requirements of subsection (a), if the Administrator obtains information related to exposures or releases of a chemical substance or mixture that may be prevented or reduced under another Federal law, including a law not administered by the Administrator, the Administrator shall make such information available to the relevant Federal agency or office of the Environmental Protection Agency.

(Pub. L. 94–469, title I, §9, Oct. 11, 1976, 90 Stat. 2030; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §§9, 19(h), June 22, 2016, 130 Stat. 476, 507.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–182, §19(h)(1), substituted "section 2605(a)" for "section 2605" wherever appearing.

Subsec. (a)(1). Pub. L. 114–182, §9(1)(A), in introductory provisions, substituted "determines" for "has reasonable basis to conclude", struck out "or will present" after "presents", and inserted ", without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator, under the conditions of use," after "or the environment".

Subsec. (a)(2)(A). Pub. L. 114–182, §9(1)(B)(i), inserted ", within the time period specified by the Administrator in the report," after "issues an order".

Subsec. (a)(2)(B). Pub. L. 114–182, §9(1)(B)(ii), inserted "responds within the time period specified by the Administrator in the report and" before "initiates, within 90".

Subsec. (a)(3) to (6). Pub. L. 114–182, §9(1)(C), (D), added pars. (3) to (5) and redesignated former par. (3) as (6).

Subsec. (b). Pub. L. 114–182, §9(2), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 114–182, §19(h)(2), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (e). Pub. L. 114–182, §9(3), added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d) of this section relating to reporting certain coordinating actions annually to Congress in the report required by section 2629 of this title, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 163 of House Document No. 103–7.

§2609. Research, development, collection, dissemination, and utilization of information

(a) Authority

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this chapter. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(b) Information systems

(1) The Administrator shall establish, administer, and be responsible for the continuing activities of an interagency committee which shall design, establish, and coordinate an efficient and effective system, within the Environmental Protection Agency, for the collection, dissemination to other Federal departments and agencies, and use of information submitted to the Administrator under this chapter.

(2)(A) The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies design, establish, and coordinate an efficient and effective system for the retrieval of toxicological and other scientific

information which could be useful to the Administrator in carrying out the purposes of this chapter. Systematized retrieval shall be developed for use by all Federal and other departments and agencies with responsibilities in the area of regulation or study of chemical substances and mixtures and their effect on health or the environment.

(B) The Administrator, in consultation and cooperation with the Secretary of Health and Human Services, may make grants and enter into contracts for the development of an information retrieval system described in subparagraph (A). Contracts may be entered into under this subparagraph without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(c) Screening techniques

The Administrator shall coordinate, with the Assistant Secretary for Health of the Department of Health and Human Services, research undertaken by the Administrator and directed toward the development of rapid, reliable, and economical screening techniques for carcinogenic, mutagenic, teratogenic, and ecological effects of chemical substances and mixtures.

(d) Monitoring

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish and be responsible for research aimed at the development, in cooperation with local, State, and Federal agencies, of monitoring techniques and instruments which may be used in the detection of toxic chemical substances and mixtures and which are reliable, economical, and capable of being implemented under a wide variety of conditions.

(e) Basic research

The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish research programs to develop the fundamental scientific basis of the screening and monitoring techniques described in subsections (c) and (d), the bounds of the reliability of such techniques, and the opportunities for their improvement.

(f) Training

The Administrator shall establish and promote programs and workshops to train or facilitate the training of Federal laboratory and technical personnel in existing or newly developed screening and monitoring techniques.

(g) Exchange of research and development results

The Administrator shall, in consultation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard information format and analysis and consistent testing procedures.

(Pub. L. 94–469, title I, §10, Oct. 11, 1976, 90 Stat. 2031; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §19(i), June 22, 2016, 130 Stat. 507.)

EDITORIAL NOTES

AMENDMENTS

2016—Pub. L. 114–182, §19(i)(2), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Pub. L. 114–182, §19(i)(1), substituted "information" for "data" in section catchline.

Subsec. (b). Pub. L. 114–182, §19(i)(3)(A), substituted "Information" for "Data" in heading.

Subsec. (b)(1). Pub. L. 114–182, §19(i)(3)(B), substituted "information" for "data".

Subsec. (b)(2)(A). Pub. L. 114–182, §19(i)(3)(C), substituted "information" for "data".

Subsec. (b)(2)(B). Pub. L. 114–182, §19(i)(3)(D), substituted "an information" for "a data".

Subsec. (g). Pub. L. 114–182, §19(i)(4), substituted "information" for "data".

CODIFICATION

In subsec. (a), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 14 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(2)(B), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

AVAILABILITY OF GRANTS

Grants awarded under this section are available for research, development, monitoring, public education, training, demonstrations, and studies, beginning in fiscal year 2000 and thereafter, see provisions of title III of Pub. L. 106–74, set out as a note under section 136r of Title 7, Agriculture.

§2610. Inspections and subpoenas

(a) In general

For purposes of administering this chapter, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances, mixtures, or products subject to subchapter IV are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, such products, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) Scope

(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances, mixtures, or products subject to subchapter IV within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) shall extend to—

(A) financial information,

(B) sales information (other than shipment information),

(C) pricing information,

(D) personnel information, or

(E) research information (other than information required by this chapter or under a rule promulgated, order issued, or consent agreement entered into thereunder),

unless the nature and extent of such information are described with reasonable specificity in the written notice required by subsection (a) for such inspection.

(c) Subpoenas

In carrying out this chapter, the Administrator may by subpoena require the attendance and

testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(Pub. L. 94–469, title I, §11, Oct. 11, 1976, 90 Stat. 2032; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(2), (3), Oct. 28, 1992, 106 Stat. 3923; Pub. L. 114–182, title I, §19(j), June 22, 2016, 130 Stat. 507.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (b)(2). Pub. L. 114–182, §19(j)(1), substituted "information" for "data" wherever appearing.

Subsec. (b)(2)(E). Pub. L. 114–182, §19(j)(2), substituted "rule promulgated, order issued, or consent agreement entered into" for "rule promulgated".

1992—Subsec. (a). Pub. L. 102–550, §1021(b)(2), in first sentence, substituted "substances, mixtures, or products subject to subchapter IV" for "substances or mixtures" and inserted "such products," before "or such articles".

Subsec. (b)(1). Pub. L. 102–550, §1021(b)(3), substituted "chemical substances, mixtures, or products subject to subchapter IV" for "chemical substances or mixtures".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2611. Exports

(a) In general

(1) Except as provided in paragraph (2) and subsections (b) and (c), this chapter (other than section 2607 of this title) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United States, and

(B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.

(2) Paragraph (1) shall not apply to any chemical substance, mixture, or article if the Administrator finds that the substance, mixture, or article presents an unreasonable risk of injury to health within the United States or to the environment of the United States. The Administrator may require, under section 2603 of this title, testing of any chemical substance or mixture exempted from this chapter by paragraph (1) for the purpose of determining whether or not such substance or mixture presents an unreasonable risk of injury to health within the United States or to the environment of the United States.

(b) Notice

(1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of information is required under section 2603 or 2604(b) of this title, such

person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the information submitted to the Administrator under such section for such substance or mixture.

(2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 2604 of this title or a rule has been proposed or promulgated under section 2604 or 2605 of this title, or with respect to which an action is pending, or relief has been granted under section 2604 or 2606 of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

(c) Prohibition on export of elemental mercury and mercury compounds

(1) Prohibition

Effective January 1, 2013, the export of elemental mercury from the United States is prohibited.

(2) Inapplicability of subsection (a)

Subsection (a) shall not apply to this subsection.

(3) Report to Congress on mercury compounds

(A) Report

Not later than one year after October 14, 2008, the Administrator shall publish and submit to Congress a report on mercuric chloride, mercurous chloride or calomel, mercuric oxide, and other mercury compounds, if any, that may currently be used in significant quantities in products or processes. Such report shall include an analysis of—

(i) the sources and amounts of each of the mercury compounds imported into the United States or manufactured in the United States annually;

(ii) the purposes for which each of these compounds are used domestically, the amount of these compounds currently consumed annually for each purpose, and the estimated amounts to be consumed for each purpose in 2010 and beyond;

(iii) the sources and amounts of each mercury compound exported from the United States annually in each of the last three years;

(iv) the potential for these compounds to be processed into elemental mercury after export from the United States; and

(v) other relevant information that Congress should consider in determining whether to extend the export prohibition to include one or more of these mercury compounds.

(B) Procedure

For the purpose of preparing the report under this paragraph, the Administrator may utilize the information gathering authorities of this subchapter, including sections 2609 and 2610 of this title.

(4) Essential use exemption

(A) Any person residing in the United States may petition the Administrator for an exemption from the prohibition in paragraph (1), and the Administrator may grant by rule, after notice and opportunity for comment, an exemption for a specified use at an identified foreign facility if the Administrator finds that—

(i) nonmercury alternatives for the specified use are not available in the country where the facility is located;

(ii) there is no other source of elemental mercury available from domestic supplies (not including new mercury mines) in the country where the elemental mercury will be used;

(iii) the country where the elemental mercury will be used certifies its support for the exemption;

(iv) the export will be conducted in such a manner as to ensure the elemental mercury will be used at the identified facility as described in the petition, and not otherwise diverted for other uses for any reason;

(v) the elemental mercury will be used in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts;

(vi) the elemental mercury will be handled and managed in a manner that will protect human health and the environment, taking into account local, regional, and global human health and environmental impacts; and

(vii) the export of elemental mercury for the specified use is consistent with international obligations of the United States intended to reduce global mercury supply, use, and pollution.

(B) Each exemption issued by the Administrator pursuant to this paragraph shall contain such terms and conditions as are necessary to minimize the export of elemental mercury and ensure that the conditions for granting the exemption will be fully met, and shall contain such other terms and conditions as the Administrator may prescribe. No exemption granted pursuant to this paragraph shall exceed three years in duration and no such exemption shall exceed 10 metric tons of elemental mercury.

(C) The Administrator may by order suspend or cancel an exemption under this paragraph in the case of a violation described in subparagraph (D).

(D) A violation of this subsection or the terms and conditions of an exemption, or the submission of false information in connection therewith, shall be considered a prohibited act under section 2614 of this title, and shall be subject to penalties under section 2615 of this title, injunctive relief under section 2616 of this title, and citizen suits under section 2619 of this title.

(5) Consistency with trade obligations

Nothing in this subsection affects, replaces, or amends prior law relating to the need for consistency with international trade obligations.

(6) Export of coal

Nothing in this subsection shall be construed to prohibit the export of coal.

(7) Prohibition on export of certain mercury compounds

(A) In general

Effective January 1, 2020, the export of the following mercury compounds is prohibited:

(i) Mercury (I) chloride or calomel.

(ii) Mercury (II) oxide.

(iii) Mercury (II) sulfate.

(iv) Mercury (II) nitrate.

(v) Cinnabar or mercury sulphide.

(vi) Any mercury compound that the Administrator adds to the list published under subparagraph (B) by rule, on determining that exporting that mercury compound for the purpose of regenerating elemental mercury is technically feasible.

(B) Publication

Not later than 90 days after June 22, 2016, and as appropriate thereafter, the Administrator shall publish in the Federal Register a list of the mercury compounds that are prohibited from export under this paragraph.

(C) Petition

Any person may petition the Administrator to add a mercury compound to the list published under subparagraph (B).

(D) Environmentally sound disposal

This paragraph does not prohibit the export of mercury compounds on the list published under subparagraph (B) to member countries of the Organization for Economic Co-operation

and Development for environmentally sound disposal, on the condition that no mercury or mercury compounds so exported are to be recovered, recycled, or reclaimed for use, or directly reused, after such export.

(E) Report

Not later than 5 years after June 22, 2016, the Administrator shall evaluate any exports of mercury compounds on the list published under subparagraph (B) for disposal that occurred after June 22, 2016, and shall submit to Congress a report that—

(i) describes volumes and sources of mercury compounds on the list published under subparagraph (B) exported for disposal;

(ii) identifies receiving countries of such exports;

(iii) describes methods of disposal used after such export;

(iv) identifies issues, if any, presented by the export of mercury compounds on the list published under subparagraph (B);

(v) includes an evaluation of management options in the United States for mercury compounds on the list published under subparagraph (B), if any, that are commercially available and comparable in cost and efficacy to methods being utilized in such receiving countries; and

(vi) makes a recommendation regarding whether Congress should further limit or prohibit the export of mercury compounds on the list published under subparagraph (B) for disposal.

(F) Effect on other law

Nothing in this paragraph shall be construed to affect the authority of the Administrator under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(Pub. L. 94–469, title I, §12, Oct. 11, 1976, 90 Stat. 2033; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 110–414, §4, Oct. 14, 2008, 122 Stat. 4342; Pub. L. 114–182, title I, §§10(a), (b), 19(k), June 22, 2016, 130 Stat. 477, 508.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(7)(F), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

2016—Subsec. (a)(2). Pub. L. 114–182, §10(a), substituted "presents" for "will present".

Subsec. (b)(1). Pub. L. 114–182, §19(k), substituted "information" for "data" in two places.

Subsec. (c). Pub. L. 114–182, §10(b)(1), inserted "and mercury compounds" after "mercury" in heading.

Subsec. (c)(7). Pub. L. 114–182, §10(b)(2), added par. (7).

2008—Subsec. (a)(1). Pub. L. 110–414, §4(1), substituted "subsections (b) and (c)" for "subsection (b)" in introductory provisions.

Subsec. (c). Pub. L. 110–414, §4(2), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

FINDINGS

Pub. L. 110–414, §2, Oct. 14, 2008, 122 Stat. 4341, provided that: "Congress finds that—

"(1) mercury is highly toxic to humans, ecosystems, and wildlife;

"(2) as many as 10 percent of women in the United States of childbearing age have mercury in the

blood at a level that could put a baby at risk;

"(3) as many as 630,000 children born annually in the United States are at risk of neurological problems related to mercury;

"(4) the most significant source of mercury exposure to people in the United States is ingestion of mercury-contaminated fish;

"(5) the Environmental Protection Agency reports that, as of 2004—

"(A) 44 States have fish advisories covering over 13,000,000 lake acres and over 750,000 river miles;

"(B) in 21 States the freshwater advisories are statewide; and

"(C) in 12 States the coastal advisories are statewide;

"(6) the long-term solution to mercury pollution is to minimize global mercury use and releases to eventually achieve reduced contamination levels in the environment, rather than reducing fish consumption since uncontaminated fish represents a critical and healthy source of nutrition worldwide;

"(7) mercury pollution is a transboundary pollutant, depositing locally, regionally, and globally, and affecting water bodies near industrial sources (including the Great Lakes) and remote areas (including the Arctic Circle);

"(8) the free trade of elemental mercury on the world market, at relatively low prices and in ready supply, encourages the continued use of elemental mercury outside of the United States, often involving highly dispersive activities such as artisinal [probably should be "artisanal"] gold mining;

"(9) the intentional use of mercury is declining in the United States as a consequence of process changes to manufactured products (including batteries, paints, switches, and measuring devices), but those uses remain substantial in the developing world where releases from the products are extremely likely due to the limited pollution control and waste management infrastructures in those countries;

"(10) the member countries of the European Union collectively are the largest source of elemental mercury exports globally;

"(11) the European Commission has proposed to the European Parliament and to the Council of the European Union a regulation to ban exports of elemental mercury from the European Union by 2011;

"(12) the United States is a net exporter of elemental mercury and, according to the United States Geological Survey, exported 506 metric tons of elemental mercury more than the United States imported during the period of 2000 through 2004; and

"(13) banning exports of elemental mercury from the United States will have a notable effect on the market availability of elemental mercury and switching to affordable mercury alternatives in the developing world."

§2612. Entry into customs territory of the United States

(a) In general

(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this chapter, or

(B) it is offered for entry in violation of section 2604 of this title, 2605 of this title, or subchapter IV, a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV, or an order issued in a civil action brought under section 2604 of this title, 2606 of this title or subchapter IV.

(2) If a chemical substance, mixture, or article is refused entry under paragraph (1), the Secretary of the Treasury shall notify the consignee of such entry refusal, shall not release it to the consignee, and shall cause its disposal or storage (under such rules as the Secretary of the Treasury may prescribe) if it has not been exported by the consignee within 90 days from the date of receipt of notice of such refusal, except that the Secretary of the Treasury may, pending a review by the Administrator of the entry refusal, release to the consignee such substance, mixture, or article on execution of bond for the amount of the full invoice of such substance, mixture, or article (as such value is set forth in the customs entry), together with the duty thereon. On failure to return such

substance, mixture, or article for any cause to the custody of the Secretary of the Treasury when demanded, such consignee shall be liable to the United States for liquidated damages equal to the full amount of such bond. All charges for storage, cartage, and labor on and for disposal of substances, mixtures, or articles which are refused entry or release under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future entry made by such owner or consignee.

(b) Rules

The Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of subsection (a) of this section.

(Pub. L. 94–469, title I, §13, Oct. 11, 1976, 90 Stat. 2034; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 100–418, title I, §1214(e)(2), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 102–550, title X, §1021(b)(4), Oct. 28, 1992, 106 Stat. 3923.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

1992—Subsec. (a)(1)(B). Pub. L. 102–550 substituted "section 2604 of this title, 2605 of this title, or subchapter IV" for "section 2604 or 2605 of this title" in two places and "section 2604 of this title, 2606 of this title or subchapter IV" for "section 2604 or 2606 of this title".

1988—Subsec. (a)(1). Pub. L. 100–418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 to the Tariff Schedules of the United States" in introductory text.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2613. Confidential information

(a) In general

Except as provided in this section, the Administrator shall not disclose information that is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of that section—

(1) that is reported to, or otherwise obtained by, the Administrator under this chapter; and

(2) for which the requirements of subsection (c) are met.

In any proceeding under section 552(a) of title 5 to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(b) Information not protected from disclosure

(1) Mixed confidential and nonconfidential information

Information that is protected from disclosure under this section, and which is mixed with

information that is not protected from disclosure under this section, does not lose its protection from disclosure notwithstanding that it is mixed with information that is not protected from disclosure.

(2) Information from health and safety studies

Subsection (a) does not prohibit the disclosure of—

(A) any health and safety study which is submitted under this chapter with respect to—

(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution; or

(ii) any chemical substance or mixture for which testing is required under section 2603 of this title or for which notification is required under section 2604 of this title; and

(B) any information reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).

This paragraph does not authorize the disclosure of any information, including formulas (including molecular structures) of a chemical substance or mixture, that discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the portion of the mixture comprised by any of the chemical substances in the mixture.

(3) Other information not protected from disclosure

Subsection (a) does not prohibit the disclosure of—

(A) any general information describing the manufacturing volumes, expressed as specific aggregated volumes or, if the Administrator determines that disclosure of specific aggregated volumes would reveal confidential information, expressed in ranges; or

(B) a general description of a process used in the manufacture or processing and industrial, commercial, or consumer functions and uses of a chemical substance, mixture, or article containing a chemical substance or mixture, including information specific to an industry or industry sector that customarily would be shared with the general public or within an industry or industry sector.

(4) Bans and phase-outs

(A) In general

If the Administrator promulgates a rule pursuant to section 2605(a) of this title that establishes a ban or phase-out of a chemical substance or mixture, the protection from disclosure of any information under this section with respect to the chemical substance or mixture shall be presumed to no longer apply, subject to subsection (g)(1)(E) and subparagraphs (B) and (C) of this paragraph.

(B) Limitations

(i) Critical use

In the case of a chemical substance or mixture for which a specific condition of use is subject to an exemption pursuant to section 2605(g) of this title, if the Administrator establishes a ban or phase-out described in subparagraph (A) with respect to the chemical substance or mixture, the presumption against protection under such subparagraph shall only apply to information that relates solely to any conditions of use of the chemical substance or mixture to which the exemption does not apply.

(ii) Export

In the case of a chemical substance or mixture for which there is manufacture, processing, or distribution in commerce that meets the conditions of section 2611(a)(1) of this title, if the Administrator establishes a ban or phase-out described in subparagraph (A) with respect to the chemical substance or mixture, the presumption against protection under such

subparagraph shall only apply to information that relates solely to any other manufacture, processing, or distribution in commerce of the chemical substance or mixture for the conditions of use subject to the ban or phase-out, unless the Administrator makes the determination in section 2611(a)(2) of this title.

(iii) Specific conditions of use

In the case of a chemical substance or mixture for which the Administrator establishes a ban or phase-out described in subparagraph (A) with respect to a specific condition of use of the chemical substance or mixture, the presumption against protection under such subparagraph shall only apply to information that relates solely to the condition of use of the chemical substance or mixture for which the ban or phase-out is established.

(C) Request for nondisclosure

(i) In general

A manufacturer or processor of a chemical substance or mixture subject to a ban or phase-out described in this paragraph may submit to the Administrator, within 30 days of receiving a notification under subsection (g)(2)(A), a request, including documentation supporting such request, that some or all of the information to which the notice applies should not be disclosed or that its disclosure should be delayed, and the Administrator shall review the request under subsection (g)(1)(E).

(ii) Effect of no request or denial

If no request for nondisclosure or delay is submitted to the Administrator under this subparagraph, or the Administrator denies such a request under subsection (g)(1)(A), the information shall not be protected from disclosure under this section.

(5) Certain requests

If a request is made to the Administrator under section 552(a) of title 5 for information reported to or otherwise obtained by the Administrator under this chapter that is not protected from disclosure under this subsection, the Administrator may not deny the request on the basis of section 552(b)(4) of title 5.

(c) Requirements for confidentiality claims

(1) Assertion of claims

(A) In general

A person seeking to protect from disclosure any information that person submits under this chapter (including information described in paragraph (2)) shall assert to the Administrator a claim for protection from disclosure concurrent with submission of the information, in accordance with such rules regarding a claim for protection from disclosure as the Administrator has promulgated or may promulgate pursuant to this subchapter.

(B) Inclusion

An assertion of a claim under subparagraph (A) shall include a statement that the person has—

(i) taken reasonable measures to protect the confidentiality of the information;

(ii) determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

(iii) a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person; and

(iv) a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

(C) Additional requirements for claims regarding chemical identity information

In the case of a claim under subparagraph (A) for protection from disclosure of a specific chemical identity, the claim shall include a structurally descriptive generic name for the

chemical substance that the Administrator may disclose to the public, subject to the condition that such generic name shall—

(i) be consistent with guidance developed by the Administrator under paragraph (4)(A); and

(ii) describe the chemical structure of the chemical substance as specifically as practicable while protecting those features of the chemical structure—

(I) that are claimed as confidential; and

(II) the disclosure of which would be likely to cause substantial harm to the competitive position of the person.

(2) Information generally not subject to substantiation requirements

Subject to subsection (f), the following information shall not be subject to substantiation requirements under paragraph (3):

(A) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

(B) Marketing and sales information.

(C) Information identifying a supplier or customer.

(D) In the case of a mixture, details of the full composition of the mixture and the respective percentages of constituents.

(E) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or article.

(F) Specific production or import volumes of the manufacturer or processor.

(G) Prior to the date on which a chemical substance is first offered for commercial distribution, the specific chemical identity of the chemical substance, including the chemical name, molecular formula, Chemical Abstracts Service number, and other information that would identify the specific chemical substance, if the specific chemical identity was claimed as confidential at the time it was submitted in a notice under section 2604 of this title.

(3) Substantiation requirements

Except as provided in paragraph (2), a person asserting a claim to protect information from disclosure under this section shall substantiate the claim, in accordance with such rules as the Administrator has promulgated or may promulgate pursuant to this section.

(4) Guidance

The Administrator shall develop guidance regarding—

(A) the determination of structurally descriptive generic names, in the case of claims for the protection from disclosure of specific chemical identity; and

(B) the content and form of the statements of need and agreements required under paragraphs (4), (5), and (6) of subsection (d).

(5) Certification

An authorized official of a person described in paragraph (1)(A) shall certify that the statement required to assert a claim submitted pursuant to paragraph (1)(B), and any information required to substantiate a claim submitted pursuant to paragraph (3), are true and correct.

(d) Exceptions to protection from disclosure

Information described in subsection (a)—

(1) shall be disclosed to an officer or employee of the United States—

(A) in connection with the official duties of that person under any Federal law for the protection of health or the environment; or

(B) for a specific Federal law enforcement purpose;

(2) shall be disclosed to a contractor of the United States and employees of that contractor—

(A) if, in the opinion of the Administrator, the disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States for the performance of work

in connection with this chapter; and

(B) subject to such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines that disclosure is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use;

(4) shall be disclosed to a State, political subdivision of a State, or tribal government, on written request, for the purpose of administration or enforcement of a law, if such entity has 1 or more applicable agreements with the Administrator that are consistent with the guidance developed under subsection (c)(4)(B) and ensure that the entity will take appropriate measures, and has adequate authority, to maintain the confidentiality of the information in accordance with procedures comparable to the procedures used by the Administrator to safeguard the information;

(5) shall be disclosed to a health or environmental professional employed by a Federal or State agency or tribal government or a treating physician or nurse in a nonemergency situation if such person provides a written statement of need and agrees to sign a written confidentiality agreement with the Administrator, subject to the conditions that—

(A) the statement of need and confidentiality agreement are consistent with the guidance developed under subsection (c)(4)(B);

(B) the statement of need shall be a statement that the person has a reasonable basis to suspect that—

(i) the information is necessary for, or will assist in—

(I) the diagnosis or treatment of 1 or more individuals; or

(II) responding to an environmental release or exposure; and

(ii) 1 or more individuals being diagnosed or treated have been exposed to the chemical substance or mixture concerned, or an environmental release of or exposure to the chemical substance or mixture concerned has occurred; and

(C) the person will not use the information for any purpose other than the health or environmental needs asserted in the statement of need, except as otherwise may be authorized by the terms of the agreement or by the person who has a claim under this section with respect to the information;

(6) shall be disclosed in the event of an emergency to a treating or responding physician, nurse, agent of a poison control center, public health or environmental official of a State, political subdivision of a State, or tribal government, or first responder (including any individual duly authorized by a Federal agency, State, political subdivision of a State, or tribal government who is trained in urgent medical care or other emergency procedures, including a police officer, firefighter, or emergency medical technician) if such person requests the information, subject to the conditions that such person shall—

(A) have a reasonable basis to suspect that—

(i) a medical, public health, or environmental emergency exists;

(ii) the information is necessary for, or will assist in, emergency or first-aid diagnosis or treatment; or

(iii) 1 or more individuals being diagnosed or treated have likely been exposed to the chemical substance or mixture concerned, or a serious environmental release of or exposure to the chemical substance or mixture concerned has occurred; and

(B) if requested by a person who has a claim with respect to the information under this section—

(i) provide a written statement of need and agree to sign a confidentiality agreement, as

described in paragraph (5); and

(ii) submit to the Administrator such statement of need and confidentiality agreement as soon as practicable, but not necessarily before the information is disclosed;

(7) may be disclosed if the Administrator determines that disclosure is relevant in a proceeding under this chapter, subject to the condition that the disclosure is made in such a manner as to preserve confidentiality to the extent practicable without impairing the proceeding;

(8) shall be disclosed if the information is required to be made public under any other provision of Federal law; and

(9) shall be disclosed as required pursuant to discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law.

(e) Duration of protection from disclosure

(1) In general

Subject to paragraph (2), subsection (f)(3), and section 2607(b) of this title, the Administrator shall protect from disclosure information described in subsection (a)—

(A) in the case of information described in subsection (c)(2), until such time as—

(i) the person that asserted the claim notifies the Administrator that the person is withdrawing the claim, in which case the information shall not be protected from disclosure under this section; or

(ii) the Administrator becomes aware that the information does not qualify for protection from disclosure under this section, in which case the Administrator shall take any actions required under subsections (f) and (g); and

(B) in the case of information other than information described in subsection (c)(2)—

(i) for a period of 10 years from the date on which the person asserts the claim with respect to the information submitted to the Administrator; or

(ii) if applicable before the expiration of such 10-year period, until such time as—

(I) the person that asserted the claim notifies the Administrator that the person is withdrawing the claim, in which case the information shall not be protected from disclosure under this section; or

(II) the Administrator becomes aware that the information does not qualify for protection from disclosure under this section, in which case the Administrator shall take any actions required under subsections (f) and (g).

(2) Extensions

(A) In general

In the case of information other than information described in subsection (c)(2), not later than the date that is 60 days before the expiration of the period described in paragraph (1)(B)(i), the Administrator shall provide to the person that asserted the claim a notice of the impending expiration of the period.

(B) Request

(i) In general

Not later than the date that is 30 days before the expiration of the period described in paragraph (1)(B)(i), a person reasserting the relevant claim shall submit to the Administrator a request for extension substantiating, in accordance with subsection (c)(3), the need to extend the period.

(ii) Action by Administrator

Not later than the date of expiration of the period described in paragraph (1)(B)(i), the Administrator shall, in accordance with subsection (g)(1)—

(I) review the request submitted under clause (i);

(II) make a determination regarding whether the claim for which the request was

submitted continues to meet the relevant requirements of this section; and

(III)(aa) grant an extension of 10 years; or

(bb) deny the request.

(C) No limit on number of extensions

There shall be no limit on the number of extensions granted under this paragraph, if the Administrator determines that the relevant request under subparagraph (B)(i)—

(i) establishes the need to extend the period; and

(ii) meets the requirements established by the Administrator.

(f) Review and resubstantiation

(1) Discretion of Administrator

The Administrator may require any person that has claimed protection for information from disclosure under this section, whether before, on, or after June 22, 2016, to reassert and substantiate or resubstantiate the claim in accordance with this section—

(A) after the chemical substance is designated as a high-priority substance under section 2605(b) of this title;

(B) for any chemical substance designated as an active substance under section 2607(b)(5)(B)(iii) of this title; or

(C) if the Administrator determines that disclosure of certain information currently protected from disclosure would be important to assist the Administrator in conducting risk evaluations or promulgating rules under section 2605 of this title.

(2) Review required

The Administrator shall review a claim for protection of information from disclosure under this section and require any person that has claimed protection for that information, whether before, on, or after June 22, 2016, to reassert and substantiate or resubstantiate the claim in accordance with this section—

(A) as necessary to determine whether the information qualifies for an exemption from disclosure in connection with a request for information received by the Administrator under section 552 of title 5;

(B) if the Administrator has a reasonable basis to believe that the information does not qualify for protection from disclosure under this section; or

(C) for any chemical substance the Administrator determines under section 2605(b)(4)(A) of this title presents an unreasonable risk of injury to health or the environment.

(3) Period of protection

If the Administrator requires a person to reassert and substantiate or resubstantiate a claim under this subsection, and determines that the claim continues to meet the relevant requirements of this section, the Administrator shall protect the information subject to the claim from disclosure for a period of 10 years from the date of such determination, subject to any subsequent requirement by the Administrator under this subsection.

(g) Duties of Administrator

(1) Determination

(A) In general

Except for claims regarding information described in subsection (c)(2), the Administrator shall, subject to subparagraph (C), not later than 90 days after the receipt of a claim under subsection (c), and not later than 30 days after the receipt of a request for extension of a claim under subsection (e) or a request under subsection (b)(4)(C), review and approve, approve in part and deny in part, or deny the claim or request.

(B) Reasons for denial

If the Administrator denies or denies in part a claim or request under subparagraph (A) the

Administrator shall provide to the person that asserted the claim or submitted the request a written statement of the reasons for the denial or denial in part of the claim or request.

(C) Subsets

The Administrator shall—

(i) except with respect to information described in subsection (c)(2)(G), review all claims or requests under this section for the protection from disclosure of the specific chemical identity of a chemical substance; and

(ii) review a representative subset, comprising at least 25 percent, of all other claims or requests for protection from disclosure under this section.

(D) Effect of failure to act

The failure of the Administrator to make a decision regarding a claim or request for protection from disclosure or extension under this section shall not have the effect of denying or eliminating a claim or request for protection from disclosure.

(E) Determination of requests under subsection (b)(4)(C)

With respect to a request submitted under subsection (b)(4)(C), the Administrator shall, with the objective of ensuring that information relevant to the protection of health and the environment is disclosed to the extent practicable, determine whether the documentation provided by the person rebuts what shall be the presumption of the Administrator that the public interest in the disclosure of the information outweighs the public or proprietary interest in maintaining the protection for all or a portion of the information that the person has requested not be disclosed or for which disclosure be delayed.

(2) Notification

(A) In general

Except as provided in subparagraph (B) and subsections (b), (d), and (e), if the Administrator denies or denies in part a claim or request under paragraph (1), concludes, in accordance with this section, that the information does not qualify for protection from disclosure, intends to disclose information pursuant to subsection (d), or promulgates a rule under section 2605(a) of this title establishing a ban or phase-out with respect to a chemical substance or mixture, the Administrator shall notify, in writing, the person that asserted the claim or submitted the request of the intent of the Administrator to disclose the information or not protect the information from disclosure under this section. The notice shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means that allows verification of the fact and date of receipt.

(B) Disclosure of information

Except as provided in subparagraph (C), the Administrator shall not disclose information under this subsection until the date that is 30 days after the date on which the person that asserted the claim or submitted the request receives notification under subparagraph (A).

(C) Exceptions

(i) Fifteen day notification

For information the Administrator intends to disclose under subsections (d)(3), (d)(4), (d)(5), and (j), the Administrator shall not disclose the information until the date that is 15 days after the date on which the person that asserted the claim or submitted the request receives notification under subparagraph (A), except that, with respect to information to be disclosed under subsection (d)(3), if the Administrator determines that disclosure of the information is necessary to protect against an imminent and substantial harm to health or the environment, no prior notification shall be necessary.

(ii) Notification as soon as practicable

For information the Administrator intends to disclose under paragraph (6) of subsection

(d), the Administrator shall notify the person that submitted the information that the information has been disclosed as soon as practicable after disclosure of the information.

(iii) No notification required

Notification shall not be required—

(I) for the disclosure of information under paragraphs (1), (2), (7), or (8) of subsection (d); or

(II) for the disclosure of information for which—

(aa) the Administrator has provided to the person that asserted the claim a notice under subsection (e)(2)(A); and

(bb) such person does not submit to the Administrator a request under subsection (e)(2)(B) on or before the deadline established in subsection (e)(2)(B)(i).

(D) Appeals

(i) Action to restrain disclosure

If a person receives a notification under this paragraph and believes the information is protected from disclosure under this section, before the date on which the information is to be disclosed pursuant to subparagraph (B) or (C) the person may bring an action to restrain disclosure of the information in—

(I) the United States district court of the district in which the complainant resides or has the principal place of business; or

(II) the United States District Court for the District of Columbia.

(ii) No disclosure

(I) In general

Subject to subsection (d), the Administrator shall not disclose information that is the subject of an appeal under this paragraph before the date on which the applicable court rules on an action under clause (i).

(II) Exception

Subclause (I) shall not apply to disclosure of information described under subsections (d)(4) and (j).

(3) Request and notification system

The Administrator, in consultation with the Director of the Centers for Disease Control and Prevention, shall develop a request and notification system that, in a format and language that is readily accessible and understandable, allows for expedient and swift access to information disclosed pursuant to paragraphs (5) and (6) of subsection (d).

(4) Unique identifier

The Administrator shall—

(A)(i) develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure, which shall not be either the specific chemical identity or a structurally descriptive generic term; and

(ii) apply that identifier consistently to all information relevant to the applicable chemical substance;

(B) annually publish and update a list of chemical substances, referred to by their unique identifiers, for which claims to protect the specific chemical identity from disclosure have been approved, including the expiration date for each such claim;

(C) ensure that any nonconfidential information received by the Administrator with respect to a chemical substance included on the list published under subparagraph (B) while the specific chemical identity of the chemical substance is protected from disclosure under this section identifies the chemical substance using the unique identifier; and

(D) for each claim for protection of a specific chemical identity that has been denied by the Administrator or expired, or that has been withdrawn by the person who asserted the claim, and

for which the Administrator has used a unique identifier assigned under this paragraph to protect the specific chemical identity in information that the Administrator has made public, clearly link the specific chemical identity to the unique identifier in such information to the extent practicable.

(h) Criminal penalty for wrongful disclosure

(1) Individuals subject to penalty

(A) In general

Subject to subparagraph (C) and paragraph (2), an individual described in subparagraph (B) shall be fined under title 18 or imprisoned for not more than 1 year, or both.

(B) Description

An individual referred to in subparagraph (A) is an individual who—

(i) pursuant to this section, obtained possession of, or has access to, information protected from disclosure under this section; and

(ii) knowing that the information is protected from disclosure under this section, willfully discloses the information in any manner to any person not entitled to receive that information.

(C) Exception

This paragraph shall not apply to any medical professional (including an emergency medical technician or other first responder) who discloses any information obtained under paragraph (5) or (6) of subsection (d) to a patient treated by the medical professional, or to a person authorized to make medical or health care decisions on behalf of such a patient, as needed for the diagnosis or treatment of the patient.

(2) Other laws

Section 1905 of title 18 shall not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported to or otherwise obtained by the Administrator under this chapter.

(i) Applicability

(1) In general

Except as otherwise provided in this section, section 2607 of this title, or any other applicable Federal law, the Administrator shall have no authority—

(A) to require the substantiation or resubstantiation of a claim for the protection from disclosure of information reported to or otherwise obtained by the Administrator under this chapter prior to June 22, 2016; or

(B) to impose substantiation or resubstantiation requirements, with respect to the protection of information described in subsection (a), under this chapter that are more extensive than those required under this section.

(2) Actions prior to promulgation of rules

Nothing in this chapter prevents the Administrator from reviewing, requiring substantiation or resubstantiation of, or approving, approving in part, or denying any claim for the protection from disclosure of information before the effective date of such rules applicable to those claims as the Administrator may promulgate after June 22, 2016.

(j) Access by Congress

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

(Pub. L. 94–469, title I, §14, Oct. 11, 1976, 90 Stat. 2034; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §11, June 22, 2016, 130 Stat. 481.)

EDITORIAL NOTES

AMENDMENTS

2016—Pub. L. 114–182 amended section generally. Prior to amendment, section related to disclosure of data.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2614. Prohibited acts

It shall be unlawful for any person to—

(1) fail or refuse to comply with any requirement of this subchapter or any rule promulgated, order issued, or consent agreement entered into under this subchapter, or any requirement of subchapter II or any rule promulgated or order issued under subchapter II;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 2604 or 2605 of this title, a rule or order under section 2604 or 2605 of this title, or an order issued in action brought under section 2604 or 2606 of this title;

(3) fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records, as required by this chapter or a rule thereunder; or

(4) fail or refuse to permit entry or inspection as required by section 2610 of this title.

(Pub. L. 94–469, title I, §15, Oct. 11, 1976, 90 Stat. 2036; renumbered title I and amended Pub. L. 99–519, §3(b)(1), (c)(1), Oct. 22, 1986, 100 Stat. 2988, 2989; Pub. L. 114–182, title I, §19(l), June 22, 2016, 130 Stat. 508.)

EDITORIAL NOTES

AMENDMENTS

2016—Par. (1). Pub. L. 114–182 substituted "any requirement of this subchapter or any rule promulgated, order issued, or consent agreement entered into under this subchapter, or" for "(A) any rule promulgated or order issued under section 2603 of this title, (B) any requirement prescribed by section 2604 or 2605 of this title, (C) any rule promulgated or order issued under section 2604 or 2605 of this title, or (D)".

1986—Par. (1)(D). Pub. L. 99–519 added cl. (D).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2615. Penalties

(a) Civil

(1) Any person who violates a provision of section 2614 or 2689 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $37,500 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of

section 2614 or 2689 of this title.

(2)(A) A civil penalty for a violation of section section 2614 or 2689 of this title shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) Criminal

(1) In general

Any person who knowingly or willfully violates any provision of section 2614 or 2689 of this title, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $50,000 for each day of violation, or to imprisonment for not more than one year, or both.

(2) Imminent danger of death or serious bodily injury

(A) In general

Any person who knowingly and willfully violates any provision of section 2614 or 2689 of this title, and who knows at the time of the violation that the violation places an individual in imminent danger of death or serious bodily injury, shall be subject on conviction to a fine of not more than $250,000, or imprisonment for not more than 15 years, or both.

(B) Organizations

Notwithstanding the penalties described in subparagraph (A), an organization that commits a knowing violation described in subparagraph (A) shall be subject on conviction to a fine of not more than $1,000,000 for each violation.

(C) Incorporation of corresponding provisions

Subparagraphs (B) through (F) of section 7413(c)(5) of title 42 shall apply to the prosecution of a violation under this paragraph.

(Pub. L. 94–469, title I, §16, Oct. 11, 1976, 90 Stat. 2037; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(5), Oct. 28, 1992, 106 Stat. 3923; Pub. L. 114–182, title I, §12, June 22, 2016, 130 Stat. 492.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–182, §12(1), substituted "$37,500" for "$25,000".

Subsec. (b). Pub. L. 114–182, §12(2), designated existing provisions as par. (1), inserted heading, substituted "$50,000" for "$25,000", and added par. (2).

1992—Subsecs. (a)(1), (2)(A), (b). Pub. L. 102–550 substituted "section 2614 or 2689 of this title" for "section 2614 of this title" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2616. Specific enforcement and seizure

(a) Specific enforcement

(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of section 2614 or 2689 of this title,

(B) restrain any person from taking any action prohibited by section 2604 of this title, 2605 of this title, or subchapter IV, or by a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV,

(C) compel the taking of any action required by or under this chapter, or

(D) direct any manufacturer or processor of a chemical substance, mixture, or product subject to subchapter IV manufactured or processed in violation of section 2604 of this title, 2605 of this title, or subchapter IV, or a rule or order under section 2604 of this title, 2605 of this title, or subchapter IV, and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance, mixture, or product and, to the extent reasonably ascertainable, to other persons in possession of such substance, mixture, or product or exposed to such substance, mixture, or product, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance, mixture, or product, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—

(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 2614 of this title occurred or wherein the defendant is found or transacts business, or

(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) Seizure

Any chemical substance, mixture, or product subject to subchapter IV which was manufactured, processed, or distributed in commerce in violation of this chapter or any rule promulgated or order issued under this chapter or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel, for the seizure and condemnation of such substance, mixture, product, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, product, or article is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

(Pub. L. 94–469, title I, §17, Oct. 11, 1976, 90 Stat. 2037; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(6), (7), Oct. 28, 1992, 106 Stat. 3923.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550, §1021(b)(6), which directed that subsec. (a) be amended "to read as follows" and then set out the subsec. (a) designation and heading, followed by the par. (1) designation and text, without any restatement of par. (2), was executed as a general amendment of par. (1) only, to reflect the probable intent of Congress. Prior to amendment, par. (1) read as follows: "The district courts of the United States shall have jurisdiction over civil actions to—

"(A) restrain any violation of section 2614 of this title,

"(B) restrain any person from taking any action prohibited by section 2604 or 2605 of this title or by a rule or order under section 2604 or 2605 of this title,

"(C) compel the taking of any action required by or under this chapter, or

"(D) direct any manufacturer or processor of a chemical substance or mixture manufactured or processed in violation of section 2604 or 2605 of this title or a rule or order under section 2604 or 2605 of this title and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects."

Subsec. (b). Pub. L. 102–550, §1021(b)(7), in first sentence substituted "substance, mixture, or product subject to subchapter IV" for "substance or mixture" and inserted "product," before "or article" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2617. Preemption

(a) In general

(1) Establishment or enforcement

Except as otherwise provided in subsections (c), (d), (e), (f), and (g), and subject to paragraph (2), no State or political subdivision of a State may establish or continue to enforce any of the following:

(A) Development of information

A statute or administrative action to require the development of information about a chemical substance or category of chemical substances that is reasonably likely to produce the same information required under section 2603, 2604, or 2605 of this title in—

(i) a rule promulgated by the Administrator;

(ii) a consent agreement entered into by the Administrator; or

(iii) an order issued by the Administrator.

(B) Chemical substances found not to present an unreasonable risk or restricted

A statute, criminal penalty, or administrative action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance—

(i) for which the determination described in section 2605(i)(1) of this title is made, consistent with the scope of the risk evaluation under section 2605(b)(4)(D) [1] of this title; or

(ii) for which a final rule is promulgated under section 2605(a) of this title, after the effective date of the rule issued under section 2605(a) of this title for the chemical substance, consistent with the scope of the risk evaluation under section 2605(b)(4)(D) [1] of this title.

(C) Significant new use

A statute or administrative action requiring the notification of a use of a chemical substance that the Administrator has specified as a significant new use and for which the Administrator has required notification pursuant to a rule promulgated under section 2604 of this title.

(2) Effective date of preemption

Under this subsection, Federal preemption of statutes and administrative actions applicable to specific chemical substances shall not occur until the effective date of the applicable action described in paragraph (1) taken by the Administrator.

(b) New statutes, criminal penalties, or administrative actions creating prohibitions or other restrictions

(1) In general

Except as provided in subsections (c), (d), (e), (f), and (g), beginning on the date on which the Administrator defines the scope of a risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title and ending on the date on which the deadline established pursuant to section 2605(b)(4)(G) of this title for completion of the risk evaluation expires, or on the date on which the Administrator publishes the risk evaluation under section 2605(b)(4)(C) of this title, whichever is earlier, no State or political subdivision of a State may establish a statute, criminal penalty, or administrative action prohibiting or otherwise restricting the manufacture, processing, distribution in commerce, or use of such chemical substance that is a high-priority substance designated under section 2605(b)(1)(B)(i) of this title.

(2) Effect of subsection

This subsection does not restrict the authority of a State or political subdivision of a State to continue to enforce any statute enacted, criminal penalty assessed, or administrative action taken, prior to the date on which the Administrator defines and publishes the scope of a risk evaluation under section 2605(b)(4)(D) of this title.

(c) Scope of preemption

Federal preemption under subsections (a) and (b) of statutes, criminal penalties, and administrative actions applicable to specific chemical substances shall apply only to—

(1) with respect to subsection (a)(1)(A), the chemical substances or category of chemical substances subject to a rule, order, or consent agreement under section 2603, 2604, or 2605 of this title;

(2) with respect to subsection (b), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in the scope of the risk evaluation pursuant to section 2605(b)(4)(D) of this title;

(3) with respect to subsection (a)(1)(B), the hazards, exposures, risks, and uses or conditions of use of such chemical substances included in any final action the Administrator takes pursuant to section 2605(a) or 2605(i)(1) of this title; or

(4) with respect to subsection (a)(1)(C), the uses of such chemical substances that the Administrator has specified as significant new uses and for which the Administrator has required notification pursuant to a rule promulgated under section 2604 of this title.

(d) Exceptions

(1) No preemption of statutes and administrative actions

(A) In general

Nothing in this chapter, nor any amendment made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any rule, standard of performance, risk evaluation, or scientific assessment implemented pursuant to this chapter, shall affect the right of a State or a political subdivision of a State to adopt or enforce any rule, standard of performance, risk evaluation, scientific assessment, or any other protection for public health or the environment that—

(i) is adopted or authorized under the authority of any other Federal law or adopted to satisfy or obtain authorization or approval under any other Federal law;

(ii) implements a reporting, monitoring, or other information obligation for the chemical substance not otherwise required by the Administrator under this chapter or required under any other Federal law;

(iii) is adopted pursuant to authority under a law of the State or political subdivision of the State related to water quality, air quality, or waste treatment or disposal, except to the extent that the action—

(I) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and

(II)(aa) addresses the same hazards and exposures, with respect to the same conditions of use as are included in the scope of the risk evaluation published pursuant to section 2605(b)(4)(D) of this title, but is inconsistent with the action of the Administrator; or

(bb) would cause a violation of the applicable action by the Administrator under section 2604 or 2605 of this title; or

(iv) subject to subparagraph (B), is identical to a requirement prescribed by the Administrator.

(B) Identical requirements

(i) In general

The penalties and other sanctions applicable under a law of a State or political subdivision of a State in the event of noncompliance with the identical requirement shall be no more stringent than the penalties and other sanctions available to the Administrator under section 2615 of this title.

(ii) Penalties

In the case of an identical requirement—

(I) a State or political subdivision of a State may not assess a penalty for a specific violation for which the Administrator has assessed an adequate penalty under section 2615 of this title; and

(II) if a State or political subdivision of a State has assessed a penalty for a specific violation, the Administrator may not assess a penalty for that violation in an amount that would cause the total of the penalties assessed for the violation by the State or political subdivision of a State and the Administrator combined to exceed the maximum amount that may be assessed for that violation by the Administrator under section 2615 of this title.

(2) Applicability to certain rules or orders

(A) Prior rules and orders

Nothing in this section shall be construed as modifying the preemptive effect under this section, as in effect on the day before the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, of any rule or order promulgated or issued under this chapter prior to that effective date.

(B) Certain chemical substances and mixtures

With respect to a chemical substance or mixture for which any rule or order was promulgated or issued under section 2605 of this title prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act with respect to manufacturing, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, nothing in this section shall be construed as modifying the preemptive effect of this section as in effect prior to the enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act of any rule or order that is promulgated or issued with respect to such chemical substance or mixture under section 2605 of this title after that effective date, unless the latter rule or order is with respect to a chemical substance or mixture containing a chemical substance and follows a designation of that chemical substance as a high-priority substance under section 2605(b)(1)(B)(i) of this title, the identification of that chemical substance under section 2605(b)(2)(A) of this title, or the selection of that chemical substance for risk evaluation under section 2605(b)(4)(E)(iv)(II) of this title.

(e) Preservation of certain laws

(1) In general

Nothing in this chapter, subject to subsection (g) of this section, shall—

(A) be construed to preempt or otherwise affect the authority of a State or political subdivision of a State to continue to enforce any action taken or requirement imposed or requirement enacted relating to a specific chemical substance before April 22, 2016, under the authority of a law of the State or political subdivision of the State that prohibits or otherwise restricts manufacturing, processing, distribution in commerce, use, or disposal of a chemical substance; or

(B) be construed to preempt or otherwise affect any action taken pursuant to a State law that was in effect on August 31, 2003.

(2) Effect of subsection

This subsection does not affect, modify, or alter the relationship between Federal law and laws of a State or political subdivision of a State pursuant to any other Federal law.

(f) Waivers

(1) Discretionary exemptions

Upon application of a State or political subdivision of a State, the Administrator may, by rule, exempt from subsection (a), under such conditions as may be prescribed in the rule, a statute, criminal penalty, or administrative action of that State or political subdivision of the State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

(A) compelling conditions warrant granting the waiver to protect health or the environment;

(B) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(C) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(D) in the judgment of the Administrator, the proposed requirement of the State or political subdivision of the State is designed to address a risk of a chemical substance, under the conditions of use, that was identified—

(i) consistent with the best available science;

(ii) using supporting studies conducted in accordance with sound and objective scientific practices; and

(iii) based on the weight of the scientific evidence.

(2) Required exemptions

Upon application of a State or political subdivision of a State, the Administrator shall exempt

from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

(A)(i) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(ii) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(iii) the State or political subdivision of the State has a concern about the chemical substance or use of the chemical substance based in peer-reviewed science; or

(B) no later than the date that is 18 months after the date on which the Administrator has initiated the prioritization process for a chemical substance under the rule promulgated pursuant to section 2605(b)(1)(A) of this title, or the date on which the Administrator publishes the scope of the risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title, whichever is sooner, the State or political subdivision of the State has enacted a statute or proposed or finalized an administrative action intended to prohibit or otherwise restrict the manufacture, processing, distribution in commerce, or use of the chemical substance.

(3) Determination of a waiver request

The duty of the Administrator to grant or deny a waiver application shall be nondelegable and shall be exercised—

(A) not later than 180 days after the date on which an application under paragraph (1) is submitted; and

(B) not later than 110 days after the date on which an application under paragraph (2) is submitted.

(4) Failure to make a determination

If the Administrator fails to make a determination under paragraph (3)(B) during the 110-day period beginning on the date on which an application under paragraph (2) is submitted, the statute or administrative action of the State or political subdivision of the State that was the subject of the application shall not be considered to be an existing statute or administrative action for purposes of subsection (b) by reason of the failure of the Administrator to make a determination.

(5) Notice and comment

Except in the case of an application approved under paragraph (9), the application of a State or political subdivision of a State under this subsection shall be subject to public notice and comment.

(6) Final agency action

The decision of the Administrator on the application of a State or political subdivision of a State shall be—

(A) considered to be a final agency action; and

(B) subject to judicial review.

(7) Duration of waivers

A waiver granted under paragraph (2) or approved under paragraph (9) shall remain in effect until such time as the Administrator publishes the risk evaluation under section 2605(b) of this title.

(8) Judicial review of waivers

Not later than 60 days after the date on which the Administrator makes a determination on an application of a State or political subdivision of a State under paragraph (1) or (2), any person may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over the determination.

(9) Approval

(A) Automatic approval

If the Administrator fails to meet the deadline established under paragraph (3)(B), the application of a State or political subdivision of a State under paragraph (2) shall be automatically approved, effective on the date that is 10 days after the deadline.

(B) Requirements

Notwithstanding paragraph (6), approval of a waiver application under subparagraph (A) for failure to meet the deadline under paragraph (3)(B) shall not be considered final agency action or be subject to judicial review or public notice and comment.

(g) Savings

(1) No preemption of common law or statutory causes of action for civil relief or criminal conduct

(A) In general

Nothing in this chapter, nor any amendment made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any standard, rule, requirement, standard of performance, risk evaluation, or scientific assessment implemented pursuant to this chapter, shall be construed to preempt, displace, or supplant any State or Federal common law rights or any State or Federal statute creating a remedy for civil relief, including those for civil damage, or a penalty for a criminal conduct.

(B) Clarification of no preemption

Notwithstanding any other provision of this chapter, nothing in this chapter, nor any amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, shall preempt or preclude any cause of action for personal injury, wrongful death, property damage, or other injury based on negligence, strict liability, products liability, failure to warn, or any other legal theory of liability under any State law, maritime law, or Federal common law or statutory theory.

(2) No effect on private remedies

(A) In general

Nothing in this chapter, nor any amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, nor any rules, regulations, requirements, risk evaluations, scientific assessments, or orders issued pursuant to this chapter shall be interpreted as, in either the plaintiff's or defendant's favor, dispositive in any civil action.

(B) Authority of courts

This chapter does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State or Federal law with respect to the admission into evidence or any other use of this chapter or rules, regulations, requirements, standards of performance, risk evaluations, scientific assessments, or orders issued pursuant to this chapter.

(Pub. L. 94–469, title I, §18, Oct. 11, 1976, 90 Stat. 2038; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §13, June 22, 2016, 130 Stat. 492.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2605(b)(4)(D) of this title, referred to in subsec. (a)(1)(B)(i), (ii), was in the original "section (6)(b)(4)(D)", and was translated as meaning section 6(b)(4)(D) of title I of Pub. L. 94–469 to reflect the probable intent of Congress.

The Frank R. Lautenberg Chemical Safety for the 21st Century Act, referred to in subsecs. (d)(1)(A), (2) and (g)(1), (2)(A), is Pub. L. 114–182, June 22, 2016, 130 Stat. 492. The effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act probably means the date of the enactment of the Act,

which was approved June 22, 2016. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 2601 of this title and Tables.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–182, §13(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to effect of chapter on State law.

Subsec. (b). Pub. L. 114–182, §13(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to exemption from required testing of chemical substances or mixtures.

Subsecs. (c) to (g). Pub. L. 114–182, §13(3), added subsecs. (c) to (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

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

§2618. Judicial review

(a) In general

(1)(A) Except as otherwise provided in this subchapter, not later than 60 days after the date on which a rule is promulgated under this subchapter, subchapter II, or subchapter IV, or the date on which an order is issued under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title,,[1] any person may file a petition for judicial review of such rule or order with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule or order if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(B) Except as otherwise provided in this subchapter, courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of an order issued under this subchapter, other than an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title, if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(C)(i) Not later than 60 days after the publication of a designation under section 2605(b)(1)(B)(ii) of this title, any person may commence a civil action to challenge the designation.

(ii) The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over a civil action filed under this subparagraph.

(2) Copies of any petition filed under paragraph (1)(A) shall be transmitted forthwith to the Administrator and to the Attorney General by the clerk of the court with which such petition was filed. The provisions of section 2112 of title 28 shall apply to the filing of the record of proceedings on which the Administrator based the rule or order being reviewed under this section and to the transfer of proceedings between United States courts of appeals.

(b) Additional submissions and presentations; modifications

If in an action under this section to review a rule, or an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title, the petitioner or the Administrator applies to the court for leave to make additional oral submissions or written presentations respecting such rule or order and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify

or set aside the rule or order being reviewed or make a new rule or order by reason of the additional submissions and presentations and shall file such modified or new rule or order with the return of such submissions and presentations. The court shall thereafter review such new or modified rule or order.

(c) Standard of review

(1)(A) Upon the filing of a petition under subsection (a)(1) for judicial review of a rule or order, the court shall have jurisdiction (i) to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5, and (ii) except as otherwise provided in subparagraph (B), to review such rule or order in accordance with chapter 7 of title 5.

(B) Section 706 of title 5 shall apply to review of a rule or order under this section, except that—

(i) in the case of review of—

(I) a rule under section 2603(a), 2604(b)(4), 2605(a) (including review of the associated determination under section 2605(b)(4)(A)), or 2605(e) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record taken as a whole; and

(II) an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such order if the court finds that the order is not supported by substantial evidence in the record taken as a whole; and

(ii) the court may not review the contents and adequacy of any statement of basis and purpose required by section 553(c) of title 5 to be incorporated in the rule or order, except as part of the record, taken as a whole.

(2) The judgment of the court affirming or setting aside, in whole or in part, any rule or order reviewed in accordance with this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(d) Fees and costs

The decision of the court in an action commenced under subsection (a), or of the Supreme Court of the United States on review of such a decision, may include an award of costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

(e) Other remedies

The remedies as provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

(Pub. L. 94–469, title I, §19, Oct. 11, 1976, 90 Stat. 2039; renumbered title I and amended Pub. L. 99–519, §3(b)(2), (c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 102–550, title X, §1021(b)(8), Oct. 28, 1992, 106 Stat. 3923; Pub. L. 114–182, title I, §§14, 19(m), June 22, 2016, 130 Stat. 498, 508.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (a)(1)(A). Pub. L. 114–182, §19(m)(1)(A), substituted "Except as otherwise provided in this subchapter, not later than 60 days after the date on which a rule is promulgated under this subchapter, subchapter II, or subchapter IV, or the date on which an order is issued under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title," for "Not later than 60 days after the date of the promulgation of a rule under section 2603(a), 2604(a)(2), 2604(b)(4), 2605(a), 2605(e), or 2607 of this title, or under subchapter II or IV", "such rule or order" for "such rule", and "such a rule or order" for "such a rule".

Subsec. (a)(1)(B). Pub. L. 114–182, §19(m)(1)(B), substituted "Except as otherwise provided in this subchapter, courts" for "Courts" and "this subchapter, other than an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title," for "subparagraph (A) or (B) of section 2605(b)(1) of this title".

Subsec. (a)(1)(C). Pub. L. 114–182, §14(1), added subpar. (C).

Subsec. (a)(2). Pub. L. 114–182, §19(m)(1)(C), substituted "record" for "rulemaking record" and "based the rule or order" for "based the rule".

Subsec. (a)(3). Pub. L. 114–182, §14(2), struck out par. (3) which defined "rulemaking record".

Subsec. (b). Pub. L. 114–182, §19(m)(2), substituted "review a rule, or an order under section 2603, 2604(e), 2604(f), or 2605(i)(1) of this title," for "review a rule", "such rule or order" for "such rule", "the rule or order" for "the rule", "new rule or order" for "new rule" in two places, and "modified rule or order" for "modified rule".

Subsec. (c)(1)(A). Pub. L. 114–182, §19(m)(3)(A)(i), substituted "a rule or order" for "a rule" and "such rule or order" for "such rule".

Subsec. (c)(1)(B). Pub. L. 114–182, §19(m)(3)(A)(ii)(I), substituted "a rule or order" for "a rule" in introductory provisions.

Pub. L. 114–182, §19(m)(3)(A)(ii)(III), struck out concluding provisions which read as follows: "The term 'evidence' as used in clause (i) means any matter in the rulemaking record."

Subsec. (c)(1)(B)(i). Pub. L. 114–182, §19(m)(3)(A)(ii)(II), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "in the case of review of a rule under section 2603(a), 2604(b)(4), 2605(a), or 2605(e) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3)) taken as a whole;".

Subsec. (c)(1)(B)(ii), (iii). Pub. L. 114–182, §19(m)(3)(A)(ii)(III), added cl. (ii) and struck out former cls. (ii) and (iii) which related to review of rules under section 2605(a) of this title and statements not subject to court review, respectively.

Subsec. (c)(1)(C). Pub. L. 114–182, §19(m)(3)(A)(iii), struck out subpar. (C) which read as follows: "A determination, rule, or ruling of the Administrator described in subparagraph (B)(ii) may be reviewed only in an action under this section and only in accordance with such subparagraph."

Subsec. (c)(2). Pub. L. 114–182, §19(m)(3)(B), substituted "any rule or order" for "any rule".

1992—Subsec. (a)(1)(A). Pub. L. 102–550, §1021(b)(8)(A), substituted "subchapter II or IV" for "subchapter II".

Subsec. (a)(3)(B). Pub. L. 102–550, §1021(b)(8)(B), inserted before semicolon at end "and in the case of a rule under subchapter IV, the finding required for the issuance of such a rule".

1986—Subsec. (a)(1)(A). Pub. L. 99–519 inserted reference to subchapter II of this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

[1] *So in original.*

§2619. Citizens' civil actions

(a) In general

Except as provided in subsection (b), any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this chapter or any rule promulgated under section 2603, 2604, or 2605 of this title, or subchapter II or IV, or order issued under section 2603 or 2604 of this title or subchapter II or IV to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this chapter which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the

defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

(b) Limitation

No civil action may be commenced—

(1) under subsection (a)(1) to restrain a violation of this chapter or rule or order under this chapter—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 2615(a)(2) of this title to require compliance with this chapter or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this chapter or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action;

(2) under subsection (a)(2) before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 2606 of this title, before the expiration of ten days after such notification, except that no prior notification shall be required in the case of a civil action brought to compel a decision by the Administrator pursuant to section 2617(f)(3)(B) of this title; or

(3) in the case of a civil action brought to compel a decision by the Administrator pursuant to section 2617(f)(3)(B) of this title, after the date that is 60 days after the deadline specified in section 2617(f)(3)(B) of this title.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(c) General

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

(2) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(3) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this chapter or any rule or order under this chapter or to seek any other relief.

(d) Consolidation

When two or more civil actions brought under subsection (a) involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions which is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

(1) any district which is selected by such defendant and in which one of such actions is pending,

(2) a district which is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending, or

(3) a district which is selected by the court and in which one of such actions is pending.

The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending.

(Pub. L. 94–469, title I, §20, Oct. 11, 1976, 90 Stat. 2041; renumbered title I and amended Pub. L. 99–519, §3(b)(3), (c)(1), Oct. 22, 1986, 100 Stat. 2989; Pub. L. 102–550, title X, §1021(b)(9), Oct. 28, 1992, 106 Stat. 3923; Pub. L. 114–182, title I, §§15, 19(n), June 22, 2016, 130 Stat. 498, 509.)

EDITORIAL NOTES

AMENDMENTS

Subsec. (a)(1). Pub. L. 114–182, §19(n), substituted "order issued under section 2603 or 2604 of this title" for "order issued under section 2604 of this title".

Subsec. (b)(2), (3). Pub. L. 114–182, §15, substituted ", except that no prior notification shall be required in the case of a civil action brought to compel a decision by the Administrator pursuant to section 2617(f)(3)(B) of this title; or" for period at end of par. (2) and added par. (3).

1992—Subsec. (a)(1). Pub. L. 102–550 substituted "subchapter II or IV" for "subchapter II" in two places.

1986—Subsec. (a)(1). Pub. L. 99–519 inserted references to subchapter II of this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2620. Citizens' petitions

(a) In general

Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 2603, 2605, or 2607 of this title or an order under section 2603 or 2604(e) or (f) of this title.

(b) Procedures

(1) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under section 2603, 2605, or 2607 of this title or an order under section 2603 or 2604(e) or (f) of this title.

(2) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(3) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with section 2603, 2604, 2605, or 2607 of this title. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial.

(4)(A) If the Administrator denies a petition filed under this section (or if the Administrator fails to grant or deny such petition within the 90-day period) the petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after filing the petition, within 60 days after the expiration of the 90-day period.

(B) In an action under subparagraph (A) respecting a petition to initiate a proceeding to issue a rule under section 2603, 2605, or 2607 of this title or an order under section 2603 or 2604(e) or (f) of this title, the petitioner shall be provided an opportunity to have such petition considered by the court in a de novo proceeding. If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

(i) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2603 of this title or an order under section 2603 or 2604(e) of this title—

(I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance to be subject to such rule or order; and

(II) in the absence of such information, the substance may present an unreasonable risk to health or the environment, or the substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to it; or

(ii) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2605(a) or 2607 of this title or an order under section 2604(f) of this title, the chemical substance or mixture to be subject to such rule or order presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use.[1]

the court shall order the Administrator to initiate the action requested by the petitioner. If the court finds that the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this chapter and there are insufficient resources available to the Administrator to take the action requested by the petitioner, the court may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes.

(C) The court in issuing any final order in any action brought pursuant to subparagraph (A) may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(5) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(Pub. L. 94–469, title I, §21, Oct. 11, 1976, 90 Stat. 2042; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §19(o), June 22, 2016, 130 Stat. 509.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–182, §19(o)(1), substituted "order under section 2603 or 2604(e) or (f) of this title" for "order under section 2604(e) or 2605(b)(2) of this title".

Subsec. (b)(1). Pub. L. 114–182, §19(o)(2)(A), substituted "order under section 2603 or 2604(e) or (f) of this title" for "order under section 2604(e), 2605(b)(1)(A), or 2605(b)(1)(B) of this title".

Subsec. (b)(4)(B). Pub. L. 114–182, §19(o)(2)(B)(i), substituted "order under section 2603 or 2604(e) or (f) of this title" for "order under section 2604(e) or 2605(b)(2) of this title" in introductory provisions.

Subsec. (b)(4)(B)(i). Pub. L. 114–182, §19(o)(2)(B)(ii), substituted "order under section 2603 or 2604(e) of this title" for "order under section 2604(e) of this title" in introductory provisions.

Subsec. (b)(4)(B)(ii). Pub. L. 114–182, §19(o)(2)(B)(iii), substituted "section 2605(a) or 2607 of this title or an order under section 2604(f) of this title, the chemical substance or mixture to be subject to such rule or order presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation,

under the conditions of use" for "section 2605 or 2607 of this title or an order under section 2605(b)(2) of this title, there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

[1] *So in original. The period probably should be a semicolon.*

§2621. National defense waiver

The Administrator shall waive compliance with any provision of this chapter upon a request and determination by the President that the requested waiver is necessary in the interest of national defense. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this chapter. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national defense purposes, unless, upon the request of the President, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national defense, in which event the Administrator shall submit notice thereof to the Armed Services Committees of the Senate and the House of Representatives.

(Pub. L. 94–469, title I, §22, Oct. 11, 1976, 90 Stat. 2044; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2622. Employee protection

(a) In general

No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Remedy

(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If in response to a complaint filed under paragraph (1) the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any employee or employer adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5.

(2) An order of the Secretary, with respect to which review could have been obtained under paragraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement

Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

(e) Exclusion

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the employee's employer (or any agent of the employer), deliberately causes a violation of any requirement of this chapter.

(Pub. L. 94–469, title I, §23, Oct. 11, 1976, 90 Stat. 2044; Pub. L. 98–620, title IV, §402(19), Nov. 8, 1984, 98 Stat. 3358; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

EDITORIAL NOTES

AMENDMENTS

1984—Subsec. (d). Pub. L. 98–620 struck out provision that civil actions brought under this subsection had to be heard and decided expeditiously.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2623. Employment effects

(a) In general

The Administrator shall evaluate on a continuing basis the potential effects on employment (including reductions in employment or loss of employment from threatened plant closures) of—

(1) the issuance of a rule or order under section 2603, 2604, or 2605 of this title, or

(2) a requirement of section 2604 or 2605 of this title.

(b) Investigations

(1) Any employee (or any representative of an employee) may request the Administrator to make an investigation of—

(A) a discharge or layoff or threatened discharge or layoff of the employee, or

(B) adverse or threatened adverse effects on the employee's employment,

allegedly resulting from a rule or order under section 2603, 2604, or 2605 of this title or a requirement of section 2604 or 2605 of this title. Any such request shall be made in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

(2)(A) Upon receipt of a request made in accordance with paragraph (1) the Administrator shall (i) conduct the investigation requested, and (ii) if requested by any interested person, hold public hearings on any matter involved in the investigation unless the Administrator, by order issued within 45 days of the date such hearings are requested, denies the request for the hearings because the Administrator determines there are no reasonable grounds for holding such hearings. If the Administrator makes such a determination, the Administrator shall notify in writing the person requesting the hearing of the determination and the reasons therefor and shall publish the determination and the reasons therefor in the Federal Register.

(B) If public hearings are to be held on any matter involved in an investigation conducted under this subsection—

(i) at least five days' notice shall be provided the person making the request for the investigation and any person identified in such request, and

(ii) each employee who made or for whom was made a request for such hearings and the employer of such employee shall be required to present information respecting the applicable matter referred to in paragraph (1)(A) or (1)(B) together with the basis for such information.

(3) Upon completion of an investigation under paragraph (2), the Administrator shall make findings of fact, shall make such recommendations as the Administrator deems appropriate, and shall make available to the public such findings and recommendations.

(4) This section shall not be construed to require the Administrator to amend or repeal any rule or order in effect under this chapter.

(Pub. L. 94–469, title I, §24, Oct. 11, 1976, 90 Stat. 2045; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §19(p), June 22, 2016, 130 Stat. 510.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsec. (b)(2)(B)(ii), (iii). Pub. L. 114–182 redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: "such hearings shall be held in accordance with section 2605(c)(3) of this title, and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2624. Repealed. Pub. L. 114–182, title I, §16, June 22, 2016, 130 Stat. 499

Section, Pub. L. 94–469, title I, §25, Oct. 11, 1976, 90 Stat. 2046; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989, required a study on indemnification for actions taken by the Administrator under Federal law.

§2625. Administration

(a) Cooperation of Federal agencies

Upon request by the Administrator, each Federal department and agency is authorized—

(1) to make its services, personnel, and facilities available (with or without reimbursement) to the Administrator to assist the Administrator in the administration of this chapter; and

(2) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession as the Administrator may reasonably determine to be necessary for the administration of this chapter.

(b) Fees

(1) The Administrator may, by rule, require the payment from any person required to submit information under section 2603 of this title or a notice or other information to be reviewed by the Administrator under section 2604 of this title, or who manufactures or processes a chemical substance that is the subject of a risk evaluation under section 2605(b) of this title, of a fee that is sufficient and not more than reasonably necessary to defray the cost related to such chemical substance of administering sections 2603, 2604, and 2605 of this title, and collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 2613 of this title information on chemical substances under this subchapter, including contractor costs incurred by the Administrator. In setting a fee under this paragraph, the Administrator shall take into account the ability to pay of the person required to pay such fee and the cost to the Administrator of carrying out the activities described in this paragraph. Such rules may provide for sharing such a fee in any case in which the expenses of testing are shared under section 2603 or 2604 of this title.

(2) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the persons which qualify as small business concerns for purposes of paragraph (4).

(3) FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the TSCA Service Fee Fund (in this paragraph referred to as the "Fund"), consisting of such amounts as are deposited in the Fund under this paragraph.

(B) COLLECTION AND DEPOSIT OF FEES.—Subject to the conditions of subparagraph (C), the Administrator shall collect the fees described in this subsection and deposit those fees in the Fund.

(C) USE OF FUNDS BY ADMINISTRATOR.—Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts, and shall be available without fiscal year limitation for use in defraying the costs of the activities described in paragraph (1).

(D) ACCOUNTING AND AUDITING.—

(i) ACCOUNTING.—The Administrator shall biennially prepare and submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes an accounting of the fees paid to the Administrator under this paragraph and amounts disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with sections 3515 and 3521 of title 31.

(ii) AUDITING.—

(I) IN GENERAL.—For the purpose of section 3515(c) of title 31, the Fund shall be considered a component of a covered executive agency.

(II) COMPONENTS OF AUDIT.—The annual audit required in accordance with sections 3515 and 3521 of title 31 of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

(aa) the fees collected and amounts disbursed under this subsection;

(bb) the reasonableness of the fees in place as of the date of the audit to meet current and projected costs of administering the provisions of this subchapter for which the fees may be used; and

(cc) the number of requests for a risk evaluation made by manufacturers under section 2605(b)(4)(C)(ii) of this title.

(III) FEDERAL RESPONSIBILITY.—The Inspector General of the Environmental Protection Agency shall conduct the annual audit described in subclause (II) and submit to the Administrator a report that describes the findings and any recommendations of the Inspector General resulting from the audit.

(4) AMOUNT AND ADJUSTMENT OF FEES; REFUNDS.—In setting fees under this section, the Administrator shall—

(A) prescribe lower fees for small business concerns, after consultation with the Administrator of the Small Business Administration;

(B) set the fees established under paragraph (1) at levels such that the fees will, in aggregate, provide a sustainable source of funds to annually defray—

(i) the lower of—

(I) 25 percent of the costs to the Administrator of carrying out sections 2603, 2604, and 2605 of this title, and of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 2613 of this title information on chemical substances under this subchapter, other than the costs to conduct and complete risk evaluations under section 2605(b) of this title; or

(II) $25,000,000 (subject to adjustment pursuant to subparagraph (F)); and

(ii) the costs of risk evaluations specified in subparagraph (D);

(C) reflect an appropriate balance in the assessment of fees between manufacturers and processors, and allow the payment of fees by consortia of manufacturers or processors;

(D) notwithstanding subparagraph (B)—

(i) except as provided in clause (ii), for chemical substances for which the Administrator has granted a request from a manufacturer pursuant to section 2605(b)(4)(C)(ii) of this title, establish the fee at a level sufficient to defray the full costs to the Administrator of conducting the risk evaluation under section 2605(b) of this title;

(ii) for chemical substances for which the Administrator has granted a request from a manufacturer pursuant to section 2605(b)(4)(C)(ii) of this title, and which are included in the 2014 update of the TSCA Work Plan for Chemical Assessments, establish the fee at a level sufficient to defray 50 percent of the costs to the Administrator of conducting the risk evaluation under section 2605(b) of this title; and

(iii) apply fees collected pursuant to clauses (i) and (ii) only to defray the costs described in those clauses;

(E) prior to the establishment or amendment of any fees under paragraph (1), consult and meet with parties potentially subject to the fees or their representatives, subject to the condition that no obligation under chapter 10 of title 5 or subchapter II of chapter 5 of title 5 is applicable with respect to such meetings;

(F) beginning with the fiscal year that is 3 years after June 22, 2016, and every 3 years thereafter, after consultation with parties potentially subject to the fees and their representatives pursuant to subparagraph (E), increase or decrease the fees established under paragraph (1) as necessary to adjust for inflation and to ensure that funds deposited in the Fund are sufficient to defray—

(i) approximately but not more than 25 percent of the costs to the Administrator of carrying out sections 2603, 2604, and 2605 of this title, and of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 2613 of this title information on chemical substances under this subchapter, other than the costs to conduct and complete risk evaluations requested under section 2605(b)(4)(C)(ii) of this title; and

(ii) the costs of risk evaluations specified in subparagraph (D); and

(G) if a notice submitted under section 2604 of this title is not reviewed or such a notice is withdrawn, refund the fee or a portion of the fee if no substantial work was performed on the notice.

(5) MINIMUM AMOUNT OF APPROPRIATIONS.—Fees may not be assessed for a fiscal year under this section unless the amount of appropriations for the Chemical Risk Review and Reduction program project of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for that program project for fiscal year 2014.

(6) TERMINATION.—The authority provided by this subsection shall terminate at the conclusion of the fiscal year that is 10 years after June 22, 2016, unless otherwise reauthorized or modified by Congress.

(c) Action with respect to categories

(1) Any action authorized or required to be taken by the Administrator under any provision of this chapter with respect to a chemical substance or mixture may be taken by the Administrator in accordance with that provision with respect to a category of chemical substances or mixtures. Whenever the Administrator takes action under a provision of this chapter with respect to a category of chemical substances or mixtures, any reference in this chapter to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category.

(2) For purposes of paragraph (1):

(A) The term "category of chemical substances" means a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter, except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances.

(B) The term "category of mixtures" means a group of mixtures the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in the mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter.

(d) Assistance office

The Administrator shall establish in the Environmental Protection Agency an identifiable office to

provide technical and other nonfinancial assistance to manufacturers and processors of chemical substances and mixtures respecting the requirements of this chapter applicable to such manufacturers and processors, the policy of the Agency respecting the application of such requirements to such manufacturers and processors, and the means and methods by which such manufacturers and processors may comply with such requirements.

(e) Financial disclosures

(1) Except as provided under paragraph (3), each officer or employee of the Environmental Protection Agency and the Department of Health and Human Services who—

(A) performs any function or duty under this chapter, and

(B) has any known financial interest (i) in any person subject to this chapter or any rule or order in effect under this chapter, or (ii) in any person who applies for or receives any grant or contract under this chapter,

shall, on February 1, 1978, and on February 1 of each year thereafter, file with the Administrator or the Secretary of Health and Human Services (hereinafter in this subsection referred to as the "Secretary"), as appropriate, a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be made available to the public.

(2) The Administrator and the Secretary shall—

(A) act within 90 days of January 1, 1977—

(i) to define the term "known financial interests" for purposes of paragraph (1), and

(ii) to establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for review by the Administrator and the Secretary of such statements; and

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

(3) The Administrator may by rule identify specific positions with the Environmental Protection Agency, and the Secretary may by rule identify specific positions with the Department of Health and Human Services, which are of a nonregulatory or nonpolicymaking nature, and the Administrator and the Secretary may by rule provide that officers or employees occupying such positions shall be exempt from the requirements of paragraph (1).

(4) This subsection does not supersede any requirement of chapter 11 of title 18.

(5) Any officer or employee who is subject to, and knowingly violates, this subsection or any rule issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(f) Statement of basis and purpose

Any final order issued under this chapter shall be accompanied by a statement of its basis and purpose. The contents and adequacy of any such statement shall not be subject to judicial review in any respect.

(g) Assistant Administrator

(1) The President, by and with the advice and consent of the Senate, shall appoint an Assistant Administrator for Toxic Substances of the Environmental Protection Agency. Such Assistant Administrator shall be a qualified individual who is, by reason of background and experience, especially qualified to direct a program concerning the effects of chemicals on human health and the environment. Such Assistant Administrator shall be responsible for (A) the collection of information, (B) the preparation of studies, (C) the making of recommendations to the Administrator for regulatory and other actions to carry out the purposes and to facilitate the administration of this chapter, and (D) such other functions as the Administrator may assign or delegate.

(2) The Assistant Administrator to be appointed under paragraph (1) shall be in addition to the Assistant Administrators of the Environmental Protection Agency authorized by section 1(d) of

Reorganization Plan No. 3 of 1970.

(h) Scientific standards

In carrying out sections 2603, 2604, and 2605 of this title, to the extent that the Administrator makes a decision based on science, the Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science, and shall consider as applicable—

(1) the extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;

(2) the extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;

(3) the degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;

(4) the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and

(5) the extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models.

(i) Weight of scientific evidence

The Administrator shall make decisions under sections 2603, 2604, and 2605 of this title based on the weight of the scientific evidence.

(j) Availability of information

Subject to section 2613 of this title, the Administrator shall make available to the public—

(1) all notices, determinations, findings, rules, consent agreements, and orders of the Administrator under this subchapter;

(2) any information required to be provided to the Administrator under section 2603 of this title;

(3) a nontechnical summary of each risk evaluation conducted under section 2605(b) of this title;

(4) a list of the studies considered by the Administrator in carrying out each such risk evaluation, along with the results of those studies; and

(5) each designation of a chemical substance under section 2605(b) of this title, along with an identification of the information, analysis, and basis used to make the designations.

(k) Reasonably available information

In carrying out sections 2603, 2604, and 2605 of this title, the Administrator shall take into consideration information relating to a chemical substance or mixture, including hazard and exposure information, under the conditions of use, that is reasonably available to the Administrator.

(l) Policies, procedures, and guidance

(1) Development

Not later than 2 years after June 22, 2016, the Administrator shall develop any policies, procedures, and guidance the Administrator determines are necessary to carry out the amendments to this chapter made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(2) Review

Not later than 5 years after June 22, 2016, and not less frequently than once every 5 years thereafter, the Administrator shall—

(A) review the adequacy of the policies, procedures, and guidance developed under paragraph (1), including with respect to animal, nonanimal, and epidemiological test methods and procedures for assessing and determining risk under this subchapter; and

(B) revise such policies, procedures, and guidance as the Administrator determines necessary to reflect new scientific developments or understandings.

(3) Testing of chemical substances and mixtures

The policies, procedures, and guidance developed under paragraph (1) applicable to testing chemical substances and mixtures shall—

(A) address how and when the exposure level or exposure potential of a chemical substance or mixture would factor into decisions to require new testing, subject to the condition that the Administrator shall not interpret the lack of exposure information as a lack of exposure or exposure potential; and

(B) describe the manner in which the Administrator will determine that additional information is necessary to carry out this subchapter, including information relating to potentially exposed or susceptible populations.

(4) Chemical substances with completed risk assessments

With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which the Administrator has published a completed risk assessment prior to June 22, 2016, the Administrator may publish proposed and final rules under section 2605(a) of this title that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of section 2605 of this title.

(5) Guidance

Not later than 1 year after June 22, 2016, the Administrator shall develop guidance to assist interested persons in developing and submitting draft risk evaluations which shall be considered by the Administrator. The guidance shall, at a minimum, address the quality of the information submitted and the process to be followed in developing draft risk evaluations for consideration by the Administrator.

(m) Report to Congress

(1) Initial report

Not later than 6 months after June 22, 2016, the Administrator shall submit to the Committees on Energy and Commerce and Appropriations of the House of Representatives and the Committees on Environment and Public Works and Appropriations of the Senate a report containing an estimation of—

(A) the capacity of the Environmental Protection Agency to conduct and publish risk evaluations under section 2605(b)(4)(C)(i) of this title, and the resources necessary to conduct the minimum number of risk evaluations required under section 2605(b)(2) of this title;

(B) the capacity of the Environmental Protection Agency to conduct and publish risk evaluations under section 2605(b)(4)(C)(ii) of this title, the likely demand for such risk evaluations, and the anticipated schedule for accommodating that demand;

(C) the capacity of the Environmental Protection Agency to promulgate rules under section 2605(a) of this title as required based on risk evaluations conducted and published under section 2605(b) of this title; and

(D) the actual and anticipated efforts of the Environmental Protection Agency to increase the Agency's capacity to conduct and publish risk evaluations under section 2605(b) of this title.

(2) Subsequent reports

The Administrator shall update and resubmit the report described in paragraph (1) not less frequently than once every 5 years.

(n) Annual plan

(1) In general

The Administrator shall inform the public regarding the schedule and the resources necessary for the completion of each risk evaluation as soon as practicable after initiating the risk evaluation.

(2) Publication of plan

At the beginning of each calendar year, the Administrator shall publish an annual plan that—

(A) identifies the chemical substances for which risk evaluations are expected to be initiated or completed that year and the resources necessary for their completion;

(B) describes the status of each risk evaluation that has been initiated but not yet completed; and

(C) if the schedule for completion of a risk evaluation has changed, includes an updated schedule for that risk evaluation.

(o) Consultation with Science Advisory Committee on Chemicals

(1) Establishment

Not later than 1 year after June 22, 2016, the Administrator shall establish an advisory committee, to be known as the Science Advisory Committee on Chemicals (referred to in this subsection as the "Committee").

(2) Purpose

The purpose of the Committee shall be to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of this subchapter.

(3) Composition

The Committee shall be composed of representatives of such science, government, labor, public health, public interest, animal protection, industry, and other groups as the Administrator determines to be advisable, including representatives that have specific scientific expertise in the relationship of chemical exposures to women, children, and other potentially exposed or susceptible subpopulations.

(4) Schedule

The Administrator shall convene the Committee in accordance with such schedule as the Administrator determines to be appropriate, but not less frequently than once every 2 years.

(p) Prior actions

(1) Rules, orders, and exemptions

Nothing in the Frank R. Lautenberg Chemical Safety for the 21st Century Act eliminates, modifies, or withdraws any rule promulgated, order issued, or exemption established pursuant to this chapter before June 22, 2016.

(2) Prior-initiated evaluations

Nothing in this chapter prevents the Administrator from initiating a risk evaluation regarding a chemical substance, or from continuing or completing such risk evaluation, prior to the effective date of the policies, procedures, and guidance required to be developed by the Administrator pursuant to the amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(3) Actions completed prior to completion of policies, procedures, and guidance

Nothing in this chapter requires the Administrator to revise or withdraw a completed risk evaluation, determination, or rule under this chapter solely because the action was completed prior to the development of a policy, procedure, or guidance pursuant to the amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

(Pub. L. 94–469, title I, §26, Oct. 11, 1976, 90 Stat. 2046; Pub. L. 98–80, §2(c)(2)(A), Aug. 23, 1983, 97 Stat. 485; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §§17, 19(q), June 22, 2016, 130 Stat. 499, 510; Pub. L. 117–286, §4(a)(69), Dec. 27, 2022, 136 Stat. 4313.)

EDITORIAL NOTES

REFERENCES IN TEXT

Reorganization Plan No. 3 of 1970, referred to in subsec. (g)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

The Frank R. Lautenberg Chemical Safety for the 21st Century Act, referred to in subsecs. (l)(1) and (p), is Pub. L. 114–182, June 22, 2016, 130 Stat. 492. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 2601 of this title and Tables.

AMENDMENTS

2022—Subsec. (b)(4)(E). Pub. L. 117–286 substituted "chapter 10 of title 5" for "the Federal Advisory Committee Act (5 U.S.C. App.)".

2016—Subsec. (b)(1). Pub. L. 114–182, §17(1), struck out "of a reasonable fee" before "from any person", substituted "information under section 2603 of this title or a notice or other information to be reviewed by the Administrator under section 2604 of this title, or who manufactures or processes a chemical substance that is the subject of a risk evaluation under section 2605(b) of this title, of a fee that is sufficient and not more than reasonably necessary to defray the cost related to such chemical substance of administering sections 2603, 2604, and 2605 of this title, and collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 2613 of this title information on chemical substances under this subchapter, including contractor costs incurred by the Administrator" for "data under section 2603 or 2604 of this title to defray the cost of administering this chapter", struck out "Such rules shall not provide for any fee in excess of $2,500 or, in the case of a small business concern, any fee in excess of $100." before "In setting a fee", and substituted "pay such fee and the cost to the Administrator of carrying out the activities described in this paragraph" for "submit the data and the cost to the Administrator of reviewing such data".

Subsec. (b)(2). Pub. L. 114–182, §17(2)(A), substituted "paragraph (4)" for "paragraph (1)".

Subsec. (b)(3) to (6). Pub. L. 114–182, §17(2)(B), added pars. (3) to (6).

Subsec. (e). Pub. L. 114–182, §19(q)(1), substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing.

Subsec. (g)(1)(A). Pub. L. 114–182, §19(q)(2), substituted "information" for "data".

Subsecs. (h) to (p). Pub. L. 114–182, §17(3), added subsecs. (h) to (p).

1983—Subsec. (g)(2). Pub. L. 98–80 struck out "(A)" before "be in addition" and ", and (B) be compensated at the rate of pay authorized for such Assistant Administrators" after "No. 3 of 1970".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(2)(B) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 93 and 164 of House Document No. 103–7.

§2626. Development and evaluation of test methods

(a) In general

The Secretary of Health and Human Services, in consultation with the Administrator and acting through the Assistant Secretary for Health, may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities for, projects for the development and evaluation of inexpensive and efficient methods (1) for determining and evaluating the health and environmental effects of chemical substances and mixtures, and their toxicity, persistence, and other characteristics which affect health and the environment, and (2) which may be used for the development of information to meet the requirements of rules, orders, or consent agreements under section 2603 of this title. The Administrator shall consider such methods in prescribing under section 2603 of this title protocols and methodologies for the development of information.

(b) Approval by Secretary

No grant may be made or contract entered into under subsection (a) unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such

form and manner and contain such information as the Secretary may require. The Secretary may apply such conditions to grants and contracts under subsection (a) as the Secretary determines are necessary to carry out the purposes of such subsection. Contracts may be entered into under such subsection without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41.

(Pub. L. 94–469, title I, §27, Oct. 11, 1976, 90 Stat. 2049; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 104–66, title I, §1061(a), Dec. 21, 1995, 109 Stat. 719; Pub. L. 114–182, title I, §19(r), June 22, 2016, 130 Stat. 510.)

EDITORIAL NOTES

CODIFICATION

In subsec. (b), "section 3324(a) and (b) of title 31 and section 6101 of title 41" substituted for "sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)" on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114–182 substituted "Health and Human Services" for "Health, Education, and Welfare", "information" for "test data" in two places, "rules, orders, or consent agreements" for "rules promulgated", and "protocols and methodologies" for "standards".

1995—Subsec. (c). Pub. L. 104–66 struck out heading and text of subsec. (c). Text read as follows:

"(1) The Secretary shall prepare and submit to the President and the Congress on or before January 1 of each year a report of the number of grants made and contracts entered into under this section and the results of such grants and contracts.

"(2) The Secretary shall periodically publish in the Federal Register reports describing the progress and results of any contract entered into or grant made under this section."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2627. State programs

(a) In general

For the purpose of complementing (but not reducing) the authority of, or actions taken by, the Administrator under this chapter, the Administrator may make grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under this chapter for their prevention or elimination. The amount of a grant under this subsection shall be determined by the Administrator, except that no grant for any State program may exceed 75 per centum of the establishment and operation costs (as determined by the Administrator) of such program during the period for which the grant is made.

(b) Approval by Administrator

(1) No grant may be made under subsection (a) unless an application therefor is submitted to and approved by the Administrator. Such an application shall be submitted in such form and manner as the Administrator may require and shall—

(A) set forth the need of the applicant for a grant under subsection (a),

(B) identify the agency or agencies of the State which shall establish or operate, or both, the program for which the application is submitted,

(C) describe the actions proposed to be taken under such program,

(D) contain or be supported by assurances satisfactory to the Administrator that such program shall, to the extent feasible, be integrated with other programs of the applicant for environmental and public health protection,

(E) provide for the making of such reports and evaluations as the Administrator may require, and

(F) contain such other information as the Administrator may prescribe.

(2) The Administrator may approve an application submitted in accordance with paragraph (1) only if the applicant has established to the satisfaction of the Administrator a priority need, as determined under rules of the Administrator, for the grant for which the application has been submitted. Such rules shall take into consideration the seriousness of the health effects in a State which are associated with chemical substances or mixtures, including cancer, birth defects, and gene mutations, the extent of the exposure in a State of human beings and the environment to chemical substances and mixtures, and the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State.

(Pub. L. 94–469, title I, §28, Oct. 11, 1976, 90 Stat. 2049; Pub. L. 97–129, §1(a), Dec. 29, 1981, 95 Stat. 1686; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §18, June 22, 2016, 130 Stat. 505.)

EDITORIAL NOTES

AMENDMENTS

2016—Subsecs. (c), (d). Pub. L. 114–182 struck out subsecs. (c) and (d). Text read as follows:

"(c) Not later than six months after the end of each of the fiscal years 1979, 1980, and 1981, the Administrator shall submit to the Congress a report respecting the programs assisted by grants under subsection (a) in the preceding fiscal year and the extent to which the Administrator has disseminated information respecting such programs.

"(d) For the purpose of making grants under subsection (a), there are authorized to be appropriated $1,500,000 for each of the fiscal years 1982 and 1983. Sums appropriated under this subsection shall remain available until expended."

1981—Subsec. (d). Pub. L. 97–129 substituted provisions relating to authorization of appropriations of $1,500,000 for each of the fiscal years 1982 and 1983 for provisions relating to such authorization for fiscal years ending Sept. 30, 1977, Sept. 30, 1978, and Sept. 30, 1979.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2628. Authorization of appropriations

There are authorized to be appropriated to the Administrator for purposes of carrying out this chapter (other than sections 2626 and 2627 of this title and subsections (a) and (c) through (g) of section 2609 of this title) $58,646,000 for the fiscal year 1982 and $62,000,000 for the fiscal year 1983. No part of the funds appropriated under this section may be used to construct any research laboratories.

(Pub. L. 94–469, title I, §29, Oct. 11, 1976, 90 Stat. 2050; Pub. L. 97–129, §1(b), Dec. 29, 1981, 95 Stat. 1686; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989.)

EDITORIAL NOTES

AMENDMENTS

1981—Pub. L. 97–129 substituted provisions relating to authorization of appropriation of $58,646,000 for fiscal year 1982, and $62,000,000 for fiscal year 1983, for provisions relating to such authorization of $10,100,000 for fiscal year ending Sept. 30, 1977, $12,625,000 for fiscal year ending Sept. 30, 1978, and $16,200,000 for fiscal year ending Sept. 30, 1979.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§2629. Annual report

The Administrator shall prepare and submit to the President and the Congress on or before January 1, 1978, and on or before January 1 of each succeeding year a comprehensive report on the administration of this chapter during the preceding fiscal year. Such reports shall include—

(1) a list of the testing required under section 2603 of this title during the year for which the report is made and an estimate of the costs incurred during such year by the persons required to perform such tests;

(2) the number of notices received during such year under section 2604 of this title, the number of such notices received during such year under such section for chemical substances subject to a section 2603 rule, order, or consent agreement, and a summary of any action taken during such year under section 2604(g) of this title;

(3) a list of rules issued during such year under section 2605 of this title;

(4) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter and administrative actions under section 2615 of this title during such year;

(5) a summary of major problems encountered in the administration of this chapter; and

(6) such recommendations for additional legislation as the Administrator deems necessary to carry out the purposes of this chapter.

(Pub. L. 94–469, title I, §30, Oct. 11, 1976, 90 Stat. 2050; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §19(s), June 22, 2016, 130 Stat. 510.)

EDITORIAL NOTES

AMENDMENTS

2016—Par. (2). Pub. L. 114–182 substituted "rule, order, or consent agreement" for "rule".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 163 of House Document No. 103–7.

SUBCHAPTER II—ASBESTOS HAZARD EMERGENCY RESPONSE

§2641. Congressional findings and purpose

(a) Findings

The Congress finds the following:

(1) The Environmental Protection Agency's rule on local educational agency inspection for, and notification of, the presence of friable asbestos-containing material in school buildings includes neither standards for the proper identification of asbestos-containing material and appropriate response actions with respect to friable asbestos-containing material, nor a requirement that response actions with respect to friable asbestos-containing material be carried out in a safe and complete manner once actions are found to be necessary. As a result of the lack of regulatory guidance from the Environmental Protection Agency, some schools have not undertaken response action while many others have undertaken expensive projects without knowing if their action is necessary, adequate, or safe. Thus, the danger of exposure to asbestos continues to exist in schools, and some exposure actually may have increased due to the lack of Federal standards and improper response action.

(2) There is no uniform program for accrediting persons involved in asbestos identification and abatement, nor are local educational agencies required to use accredited contractors for asbestos work.

(3) The guidance provided by the Environmental Protection Agency in its "Guidance for Controlling Asbestos-Containing Material in Buildings" is insufficient in detail to ensure adequate responses. Such guidance is intended to be used only until the regulations required by this subchapter become effective.

(4) Because there are no Federal standards whatsoever regulating daily exposure to asbestos in other public and commercial buildings, persons in addition to those comprising the Nation's school population may be exposed daily to asbestos.

(b) Purpose

The purpose of this subchapter is—

(1) to provide for the establishment of Federal regulations which require inspection for asbestos-containing material and implementation of appropriate response actions with respect to asbestos-containing material in the Nation's schools in a safe and complete manner;

(2) to mandate safe and complete periodic reinspection of school buildings following response actions, where appropriate; and

(3) to require the Administrator to conduct a study to find out the extent of the danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger.

(Pub. L. 94–469, title II, §201, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2970.)

§2642. Definitions

For purposes of this subchapter—

(1) Accredited asbestos contractor

The term "accredited asbestos contractor" means a person accredited pursuant to the provisions of section 2646 of this title.

(2) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(3) Asbestos

The term "asbestos" means asbestiform varieties of—

(A) chrysotile (serpentine),

(B) crocidolite (riebeckite),

(C) amosite (cummingtonite-grunerite),

(D) anthophyllite,
(E) tremolite, or
(F) actinolite.

(4) Asbestos-containing material

The term "asbestos-containing material" means any material which contains more than 1 percent asbestos by weight.

(5) EPA guidance document

The term "Guidance for Controlling Asbestos-Containing Material in Buildings", means the Environmental Protection Agency document with such title as in effect on March 31, 1986.

(6) Friable asbestos-containing material

The term "friable asbestos-containing material" means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(7) Local educational agency

The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(8) Most current guidance document

The term "most current guidance document" means the Environmental Protection Agency's "Guidance for Controlling Asbestos-Containing Material in Buildings" as modified by the Environmental Protection Agency after March 31, 1986.

(9) Non-profit elementary or secondary school

The term "non-profit elementary or secondary school" means any elementary school or secondary school (as defined in section 7801 of title 20) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(10) Public and commercial building

The term "public and commercial building" means any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units.

(11) Response action

The term "response action" means methods that protect human health and the environment from asbestos-containing material. Such methods include methods described in chapters 3 and 5 of the Environmental Protection Agency's "Guidance for Controlling Asbestos-Containing Materials in Buildings".

(12) School

The term "school" means any elementary school or secondary school as defined in section 7801 of title 20.

(13) School building

The term "school building" means—

(A) any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food,

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education,

(C) any other facility used for the instruction of students or for the administration of educational or research programs, and

(D) any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in subparagraphs (A), (B), or (C).

(14) State

The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Pub. L. 94–469, title II, §202, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2971; amended Pub. L. 103–382, title III, §391(c)(1)–(3), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 107–110, title X, §1076(f)(1), Jan. 8, 2002, 115 Stat. 2091; Pub. L. 114–95, title IX, §9215(xxx)(1), Dec. 10, 2015, 129 Stat. 2191.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in par. (7)(C), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

2015—Par. (7)(A). Pub. L. 114–95, §9215(xxx)(1)(A), made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

Par. (9). Pub. L. 114–95, §9215(xxx)(1)(B), substituted "any elementary school or secondary school (as defined in section 7801 of title 20)" for "any elementary or secondary school (as defined in section 7801 of title 20)".

Par. (12). Pub. L. 114–95, §9215(xxx)(1)(C), substituted "elementary school or secondary school as defined in section 7801 of title 20" for "elementary or secondary school as defined in section 7801 of title 20".

2002—Pars. (7)(A), (9), (12). Pub. L. 107–110 substituted "7801" for "8801".

1994—Pars. (7)(A), (9), (12). Pub. L. 103–382 made technical amendment to reference to section 8801 of title 20 to reflect change in reference to corresponding section of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§2643. EPA regulations

(a) In general

Within 360 days after October 22, 1986, the Administrator shall promulgate regulations as described in subsections (b) through (i). With respect to regulations described in subsections (b), (c), (d), (e), (f), (g), and (i), the Administrator shall issue an advanced notice of proposed rulemaking within 60 days after October 22, 1986, and shall propose regulations within 180 days after October 22, 1986. Any regulation promulgated under this section must protect human health and the environment.

(b) Inspection

The Administrator shall promulgate regulations which prescribe procedures, including the use of personnel accredited under section 2646(b) or (c) of this title and laboratories accredited under section 2646(d) of this title, for determining whether asbestos-containing material is present in a school building under the authority of a local educational agency. The regulations shall provide for the exclusion of any school building, or portion of a school building, if (1) an inspection of such school building (or portion) was completed before the effective date of the regulations, and (2) the inspection meets the procedures and other requirements of the regulations under this subchapter or of the "Guidance for Controlling Asbestos-Containing Materials in Buildings" (unless the Administrator determines that an inspection in accordance with the guidance document is inadequate). The regulations shall require inspection of any school building (or portion of a school building) that is not excluded by the preceding sentence.

(c) Circumstances requiring response actions

(1) The Administrator shall promulgate regulations which define the appropriate response action in a school building under the authority of a local educational agency in at least the following circumstances:

(A) Damage

Circumstances in which friable asbestos-containing material or its covering is damaged, deteriorated, or delaminated.

(B) Significant damage

Circumstances in which friable asbestos-containing material or its covering is significantly damaged, deteriorated, or delaminated.

(C) Potential damage

Circumstances in which—

(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

(ii) there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated.

(D) Potential significant damage

Circumstances in which—

(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

(ii) there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated.

(2) In promulgating such regulations, the Administrator shall consider and assess the value of various technologies intended to improve the decisionmaking process regarding response actions and the quality of any work that is deemed necessary, including air monitoring and chemical encapsulants.

(d) Response actions

(1) In general

The Administrator shall promulgate regulations describing a response action in a school building under the authority of a local educational agency, using the least burdensome methods which protect human health and the environment. In determining the least burdensome methods, the Administrator shall take into account local circumstances, including occupancy and use patterns within the school building and short- and long-term costs.

(2) Response action for damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(A), methods for responding shall include methods identified in chapters 3 and 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings".

(3) Response action for significantly damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(B), methods for responding shall include methods identified in chapter 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings".

(4) Response action for potentially damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(C), methods for responding shall include methods identified in chapters 3 and 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings", unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become damaged, deteriorated, or delaminated.

(5) Response action for potentially significantly damaged asbestos

In the case of a response action for the circumstances described in subsection (c)(1)(D), methods for responding shall include methods identified in chapter 5 of the "Guidance for Controlling Asbestos-Containing Material in Buildings", unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become significantly damaged, deteriorated, or delaminated.

(6) "Preventive measures" defined

For purposes of this section, the term "preventive measures" means actions which eliminate the reasonable likelihood of asbestos-containing material becoming damaged, deteriorated, or delaminated, or significantly damaged [1] deteriorated, or delaminated (as the case may be) or which protect human health and the environment.

(7) EPA information or advisory

The Administrator shall, not later than 30 days after November 28, 1990, publish and distribute to all local education agencies and State Governors information or an advisory to—

(A) facilitate public understanding of the comparative risks associated with in-place management of asbestos-containing building materials and removals;

(B) promote the least burdensome response actions necessary to protect human health, safety, and the environment; and

(C) describe the circumstances in which asbestos removal is necessary to protect human health.

Such information or advisory shall be based on the best available scientific evidence and shall be revised, republished, and redistributed as appropriate, to reflect new scientific findings.

(e) Implementation

The Administrator shall promulgate regulations requiring the implementation of response actions in school buildings under the authority of a local educational agency and, where appropriate, for the determination of when a response action is completed. Such regulations shall include standards for the education and protection of both workers and building occupants for the following phases of activity:

(1) Inspection.

(2) Response Action.[2]

(3) Post-response action, including any periodic reinspection of asbestos-containing material and long-term surveillance activity.

(f) Operations and maintenance

The Administrator shall promulgate regulations to require implementation of an operations and maintenance and repair program as described in chapter 3 of the "Guidance for Controlling Asbestos-Containing Materials in Buildings" for all friable asbestos-containing material in a school building under the authority of a local educational agency.

(g) Periodic surveillance

The Administrator shall promulgate regulations to require the following:

(1) An identification of the location of friable and non-friable asbestos in a school building under the authority of a local educational agency.

(2) Provisions for surveillance and periodic reinspection of such friable and non-friable asbestos.

(3) Provisions for education of school employees, including school service and maintenance personnel, about the location of and safety procedures with respect to such friable and non-friable asbestos.

(h) Transportation and disposal

The Administrator shall promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste material.

(i) Management plans

(1) In general

The Administrator shall promulgate regulations which require each local educational agency to develop an asbestos management plan for school buildings under its authority, to begin implementation of such plan within 990 days after October 22, 1986, and to complete implementation of such plan in a timely fashion. The regulations shall require that each plan include the following elements, wherever relevant to the school building:

(A) An inspection statement describing inspection and response action activities carried out before October 22, 1986.

(B) A description of the results of the inspection conducted pursuant to regulations under subsection (b), including a description of the specific areas inspected.

(C) A detailed description of measures to be taken to respond to any friable asbestos-containing material pursuant to the regulations promulgated under subsections (c), (d), and (e), including the location or locations at which a response action will be taken, the method or methods of response action to be used, and a schedule for beginning and completing response actions.

(D) A detailed description of any asbestos-containing material which remains in the school building once response actions are undertaken pursuant to the regulations promulgated under subsections (c), (d), and (e).

(E) A plan for periodic reinspection and long-term surveillance activities developed pursuant to regulations promulgated under subsection (g), and a plan for operations and maintenance activities developed pursuant to regulations promulgated under subsection (f).

(F) With respect to the person or persons who inspected for asbestos-containing material and who will design or carry out response actions with respect to the friable asbestos-containing material, one of the following statements:

(i) If the State has adopted a contractor accreditation plan under section 2646(b) of this

title, a statement that the person (or persons) is accredited under such plan.

(ii) A statement that the local educational agency used (or will use) persons who have been accredited by another State which has adopted a contractor accreditation plan under section 2646(b) of this title or is accredited pursuant to an Administrator-approved course under section 2646(c) of this title.

(G) A list of the laboratories that analyzed any bulk samples of asbestos-containing material found in the school building or air samples taken to detect asbestos in the school building and a statement that each laboratory has been accredited pursuant to the accreditation program under section 2646(d) of this title.

(H) With respect to each consultant who contributed to the management plan, the name of the consultant and one of the following statements:

(i) If the State has adopted a contractor accreditation plan under section 2646(b) of this title, a statement that the consultant is accredited under such plan.

(ii) A statement that the contractor is accredited by another State which has adopted a contractor accreditation plan under section 2646(b) of this title or is accredited pursuant to an Administrator-approved course under section 2646(c) of this title.

(I) An evaluation of resources needed to successfully complete response actions and carry out reinspection, surveillance, and operation and maintenance activities.

(2) Statement by contractor

A local educational agency may require each management plan to contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to this section and other applicable provisions of law. Such a statement may not be signed by a contractor who, in addition to preparing or assisting in preparing the management plan, also implements (or will implement) the management plan.

(3) Warning labels

(A) The regulations shall require that each local educational agency which has inspected for and discovered any asbestos-containing material with respect to a school building shall attach a warning label to any asbestos-containing material still in routine maintenance areas (such as boiler rooms) of the school building, including—

(i) friable asbestos-containing material which was responded to by a means other than removal, and

(ii) asbestos-containing material for which no response action was carried out.

(B) The warning label shall read, in print which is readily visible because of large size or bright color, as follows: **"CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."**

(4) Plan may be submitted in stages

A local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the school buildings under the authority of the agency.

(5) Public availability

A copy of the management plan developed under the regulations shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

(6) Submission to State Governor

Each plan developed under this subsection shall be submitted to the State Governor under section 2645 of this title.

(j) Changes in regulations

Changes may be made in the regulations promulgated under this section only by rule in accordance with section 553 of title 5. Any such change must protect human health and the environment.

(k) Changes in guidance document

Any change made in the "Guidance for Controlling Asbestos-Containing Material in Buildings" shall be made only by rule in accordance with section 553 of title 5, unless a regulation described in this section dealing with the same subject matter is in effect. Any such change must protect human health and the environment.

(l) Treatment of Department of Defense schools

(1) Secretary to act in lieu of Governor

In the administration of this subchapter, any function, duty, or other responsibility imposed on a Governor of a State shall be carried out by the Secretary of Defense with respect to any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) Regulations

The Secretary of Defense, in cooperation with the Administrator, shall, to the extent feasible and consistent with the national security, take such action as may be necessary to provide for the identification, inspection, and management (including abatement) of asbestos in any building used by the Department of Defense as an overseas school for dependents of members of the Armed Forces. Such identification, inspection, and management (including abatement) shall, subject to the preceding sentence, be carried out in a manner comparable to the manner in which a local educational agency is required to carry out such activities with respect to a school building under this subchapter.

(m) Waiver

The Administrator, upon request by a Governor and after notice and comment and opportunity for a public hearing in the affected State, may waive some or all of the requirements of this section and section 2644 of this title with respect to such State if it has established and is implementing a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this section and section 2644 of this title.

(Pub. L. 94–469, title II, §203, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2972; amended Pub. L. 101–637, §13, Nov. 28, 1990, 104 Stat. 4593.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (l)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

1990—Subsec. (d)(7). Pub. L. 101–637 added par. (7).

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

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

§2644. Requirements if EPA fails to promulgate regulations

(a) In general

(1) Failure to promulgate

If the Administrator fails to promulgate within the prescribed period—

(A) regulations described in section 2643(b) of this title (relating to inspection);

(B) regulations described in section 2643(c), (d), (e), (f), (g), and (i) of this title (relating to responding to asbestos); or

(C) regulations described in section 2643(h) of this title (relating to transportation and disposal);

each local educational agency shall carry out the requirements described in this section in subsection (b); subsections (c), (d), and (e); or subsection (f); respectively, in accordance with the Environmental Protection Agency's most current guidance document.

(2) Stay by court

If the Administrator has promulgated regulations described in paragraph (1)(A), (B), or (C) within the prescribed period, but the effective date of such regulations has been stayed by a court for a period of more than 30 days, a local educational agency shall carry out the pertinent requirements described in this subsection in accordance with the Environmental Protection Agency's most current guidance document.

(3) Effective period

The requirements of this section shall be in effect until such time as the Administrator promulgates the pertinent regulations or until the stay is lifted (as the case may be).

(b) Inspection

(1) Except as provided in paragraph (2), the local educational agency, within 540 days after October 22, 1986, shall conduct an inspection for asbestos-containing material, using personnel accredited under section 2646(b) or (c) of this title and laboratories accredited under section 2646(d) of this title, in each school building under its authority.

(2) The local educational agency may exclude from the inspection requirement in paragraph (1) any school building, or portion of a school building, if (A) an inspection of such school building (or portion) was completed before the date on which this section goes into effect, and (B) the inspection meets the inspection requirements of this section.

(c) Operation and maintenance

The local educational agency shall, within 720 days after October 22, 1986, develop and begin implementation of an operation and maintenance plan with respect to friable asbestos-containing material in a school building under its authority. Such plan shall provide for the education of school service and maintenance personnel about safety procedures with respect to asbestos-containing material, including friable asbestos-containing material.

(d) Management plan

(1) In general

The local educational agency shall—

(A) develop a management plan for responding to asbestos-containing material in each school building under its authority and submit such plan to the Governor under section 2645 of this title within 810 days after October 22, 1986,

(B) begin implementation of such plan within 990 days after October 22, 1986, and

(C) complete implementation of such plan in a timely fashion.

(2) Plan requirements

The management plan shall—

(A) include the elements listed in section 2643(i)(1) of this title, including an inspection statement as described in paragraph (3) of this section,[1]

(B) provide for the attachment of warning labels as described in section 2643(i)(3) of this title,

(C) be prepared in accordance with the most current guidance document,

(D) meet the standard described in paragraph (4) for actions described in that paragraph, and

(E) be submitted to the State Governor under section 2645 of this title.

(3) Inspection statement

The local educational agency shall complete an inspection statement, covering activities carried out before October 22, 1986, which meets the following requirements:

(A) The statement shall include the following information:

(i) The dates of inspection.

(ii) The name, address, and qualifications of each inspector.

(iii) A description of the specific areas inspected.

(iv) A list of the laboratories that analyzed any bulk samples of asbestos-containing material or air samples of asbestos found in any school building and a statement describing the qualifications of each laboratory.

(v) The results of the inspection.

(B) The statement shall state whether any actions were taken with respect to any asbestos-containing material found to be present, including a specific reference to whether any actions were taken in the boiler room of the building. If any such action was taken, the following items of information shall be included in the statement:

(i) The location or locations at which the action was taken.

(ii) A description of the method of action.

(iii) The qualifications of the persons who conducted the action.

(4) Standard

The ambient interior concentration of asbestos after the completion of actions described in the most current guidance document, other than the type of action described in sections 2643(f) of this title and subsection (c) of this section, shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. Either a scanning electron microscope or a transmission electron microscope shall be used to determine the ambient interior concentration. In the absence of reliable measurements, the ambient exterior concentration shall be deemed to be—

(A) less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used, and

(B) less than 0.005 fibers per cubic centimeter if a transmission electron microscope is used.

(5) Public availability

A copy of the management plan shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

(e) Building occupant protection

The local educational agency shall provide for the protection of building occupants during each phase of activity described in this section.

(f) Transportation and disposal

The local educational agency shall provide for the transportation and disposal of asbestos in accordance with the most recent version of the Environmental Protection Agency's "Asbestos Waste Management Guidance" (or any successor to such document).

(Pub. L. 94–469, title II, §204, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2977.)

[1] *So in original. Probably should be "subsection,".*

§2645. Submission to State Governor

(a) Submission

Within 720 days after October 22, 1986 (or within 810 days if there are no regulations under section 2643(i) of this title), a local educational agency shall submit a management plan developed pursuant to regulations promulgated under section 2643(i) of this title (or under section 2644(d) of this title if there are no regulations) to the Governor of the State in which the local educational agency is located.

(b) Governor requirements

Within 360 days after October 22, 1986, the Governor of each State—

(1) shall notify local educational agencies in the State of where to submit their management plans under this section, and

(2) may establish administrative procedures for reviewing management plans submitted under this section.

If the Governor establishes procedures under paragraph (2), the Governor shall designate to carry out the reviews those State officials who are responsible for implementing environmental protection or other public health programs, or with authority over asbestos programs, in the State.

(c) Management plan review

(1) Review of plan

The Governor may disapprove a management plan within 90 days after the date of receipt of the plan if the plan—

(A) does not conform with the regulations under section 2643(i) of this title (or with section 2644(d) of this title if there are no regulations),

(B) does not assure that contractors who are accredited pursuant to this subchapter will be used to carry out the plan, or

(C) does not contain a response action schedule which is reasonable and timely, taking into account circumstances relevant to the speed at which the friable asbestos-containing material in the school buildings under the local educational agency's authority should be responded to, including human exposure to the asbestos while the friable asbestos-containing material remains in the school building, and the ability of the local educational agency to continue to provide educational services to the community.

(2) Revision of plan

If the State Governor disapproves a plan, the State Governor shall explain in writing to the local educational agency the reasons why the plan was disapproved and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of disapproval of its plan, the local educational agency shall revise the plan to conform with the State Governor's suggested changes. The Governor may extend the 30-day period for not more than 90 days.

(d) Deferral of submission

(1) Request for deferral

A local educational agency may request a deferral, to May 9, 1989, of the deadline under subsection (a). Upon approval of such a request, the deadline under subsection (a) is deferred until May 9, 1989, for the local educational agency which submitted the request. Such a request may cover one or more schools under the authority of the agency and shall include a list of all the

schools covered by the request. A local educational agency shall file any such request with the State Governor by October 12, 1988, and shall include with the request either of the following statements:

(A) A statement—

(i) that the State in which the agency is located has requested from the Administrator, before June 1, 1988, a waiver under section 2643(m) of this title; and

(ii) that gives assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

(B) A statement, the accuracy of which is sworn to by a responsible official of the agency (by notarization or other means of certification), that includes the following with respect to each school for which a deferral is sought in the request:

(i) A statement that, in spite of the fact that the local educational agency has made a good faith effort to meet the deadline for submission of a management plan under subsection (a), the agency will not be able to meet the deadline. The statement shall include a brief explanation of the reasons why the deadline cannot be met.

(ii) A statement giving assurance that the local educational agency has made available for inspection by the public, at each school for which a deferral is sought in the request, at least one of the following documents:

(I) A solicitation by the local educational agency to contract with an accredited asbestos contractor for inspection or management plan development.

(II) A letter attesting to the enrollment of school district personnel in an Environmental Protection Agency-accredited training course for inspection and management plan development.

(III) Documentation showing that an analysis of suspected asbestos-containing material from the school is pending at an accredited laboratory.

(IV) Documentation showing that an inspection or management plan has been completed in at least one other school under the local educational agency's authority.

(iii) A statement giving assurance that the local educational agency has carried out the notification and, in the case of a public school, public meeting required by paragraph (2).

(iv) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including inspection of the school (if not completed at the time of the request) with a deadline of no later than December 22, 1988, for entering into a signed contract with an accredited asbestos contractor for inspection (unless such inspections are to be performed by school personnel), laboratory analysis of material from the school suspected of containing asbestos, and development of the management plan.

(2) Notification and public meeting

Before filing a deferral request under paragraph (1), a local educational agency shall notify affected parent, teacher, and employee organizations of its intent to file such a request. In the case of a deferral request for a public school, the local educational agency shall discuss the request at a public meeting of the school board with jurisdiction over the school, and affected parent, teacher, and employee organizations shall be notified in advance of the time and place of such meeting.

(3) Response by Governor

(A) Not later than 30 days after the date on which a Governor receives a deferral request under paragraph (1) from a local educational agency, the Governor shall respond to the local educational agency in writing by acknowledging whether the request is complete or incomplete. If the request is incomplete, the Governor shall identify in the response the items that are missing from the request.

(B) A local educational agency may correct any deficiencies in an incomplete deferral request and refile the request with the Governor. In any case in which the local educational agency decides to refile the request, the agency shall refile the request, and the Governor shall respond to such

refiled request in the manner described in subparagraph (A), no later than 15 days after the local educational agency has received a response from the Governor under subparagraph (A).

(C) Approval of a deferral request under this subsection occurs only upon the receipt by a local educational agency of a written acknowledgment from the Governor that the agency's deferral request is complete.

(4) Submission and review of plan

A local educational agency whose deferral request is approved shall submit a management plan to the Governor not later than May 9, 1989. Such management plan shall include a copy of the deferral request and the statement accompanying such request. Such management plan shall be reviewed in accordance with subsection (c), except that the Governor may extend the 30-day period for revision of the plan under subsection (c)(2) for only an additional 30 days (for a total of 60 days).

(5) Implementation of plan

The approval of a deferral request from a local educational agency shall not be considered to be a waiver or exemption from the requirement under section 2643(i) of this title for the local educational agency to begin implementation of its management plan by July 9, 1989.

(6) EPA notice

(A) Not later than 15 days after July 18, 1988, the Administrator shall publish in the Federal Register the following:

(i) A notice describing the opportunity to file a request for deferral under this subsection.

(ii) A list of the State offices (including officials (if available) in each State as designated under subsection (b)) with which deferral requests should be filed.

(B) As soon as practicable, but in no event later than 30 days, after July 18, 1988, the Administrator shall mail a notice describing the opportunity to file a request for deferral under this subsection to each local educational agency and to each State office in the list published under subparagraph (A).

(e) Status reports

(1) Not later than December 31, 1988, the Governor of each State shall submit to the Administrator a written statement on the status of management plan submissions and deferral requests by local educational agencies in the State. The statement shall be made available to local educational agencies in the State and shall contain the following:

(A) A list containing each local educational agency that submitted a management plan by October 12, 1988.

(B) A list containing each local educational agency whose deferral request was approved.

(C) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and whose deferral request was disapproved.

(D) A list containing each local educational agency that failed to submit a management plan by October 12, 1988, and did not submit a deferral request.

(2) Not later than December 31, 1989, the Governor of each State shall submit to the Administrator an updated version of the written statement submitted under paragraph (1). The statement shall be made available to local educational agencies in the State and shall contain the following:

(A) A list containing each local educational agency whose management plan was submitted and not disapproved as of October 9, 1989.

(B) A list containing each local educational agency whose management plan was submitted and disapproved, and which remains disapproved, as of October 9, 1989.

(C) A list containing each local educational agency that submitted a management plan after May 9, 1989, and before October 10, 1989.

(D) A list containing each local educational agency that failed to submit a management plan as

of October 9, 1989.

(Pub. L. 94–469, title II, §205, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2979; amended Pub. L. 100–368, §§1(a), 2, July 18, 1988, 102 Stat. 829, 831.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–368, §1(a), added subsec. (d).
Subsec. (e). Pub. L. 100–368, §2, added subsec. (e).

§2646. Contractor and laboratory accreditation

(a) Contractor accreditation

A person may not—

(1) inspect for asbestos-containing material in a school building under the authority of a local educational agency or in a public or commercial building,

(2) prepare a management plan for such a school, or

(3) design or conduct response actions, other than the type of action described in sections 2643(f) and 2644(c) of this title, with respect to friable asbestos-containing material in such a school or in a public or commercial building,

unless such person is accredited by a State under subsection (b) or is accredited pursuant to an Administrator-approved course under subsection (c).

(b) Accreditation by State

(1) Model plan

(A) Persons to be accredited

Within 180 days after October 22, 1986, the Administrator, in consultation with affected organizations, shall develop a model contractor accreditation plan for States to give accreditation to persons in the following categories:

(i) Persons who inspect for asbestos-containing material in school buildings under the authority of a local educational agency or in public or commercial buildings.

(ii) Persons who prepare management plans for such schools.

(iii) Persons who design or carry out response actions, other than the type of action described in sections 2643(f) and 2644(c) of this title, with respect to friable asbestos-containing material in such schools or in public or commercial buildings.

(B) Plan requirements

The plan shall include a requirement that any person in a category listed in paragraph (1) [1] achieve a passing grade on an examination and participate in continuing education to stay informed about current asbestos inspection and response action technology. The examination shall demonstrate the knowledge of the person in areas that the Administrator prescribes as necessary and appropriate in each of the categories. Such examinations may include requirements for knowledge in the following areas:

(i) Recognition of asbestos-containing material and its physical characteristics.

(ii) Health hazards of asbestos and the relationship between asbestos exposure and disease.

(iii) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos-containing material, friability, age, deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet response action methods.

(iv) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.

(v) Appropriate work practices and control methods, including the use of high efficiency

particle absolute vacuums, the use of amended water, and principles of negative air pressure equipment use and procedures.

(vi) Preparing a work area for response action work, including isolating work areas to prevent bystander or public exposure to asbestos, decontamination procedures, and procedures for dismantling work areas after completion of work.

(vii) Establishing emergency procedures to respond to sudden releases.

(viii) Air monitoring requirements and procedures.

(ix) Medical surveillance program requirements.

(x) Proper asbestos waste transportation and disposal procedures.

(xi) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

(2) State adoption of plan

Each State shall adopt a contractor accreditation plan at least as stringent as the model plan developed by the Administrator under paragraph (1), within 180 days after the commencement of the first regular session of the legislature of such State which is convened following the date on which the Administrator completes development of the model plan. In the case of a school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.), the Secretary of Defense shall adopt a contractor accreditation plan at least as stringent as that model.

(c) Accreditation by Administrator-approved course

(1) Course approval

Within 180 days after October 22, 1986, the Administrator shall ensure that any Environmental Protection Agency-approved asbestos training course is consistent with the model plan (including testing requirements) developed under subsection (b). A contractor may be accredited by taking and passing such a course.

(2) Treatment of persons with previous EPA asbestos training

A person who—

(A) completed an Environmental Protection Agency-approved asbestos training course before October 22, 1986, and

(B) passed (or passes) an asbestos test either before or after October 22, 1986,

may be accredited under paragraph (1) if the Administrator determines that the course and test are equivalent to the requirements of the model plan developed under subsection (b). If the Administrator so determines, the person shall be considered accredited for the purposes of this subchapter until a date that is one year after the date on which the State in which such person is employed establishes an accreditation program pursuant to subsection (b).

(3) Lists of courses

The Administrator, in consultation with affected organizations, shall publish (and revise as necessary)—

(A) a list of asbestos courses and tests in effect before October 22, 1986, which qualify for equivalency treatment under paragraph (2), and

(B) a list of asbestos courses and tests which the Administrator determines under paragraph (1) are consistent with the model plan and which will qualify a contractor for accreditation under such paragraph.

(d) Laboratory accreditation

(1) The Administrator shall provide for the development of an accreditation program for laboratories by the National Institute of Standards and Technology in accordance with paragraph (2). The Administrator shall transfer such funds as are necessary to the National Institute of Standards and Technology to carry out such program.

(2) The National Institute of Standards and Technology, upon request by the Administrator, shall,

in consultation with affected organizations—

(A) within 360 days after October 22, 1986, develop an accreditation program for laboratories which conduct qualitative and semi-quantitative analyses of bulk samples of asbestos-containing material, and

(B) within 720 days after October 22, 1986, develop an accreditation program for laboratories which conduct analyses of air samples of asbestos from school buildings under the authority of a local educational agency.

(3) A laboratory which plans to carry out any such analysis shall comply with the requirements of the accreditation program.

(e) Financial assistance contingent on use of accredited persons

(1) A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. 4014] is not eligible for such assistance unless the school, in carrying out the requirements of this subchapter—

(A) uses a person (or persons)—

(i) who is accredited by a State which has adopted an accreditation plan based on the model plan developed under subsection (b), or

(ii) who is accredited pursuant to an Administrator-approved course under subsection (c), and

(B) uses a laboratory (or laboratories) which is accredited under the program developed under subsection (d).

(2) This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 [20 U.S.C. 4011 et seq.] for activities performed after the following dates:

(A) In the case of activities performed by persons, after the date which is one year after October 22, 1986.

(B) In the case of activities performed by laboratories, after the date which is 180 days after the date on which a laboratory accreditation program is completed under subsection (d).

(f) List of EPA-approved courses

Not later than August 31, 1988, and every three months thereafter until August 31, 1991, the Administrator shall publish in the Federal Register a list of all Environmental Protection Agency-approved asbestos training courses for persons to achieve accreditation in each category described in subsection (b)(1)(A) and for laboratories to achieve accreditation. The Administrator may continue publishing such a list after August 31, 1991, at such times as the Administrator considers it useful. The list shall include the name and address of each approved trainer and, to the extent available, a list of all the geographic sites where training courses will take place. The Administrator shall provide a copy of the list to each State official on the list published by the Administrator under section 2645(d)(6) of this title and to each regional office of the Environmental Protection Agency.

(Pub. L. 94–469, title II, §206, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2980; amended Pub. L. 100–368, §3, July 18, 1988, 102 Stat. 832; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 101–637, §15(a)(1), (2), Nov. 28, 1990, 104 Stat. 4596.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (b)(2), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

The Asbestos School Hazard Abatement Act of 1984, referred to in subsec. (e)(2), is title V of Pub. L.

98–377, Aug. 11, 1984, 98 Stat. 1287, which is classified generally to subchapter V (§4011 et seq.) of chapter 52 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 4011 of Title 20 and Tables.

AMENDMENTS

1990—Subsec. (a)(1), (3). Pub. L. 101–637, §15(a)(1), inserted before comma at end "or in a public or commercial building".

Subsec. (b)(1)(A)(i), (iii). Pub. L. 101–637, §15(a)(2), inserted before period at end "or in public or commercial buildings".

1988—Subsec. (d)(1), (2). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards" wherever appearing.

Subsec. (f). Pub. L. 100–368 added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–637, §15(c), Nov. 28, 1990, 104 Stat. 4597, provided that: "This section [amending this section and section 2647 of this title and enacting provisions set out as notes under this section] shall take effect upon the expiration of the 12-month period following the date of the enactment of this Act [Nov. 28, 1990]. The Administrator may extend the effective date for a period not to exceed one year if the Administrator determines that accredited asbestos contractors are needed to perform school-site abatement required under the Asbestos Hazard Emergency Response Act [of 1986] (15 U.S.C. 2641) and such an extension is necessary to ensure effective implementation of section 203 of the Toxic Substances Control Act [15 U.S.C. 2643]."

REVISION OF MODEL CONTRACTOR ACCREDITATION PROGRAM

Pub. L. 101–637, §15(a)(3), Nov. 28, 1990, 104 Stat. 4596, provided that: "Not later than one year after the date of the enactment of this Act [Nov. 28, 1990], the Administrator of the Environmental Protection Agency shall revise the model contractor accreditation plan promulgated under section 206(b)(1) of the Toxic Substances Control Act (15 U.S.C. 2646(b)(1)) to increase the minimum number of hours of training, including additional hours of hands-on health and safety training, required for asbestos abatement workers and to make such other changes as may be necessary to implement the amendments made by paragraphs (1) and (2) [amending this section]."

EPA ADMINISTRATOR NOT EXERCISING "STATUTORY AUTHORITY" UNDER OSHA LAW IN EXERCISING AUTHORITY UNDER THIS CHAPTER

Pub. L. 101–637, §15(b), Nov. 28, 1990, 104 Stat. 4596, provided that: "In exercising any authority under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] in connection with the amendment made by subsection (a) of this section [amending this section and section 2647 of this title], the Administrator of the Environmental Protection Agency shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health."

[1] So in original. Probably should be "subparagraph (A)".

§2647. Enforcement

(a) Penalties

Any local educational agency—

(1) which fails to conduct an inspection pursuant to regulations under section 2643(b) of this title or under section 2644(b) of this title,

(2) which knowingly submits false information to the Governor regarding any inspection pursuant to regulations under section 2643(i) of this title or knowingly includes false information in any inspection statement under section 2644(d)(3) of this title,

(3) which fails to develop a management plan pursuant to regulations under section 2643(i) of this title or under section 2644(d) of this title,

(4) which carries out any activity prohibited by section 2655 of this title, or

(5) which knowingly submits false information to the Governor regarding a deferral request under section 2645(d) of this title.[1]

is liable for a civil penalty of not more than $5,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of this title. For purposes of this subsection, a "violation" means a failure to comply with respect to a single school building. The court shall order that any civil penalty collected under this subsection be used by the local educational agency for purposes of complying with this subchapter. Any portion of a civil penalty remaining unspent after compliance by a local educational agency is completed shall be deposited into the Asbestos Trust Fund established by section 4022 of title 20.

(b) Relationship to subchapter I of this chapter

A local educational agency is not liable for any civil penalty under subchapter I of this chapter for failing or refusing to comply with any rule promulgated or order issued under this subchapter.

(c) Enforcement considerations

(1) In determining the amount of a civil penalty to be assessed under subsection (a) against a local educational agency, the Administrator shall consider—

(A) the significance of the violation;

(B) the culpability of the violator, including any history of previous violations under this chapter;

(C) the ability of the violator to pay the penalty; and

(D) the ability of the violator to continue to provide educational services to the community.

(2) Any action ordered by a court in fashioning relief under section 2619 of this title shall be consistent with regulations promulgated under section 2643 of this title (or with the requirements of section 2644 of this title if there are no regulations).

(d) Citizen complaints

Any person may file a complaint with the Administrator or with the Governor of the State in which the school building is located with respect to asbestos-containing material in a school building. If the Administrator or Governor receives a complaint under this subsection containing allegations which provide a reasonable basis to believe that a violation of this chapter has occurred, the Administrator or Governor shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

(e) Citizen petitions

(1) Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a regulation or order under this subchapter.

(2) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a regulation or order under this subchapter.

(3) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(4) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with this subchapter. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial. The granting or denial of a petition under this subsection shall not affect any deadline or other requirement of this subchapter.

(f) Citizen civil actions with respect to EPA regulations

(1) Any person may commence a civil action without prior notice against the Administrator to compel the Administrator to meet the deadlines in section 2643 of this title for issuing advanced notices of proposed rulemaking, proposing regulations, and promulgating regulations. Any such action shall be brought in the district court of the United States for the District of Columbia.

(2) In any action brought under paragraph (1) in which the court finds the Administrator to be in violation of any deadline in section 2643 of this title, the court shall set forth a schedule for promulgating the regulations required by section 2643 of this title and shall order the Administrator to comply with such schedule. The court may extend any deadline (which has not already occurred) in section 2644(b), (c), or (d) of this title for a period of not more than 6 months, if the court-ordered schedule will result in final promulgation of the pertinent regulations within the extended period. Such deadline extensions may not be granted by the court beginning 720 days after October 22, 1986.

(3) Section 2619 of this title shall apply to civil actions described in this subsection, except to the extent inconsistent with this subsection.

(g) Failure to attain accreditation; penalty

Any contractor who—

(1) inspects for asbestos-containing material in a school, public or commercial building;

(2) designs or conducts response actions with respect to friable asbestos-containing material in a school, public or commercial building; or

(3) employs individuals to conduct response actions with respect to friable asbestos-containing material in a school, public or commercial building;

and who fails to obtain the accreditation under section 2646 of this title, or in the case of employees to require or provide for the accreditation required, is liable for a civil penalty of not more than $5,000 for each day during which the violation continues, unless such contractor is a direct employee of the Federal Government.

(Pub. L. 94–469, title II, §207, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2983; amended Pub. L. 100–368, §5, July 18, 1988, 102 Stat. 833; Pub. L. 101–637, §15(a)(4), Nov. 28, 1990, 104 Stat. 4596.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–637 added subsec. (g).

1988—Subsec. (a)(4), (5). Pub. L. 100–368 added pars. (4) and (5).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–637 effective upon expiration of 12-month period following Nov. 28, 1990, with provisions for extension, see section 15(c) of Pub. L. 101–637, set out as a note under section 2646 of this title.

EPA ADMINISTRATOR NOT EXERCISING "STATUTORY AUTHORITY" UNDER OSHA LAW IN EXERCISING AUTHORITY UNDER THIS CHAPTER

In exercising any authority under this chapter in connection with amendment made by Pub. L. 101–637, Administrator of Environmental Protection Agency not, for purposes of section 653(b)(1) of Title 29, Labor, to be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health, see section 15(b) of Pub. L. 101–637, set out as a note under section 2646 of this title.

[1] *So in original. The period probably should be a comma.*

§2648. Emergency authority

(a) Emergency action

(1) Authority

Whenever—

(A) the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment, and

(B) the local educational agency is not taking sufficient action (as determined by the Administrator or the Governor) to respond to the airborne asbestos or friable asbestos-containing material,

the Administrator or the Governor of a State is authorized to act to protect human health or the environment.

(2) Limitations on Governor action

The Governor of a State shall notify the Administrator within a reasonable period of time before the Governor plans to take an emergency action under this subsection. After such notification, if the Administrator takes an emergency action with respect to the same hazard, the Governor may not carry out (or continue to carry out, if the action has been started) the emergency action.

(3) Notification

The following notification shall be provided before an emergency action is taken under this subsection:

(A) In the case of a Governor taking the action, the Governor shall notify the local educational agency concerned.

(B) In the case of the Administrator taking the action, the Administrator shall notify both the local educational agency concerned and the Governor of the State in which such agency is located.

(4) Cost recovery

The Administrator or the Governor of a State may seek reimbursement for all costs of an emergency action taken under this subsection in the United States District Court for the District of Columbia or for the district in which the emergency action occurred. In any action seeking reimbursement from a local educational agency, the action shall be brought in the United States District Court for the district in which the local educational agency is located.

(b) Injunctive relief

Upon receipt of evidence that the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment—

(1) the Administrator may request the Attorney General to bring suit, or

(2) the Governor of a State may bring suit,

to secure such relief as may be necessary to respond to the hazard. The district court of the United States in the district in which the response will be carried out shall have jurisdiction to grant such relief, including injunctive relief.

(Pub. L. 94–469, title II, §208, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2985.)

§2649. State and Federal law

(a) No preemption

Nothing in this subchapter shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.

(b) Cost and damage awards

Nothing in this subchapter or any standard, regulation, or requirement promulgated pursuant to this subchapter shall be construed or interpreted to preclude any court from awarding costs and damages associated with the abatement, including the removal, of asbestos-containing material, or a portion of such costs, at any time prior to the actual date on which such material is removed.

(c) State may establish more requirements

Nothing in this subchapter shall be construed or interpreted as preempting a State from establishing any additional liability or more stringent requirements with respect to asbestos in school buildings within such State.

(d) No Federal cause of action

Nothing in this subchapter creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

(e) Intent of Congress

It is not the intent of Congress that this subchapter or rules, regulations, or orders issued pursuant to this subchapter be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to asbestos. This subsection does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State law with respect to the admission into evidence or any other use of this subchapter or rules, regulations, or orders issued pursuant to this subchapter.

(Pub. L. 94–469, title II, §209, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2986.)

§2650. Asbestos contractors and local educational agencies

(a) Study

(1) General requirement

The Administrator shall conduct a study on the availability of liability insurance and other forms of assurance against financial loss which are available to local educational agencies and asbestos contractors with respect to actions required under this subchapter. Such study shall examine the following:

(A) The extent to which liability insurance and other forms of assurance against financial loss are available to local educational agencies and asbestos contractors.

(B) The extent to which the cost of insurance or other forms of assurance against financial loss has increased and the extent to which coverage has become less complete.

(C) The extent to which any limitation in the availability of insurance or other forms of assurance against financial loss is the result of factors other than standards of liability in applicable law.

(D) The extent to which the existence of the regulations required by subsections (c) and (d) of section 2643 of this title and the accreditation of contractors under section 2646 of this title has affected the availability or cost of insurance or other forms of assurance against financial loss.

(E) The extent to which any limitation on the availability of insurance or other forms of assurance against financial loss is inhibiting inspections for asbestos-containing material or the development or implementation of management plans under this subchapter.

(F) Identification of any other impediments to the timely completion of inspections or the development and implementation of management plans under this subchapter.

(2) Interim report

Not later than April 1, 1988, the Administrator shall submit to the Congress an interim report on the progress of the study required by this subsection, along with preliminary findings based on

information collected to that date.

(3) Final report

Not later than October 1, 1990, the Administrator shall submit to the Congress a final report on the study required by this subsection, including final findings based on the information collected.

(b) State action

On the basis of the interim report or the final report of the study required by subsection (a), a State may enact or amend State law to establish or modify a standard of liability for local educational agencies or asbestos contractors with respect to actions required under this subchapter.

(Pub. L. 94–469, title II, §210, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2986.)

§2651. Public protection

(a) Public protection

No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this subchapter to any other person, including a State or the Federal Government.

(b) Labor Department review

Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 660(c) of title 29.

(Pub. L. 94–469, title II, §211, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2987.)

§2652. Asbestos Ombudsman

(a) Appointment

The Administrator shall appoint an Asbestos Ombudsman, who shall carry out the duties described in subsection (b).

(b) Duties

The duties of the Asbestos Ombudsman are—

(1) to receive complaints, grievances, and requests for information submitted by any person with respect to any aspect of this subchapter,

(2) to render assistance with respect to the complaints, grievances, and requests received, and

(3) to make such recommendations to the Administrator as the Ombudsman considers appropriate.

(Pub. L. 94–469, title II, §212, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2987.)

§2653. EPA study of asbestos-containing material in public buildings

Within 360 days after October 22, 1986, the Administrator shall conduct and submit to the Congress the results of a study which shall—

(1) assess the extent to which asbestos-containing materials are present in public and commercial buildings;

(2) assess the condition of asbestos-containing material in commercial buildings and the likelihood that persons occupying such buildings, including service and maintenance personnel, are, or may be, exposed to asbestos fibers;

(3) consider and report on whether public and commercial buildings should be subject to the same inspection and response action requirements that apply to school buildings;

(4) assess whether existing Federal regulations adequately protect the general public, particularly abatement personnel, from exposure to asbestos during renovation and demolition of such buildings; and

(5) include recommendations that explicitly address whether there is a need to establish standards for, and regulate asbestos exposure in, public and commercial buildings.

(Pub. L. 94–469, title II, §213, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2987.)

§2654. Transitional rules

Any regulation of the Environmental Protection Agency under subchapter I which is inconsistent with this subchapter shall not be in effect after October 22, 1986. Any advanced notice of proposed rulemaking, any proposed rule, and any regulation of the Environmental Protection Agency in effect before October 22, 1986, which is consistent with the regulations required under section 2643 of this title shall remain in effect and may be used to meet the requirements of section 2643 of this title, except that any such regulation shall be enforced under this chapter.

(Pub. L. 94–469, title II, §214, as added Pub. L. 99–519, §2, Oct. 22, 1986, 100 Stat. 2988.)

§2655. Worker protection

(a) Prohibition on certain activities

Until the local educational agency with authority over a school has submitted a management plan (for the school) which the State Governor has not disapproved as of the end of the period for review and revision of the plan under section 2645 of this title, the local educational agency may not do either of the following in the school:

(1) Perform, or direct an employee to perform, renovations or removal of building materials, except emergency repairs, in the school, unless—

(A) the school is carrying out work under a grant awarded under section 4014 of title 20; or

(B) an inspection that complies with the requirements of regulations promulgated under section 2643 of this title has been carried out in the school and the agency complies with the following sections of title 40 of the Code of Federal Regulations:

(i) Paragraphs (g), (h), and (i) of section 763.90 (response actions).

(ii) Appendix D to subpart E of part 763 (transport and disposal of asbestos waste).

(2) Perform, or direct an employee to perform, operations and maintenance activities in the school, unless the agency complies with the following sections of title 40 of the Code of Federal Regulations:

(A) Section 763.91 (operations and maintenance), including appendix B to subpart E of part 763.

(B) Paragraph (a)(2) of section 763.92 (training and periodic surveillance).

(b) Employee training and equipment

Any school employee who is directed to conduct emergency repairs involving any building material containing asbestos or suspected of containing asbestos, or to conduct operations and maintenance activities, in a school—

(1) shall be provided the proper training to safely conduct such work in order to prevent potential exposure to asbestos; and

(2) shall be provided the proper equipment and allowed to follow work practices that are necessary to safely conduct such work in order to prevent potential exposure to asbestos.

(c) "Emergency repair" defined

For purposes of this section, the term "emergency repair" means a repair in a school building that was not planned and was in response to a sudden, unexpected event that threatens either—

(1) the health or safety of building occupants; or
(2) the structural integrity of the building.

(Pub. L. 94–469, title II, §215, as added Pub. L. 100–368, §4(a), July 18, 1988, 102 Stat. 832.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–368, §4(c), July 18, 1988, 102 Stat. 833, provided that: "Section 215 of the Toxic Substances Control Act [this section], as added by subsection (a), shall take effect on October 12, 1988."

§2656. Training grants

(a) Grants

The Administrator is authorized to award grants under this section to nonprofit organizations that demonstrate experience in implementing and operating health and safety asbestos training and education programs for workers who are or will be engaged in asbestos-related activities (including State and local governments, colleges and universities, joint labor-management trust funds, and nonprofit government employee organizations) to establish and, or, operate asbestos training programs on a not-for-profit basis. Applications for grants under this subsection shall be submitted in such form and manner, and contain such information, as the Administrator prescribes.

(b) Authorization

Of such sums as are authorized to be appropriated pursuant to section 4021(a) of title 20 for the fiscal years 1991, 1992, 1993, 1994, and 1995, not more than $5,000,000 are authorized to be appropriated to carry out this section in each such fiscal year.

(Pub. L. 94–469, title II, §216, as added Pub. L. 101–637, §16(a)(1), Nov. 28, 1990, 104 Stat. 4597.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 101–637, §16(b), Nov. 28, 1990, 104 Stat. 4598, provided that: "Section 216 of the Toxic Substances Control Act [this section], as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 28, 1990]."

SUBCHAPTER III—INDOOR RADON ABATEMENT

§2661. National goal

The national long-term goal of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings.

(Pub. L. 94–469, title III, §301, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2755.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPORT ON RECOMMENDED POLICY FOR DEALING WITH RADON IN ASSISTED HOUSING

Pub. L. 100–628, title X, §1091, Nov. 7, 1988, 102 Stat. 3283, provided that:
"(a) PURPOSES.—The purposes of this section are—
"(1) to require the Department of Housing and Urban Development to develop an effective departmental policy for dealing with radon contamination that utilizes any Environmental Protection

Agency guidelines and standards to ensure that occupants of housing covered by this section are not exposed to hazardous levels of radon; and

"(2) to require the Department of Housing and Urban Development to assist the Environmental Protection Agency in reducing radon contamination.

"(b) PROGRAM.—

"(1) APPLICABILITY.—The housing covered by this section is—

"(A) multifamily housing owned by the Department of Housing and Urban Development;

"(B) public housing and Indian housing assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.];

"(C) housing receiving project-based assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f];

"(D) housing assisted under section 236 of the National Housing Act [12 U.S.C. 1715z–1]; and

"(E) housing assisted under section 221(d)(3) of the National Housing Act [12 U.S.C. 1715l(d)(3)].

"(2) IN GENERAL.—The Secretary of Housing and Urban Development shall develop and recommend to the Congress a policy for dealing with radon contamination that specifies programs for education, research, testing, and mitigation of radon hazards in housing covered by this section.

"(3) STANDARDS.—In developing the policy, the Secretary shall utilize any guidelines, information, or standards established by the Environmental Protection Agency for—

"(A) testing residential and nonresidential structures for radon;

"(B) identifying elevated radon levels;

"(C) identifying when remedial actions should be taken; and

"(D) identifying geographical areas that are likely to have elevated levels of radon.

"(4) COORDINATION.—In developing the policy, the Secretary shall coordinate the efforts of the Department of Housing and Urban Development with the Environmental Protection Agency, and other appropriate Federal agencies, and shall consult with State and local governments, the housing industry, consumer groups, health organizations, appropriate professional organizations, and other appropriate experts.

"(5) REPORT.—The Secretary shall submit a report to the Congress within 1 year after the date of the enactment of this Act [Nov. 7, 1988] that describes the Secretary's recommended policy for dealing with radon contamination and the Secretary's reasons for recommending such policy. The report shall include an estimate of the housing covered by this section that is likely to have hazardous levels of radon.

"(c) COOPERATION WITH ENVIRONMENTAL PROTECTION AGENCY.—Within 6 months after the date of the enactment of this Act [Nov. 7, 1988], the Secretary and the Administrator of the Environmental Protection Agency shall enter into a memorandum of understanding describing the Secretary's plan to assist the Administrator in carrying out the Environmental Protection Agency's authority to assess the extent of radon contamination in the United States and assist in the development of measures to avoid and reduce radon contamination.

"(d) DEFINITIONS.—For purposes of this section:

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

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

"(e) AUTHORIZATION.—Funds available for housing covered by this section shall be available to carry out this section with respect to such housing."

§2662. Definitions

For purposes of this subchapter:

(1) The term "local educational agency" means—

(A) any local educational agency as defined in section 7801 of title 20;

(B) the owner of any nonprofit elementary or secondary school building; and

(C) the governing authority of any school operated pursuant to section 241 of title 20, as in effect before enactment of the Improving America's Schools Act of 1994, or successor authority, relating to impact aid for children who reside on Federal property.

(2) The term "nonprofit elementary or secondary school" has the meaning given such term by

section 2642(8) [1] of this title.

(3) The term "radon" means the radioactive gaseous element and its short-lived decay products produced by the disintegration of the element radium occurring in air, water, soil, or other media.

(4) The term "school building" has the meaning given such term by section 2642(13) of this title.

(Pub. L. 94–469, title III, §302, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2755; amended Pub. L. 103–382, title III, §391(c)(4), 392(b)(2), Oct. 20, 1994, 108 Stat. 4022, 4026; Pub. L. 107–110, title X, §1076(f)(2), Jan. 8, 2002, 115 Stat. 2091; Pub. L. 114–95, title IX, §9215(xxx)(2), Dec. 10, 2015, 129 Stat. 2191.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 241 of title 20, as in effect before enactment of the Improving America's Schools Act of 1994, referred to in par. (1)(C), means section 241 of Title 20, Education, prior to its repeal by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965.

AMENDMENTS

2015—Par. (1)(A). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2002—Par. (1)(A). Pub. L. 107–110 substituted "7801" for "8801".

1994—Par. (1)(A). Pub. L. 103–382, §391(c)(4)(A), made technical amendment to reference to section 8801 of title 20 to reflect change in reference to corresponding section of original act.

Par. (1)(C). Pub. L. 103–382 directed two separate amendments of par. (1)(C), the first, by section 391(c)(4)(B) of Pub. L. 103–382, directed the insertion of "or successor authority" immediately after "section 241 of title 20", the second, by section 392(b)(2) of Pub. L. 103–382, directed the insertion (without reference to the first amendment) of "as in effect before enactment of the Improving America's Schools Act of 1994" immediately after "section 241 of title 20,". Literal execution of the second amendment was not possible, as "section 241 of title 20," was amended to read "section 241 of title 20 or successor authority," by the first amendment. Commas were editorially inserted before and after the phrase added by the second amendment and it was inserted immediately after "section 241 of title 20" to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

[1] So in original. Probably should be section "2642(9)".

§2663. EPA citizen's guide

(a) Publication

In order to make continuous progress toward the long-term goal established in section 2661 of this title, the Administrator of the Environmental Protection Agency shall, not later than June 1, 1989, publish and make available to the public an updated version of its document titled "A Citizen's Guide to Radon". The Administrator shall revise and republish the guide as necessary thereafter.

(b) Information included

(1) Action levels

The updated citizen's guide published as provided in subsection (a) shall include a description of a series of action levels indicating the health risk associated with different levels of radon exposure.

(2) Other information

The updated citizen's guide shall also include information with respect to each of the following:

(A) The increased health risk associated with the exposure of potentially sensitive populations to different levels of radon.

(B) The increased health risk associated with the exposure to radon of persons engaged in potentially risk-increasing behavior.

(C) The cost and technological feasibility of reducing radon concentrations within existing and new buildings.

(D) The relationship between short-term and long-term testing techniques and the relationship between (i) measurements based on both such techniques, and (ii) the actions [1] levels set forth as provided in paragraph (1).

(E) Outdoor radon levels around the country.

(Pub. L. 94–469, title III, §303, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2755.)

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

§2664. Model construction standards and techniques

The Administrator of the Environmental Protection Agency shall develop model construction standards and techniques for controlling radon levels within new buildings. To the maximum extent possible, these standards and techniques should be developed with the assistance of organizations involved in establishing national building construction standards and techniques. The Administrator shall make a draft of the document containing the model standards and techniques available for public review and comment. The model standards and techniques shall provide for geographic differences in construction types and materials, geology, weather, and other variables that may affect radon levels in new buildings. The Administrator shall make final model standards and techniques available to the public by June 1, 1990. The Administrator shall work to ensure that organizations responsible for developing national model building codes, and authorities which regulate building construction within States or political subdivisions within States, adopt the Agency's model standards and techniques.

(Pub. L. 94–469, title III, §304, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2756.)

§2665. Technical assistance to States for radon programs

(a) Required activities

The Administrator (or another Federal department or agency designated by the Administrator) shall develop and implement activities designed to assist State radon programs. These activities may include, but are not limited to, the following:

(1) Establishment of a clearinghouse of radon related information, including mitigation studies, public information materials, surveys of radon levels, and other relevant information.

(2) Operation of a voluntary proficiency program for rating the effectiveness of radon measurement devices and methods, the effectiveness of radon mitigation devices and methods,

and the effectiveness of private firms and individuals offering radon-related architecture, design, engineering, measurement, and mitigation services. The proficiency program under this subparagraph shall be in operation within one year after October 28, 1988.

(3) Design and implementation of training seminars for State and local officials and private and professional firms dealing with radon and addressing topics such as monitoring, analysis, mitigation, health effects, public information, and program design.

(4) Publication of public information materials concerning radon health risks and methods of radon mitigation.

(5) Operation of cooperative projects between the Environmental Protection Agency's Radon Action Program and the State's radon program. Such projects shall include the Home Evaluation Program, in which the Environmental Protection Agency evaluates homes and States demonstrate mitigation methods in these homes. To the maximum extent practicable, consistent with the objectives of the evaluation and demonstration, homes of low-income persons should be selected for evaluation and demonstration.

(6) Demonstration of radon mitigation methods in various types of structures and in various geographic settings and publication of findings. In the case of demonstration of such methods in homes, the Administrator should select homes of low-income persons, to the maximum extent practicable and consistent with the objectives of the demonstration.

(7) Establishment of a national data base with data organized by State concerning the location and amounts of radon.

(8) Development and demonstration of methods of radon measurement and mitigation that take into account unique characteristics, if any, of nonresidential buildings housing child care facilities.

(b) Discretionary assistance

Upon request of a State, the Administrator (or another Federal department or agency designated by the Administrator) may provide technical assistance to such State in development or implementation of programs addressing radon. Such assistance may include, but is not limited to, the following:

(1) Design and implementation of surveys of the location and occurrence of radon within a State.

(2) Design and implementation of public information and education programs.

(3) Design and implementation of State programs to control radon in existing or new structures.

(4) Assessment of mitigation alternatives in unusual or unconventional structures.

(5) Design and implementation of methods for radon measurement and mitigation for nonresidential buildings housing child care facilities.

(c) Information provided to professional organizations

The Administrator, or another Federal department or agency designated by the Administrator, shall provide appropriate information concerning technology and methods of radon assessment and mitigation to professional organizations representing private firms involved in building design, engineering, and construction.

(d) Proficiency rating program and training seminar

(1) Authorization

There is authorized to be appropriated not more than $1,500,000 for the purposes of initially establishing the proficiency rating program under subsection (a)(2) and the training seminars under subsection (a)(3).

(2) Charge imposed

To cover the operating costs of such proficiency rating program and training seminars, the Administrator shall impose on persons applying for a proficiency rating and on private and professional firms participating in training seminars such charges as may be necessary to defray the costs of the program or seminars. No such charge may be imposed on any State or local government.

(3) Special account

Funds derived from the charges imposed under paragraph (2) shall be deposited in a special account in the Treasury. Amounts in the special account are authorized to be appropriated only for purposes of administering such proficiency rating program or training seminars or for reimbursement of funds appropriated to the Administrator to initially establish such program or seminars.

(4) Reimbursement of general fund

During the first three years of the program and seminars, the Administrator shall make every effort, consistent with the goals and successful operation of the program and seminars, to set charges imposed under paragraph (2) so that an amount in excess of operation costs is collected. Such excess amount shall be used to reimburse the General Fund of the Treasury for the full amount appropriated to initially establish the program and seminars.

(5) Research

The Administrator shall, in conjunction with other Federal agencies, conduct research to develop, test, and evaluate radon and radon progeny measurement methods and protocols. The purpose of such research shall be to assess the ability of those methods and protocols to accurately assess exposure to radon progeny. Such research shall include—

(A) conducting comparisons among radon and radon progeny measurement techniques;

(B) developing measurement protocols for different building types under varying operating conditions; and

(C) comparing the exposures estimated by stationary monitors and protocols to those measured by personal monitors, and issue guidance documents that—

(i) provide information on the results of research conducted under this paragraph; and

(ii) describe model State radon measurement and mitigation programs.

(6) Mandatory proficiency testing program study

(A) The Administrator shall conduct a study to determine the feasibility of establishing a mandatory proficiency testing program that would require that—

(i) any product offered for sale, or device used in connection with a service offered to the public, for the measurement of radon meets minimum performance criteria; and

(ii) any operator of a device, or person employing a technique, used in connection with a service offered to the public for the measurement of radon meets a minimum level of proficiency.

(B) The study shall also address procedures for—

(i) ordering the recall of any product sold for the measurement of radon which does not meet minimum performance criteria;

(ii) ordering the discontinuance of any service offered to the public for the measurement of radon which does not meet minimum performance criteria; and

(iii) establishing adequate quality assurance requirements for each company offering radon measurement services to the public to follow.

The study shall identify enforcement mechanisms necessary to the success of the program. The Administrator shall report the findings of the study with recommendations to Congress by March 1, 1991.

(7) User fee

In addition to any charge imposed pursuant to paragraph (2), the Administrator shall collect user fees from persons seeking certification under the radon proficiency program in an amount equal to $1,500,000 to cover the Environmental Protection Agency's cost of conducting research pursuant to paragraph (5) for each of the fiscal years 1991, 1992, 1993, 1994, and 1995. Such funds shall be deposited in the account established pursuant to paragraph (3).

(e) Authorization

(1) There is authorized to be appropriated for the purposes of carrying out sections 2663, 2664, and 2665 of this title an amount not to exceed $3,000,000 for each of fiscal years 1989, 1990, and 1991.

(2) No amount appropriated under this subsection may be used by the Environmental Protection Agency to administer the grant program under section 2666 of this title.

(3) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under subsection (a)(2).

(Pub. L. 94–469, title III, §305, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2756; amended Pub. L. 101–508, title X, §10202, Nov. 5, 1990, 104 Stat. 1388–393; Pub. L. 104–66, title II, §2021(l), Dec. 21, 1995, 109 Stat. 728.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsecs. (d) to (f). Pub. L. 104–66 redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: "Within 9 months after October 28, 1988, and annually thereafter, the Administrator shall submit to Congress a plan identifying assistance to be provided under this section and outlining personnel and financial resources necessary to implement this section. Prior to submission to Congress, this plan shall be reviewed by the advisory groups provided for in section 403(c) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 7401 note)."

1990—Subsec. (e)(5) to (7). Pub. L. 101–508 added pars. (5) to (7).

§2666. Grant assistance to States for radon programs

(a) In general

For each fiscal year, upon application of the Governor of a State, the Administrator may make a grant, subject to such terms and conditions as the Administrator considers appropriate, under this section to the State for the purpose of assisting the State in the development and implementation of programs for the assessment and mitigation of radon.

(b) Application

An application for a grant under this section in any fiscal year shall contain such information as the Administrator shall require, including each of the following:

(1) A description of the seriousness and extent of radon exposure in the State.

(2) An identification of the State agency which has the primary responsibility for radon programs and which will receive the grant, a description of the roles and responsibilities of the lead State agency and any other State agencies involved in radon programs, and description of the roles and responsibilities of any municipal, district, or areawide organization involved in radon programs.

(3) A description of the activities and programs related to radon which the State proposes in such year.

(4) A budget specifying Federal and State funding of each element of activity of the grant application.

(5) A 3-year plan which outlines long range program goals and objectives, tasks necessary to achieve them, and resource requirements for the entire 3-year period, including anticipated State funding levels and desired Federal funding levels. This clause shall apply only for the initial year in which a grant application is made.

(c) Eligible activities

Activities eligible for grant assistance under this section are the following:

(1) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as, among others, public buildings, school buildings, high-risk residential construction types).

(2) Development of public information and educational materials concerning radon assessment, mitigation, and control programs.

(3) Implementation of programs to control radon in existing and new structures.

(4) Purchase by the State of radon measurement equipment or devices.

(5) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment.

(6) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees.

(7) Payment of general overhead and program administration costs.

(8) Development of a data storage and management system for information concerning radon occurrence, levels, and programs.

(9) Payment of costs of demonstration of radon mitigation methods and technologies as approved by the Administrator, including State participation in the Environmental Protection Agency Home Evaluation Program.

(10) A toll-free radon hotline to provide information and technical assistance.

(d) Preference to certain States

Beginning in fiscal year 1991, the Administrator shall give a preference for grant assistance under this section to States that have made reasonable efforts to ensure the adoption, by the authorities which regulate building construction within that State or political subdivisions within States, of the model construction standards and techniques for new buildings developed under section 2664 of this title.

(e) Priority activities and projects

The Administrator shall support eligible activities contained in State applications with the full amount of available funds. In the event that State applications for funds exceed the total funds available in a fiscal year, the Administrator shall give priority to activities or projects proposed by States based on each of the following criteria:

(1) The seriousness and extent of the radon contamination problem to be addressed.

(2) The potential for the activity or project to bring about reduction in radon levels.

(3) The potential for development of innovative radon assessment techniques, mitigation measures as approved by the Administrator, or program management approaches which may be of use to other States.

(4) Any other uniform criteria that the Administrator deems necessary to promote the goals of the grant program and that the Administrator provides to States before the application process.

(f) Federal share

The Federal share of the cost of radon program activities implemented with Federal assistance under this section in any fiscal year shall not exceed 75 percent of the costs incurred by the State in implementing such program in the first year of a grant to such State, 60 percent in the second year, and 50 percent in the third year. Federal assistance shall be made on the condition that the non-Federal share is provided from non-Federal funds.

(g) Assistance to local governments

States may, at the Governor's discretion, use funds from grants under this section to assist local governments in implementation of activities eligible for assistance under paragraphs (2), (3), and (6) of subsection (c).

(h) Information

(1) The Administrator may request such information, data, and reports developed by the State as he considers necessary to make the determination of continuing eligibility under this section.

(2) Any State receiving funds under this section shall provide to the Administrator all radon-related information generated in its activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(3) Any State receiving funds under this section shall maintain, and make available to the public, a

list of firms and individuals within the State that have received a passing rating under the Environmental Protection Agency proficiency rating program referred to in section 2665(a)(2) of this title. The list shall also include the address and phone number of such firms and individuals, together with the proficiency rating received by each. The Administrator shall make such list available to the public at appropriate locations in each State which does not receive funds under this section unless the State assumes such responsibility.

(i) Limitations

(1) No grant may be made under this section in any fiscal year to a State which in the preceding fiscal year received a grant under this section unless the Administrator determines that such State satisfactorily implemented the activities funded by the grant in such preceding fiscal year.

(2) The costs of implementing paragraphs (4) and (9) of subsection (c) shall not in the aggregate exceed 50 percent of the amount of any grant awarded under this section to a State in a fiscal year. In implementing such paragraphs, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give a preference to low-income persons.

(3) The costs of general overhead and program administration under subsection (c)(7) shall not exceed 25 percent of the amount of any grant awarded under this section to a State in a fiscal year.

(4) A State may use funds received under this section for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(j) Authorization

(1) There is authorized to be appropriated for grant assistance under this section an amount not to exceed $10,000,000 for each of fiscal years 1989, 1990, and 1991.

(2) There is authorized to be appropriated for the purpose of administering the grant program under this section such sums as may be necessary for each of such fiscal years.

(3) Notwithstanding any other provision of this section, not more than 10 percent of the amount appropriated to carry out this section may be used to make grants to any one State.

(4) Funds not obligated to States in the fiscal year for which funds are appropriated under this section shall remain available for obligation during the next fiscal year.

(5) No amount appropriated under this subsection may be used to cover the costs of the proficiency rating program under section 2665(a)(2) of this title.

(Pub. L. 94–469, title III, §306, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2758.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

FEDERAL SHARE OF COST

Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 531, provided in part that: "Beginning in fiscal year 2006 and thereafter, and notwithstanding section 306 of the Toxic Substances Control Act [15 U.S.C. 2666], the Federal share of the cost of radon program activities implemented with Federal assistance under section 306 shall not exceed 60 percent in the third and subsequent grant years."

§2667. Radon in schools

(a) Study of radon in schools

(1) Authority

The Administrator shall conduct a study for the purpose of determining the extent of radon contamination in the Nation's school buildings.

(2) List of high probability areas

In carrying out such study, the Administrator shall identify and compile a list of areas within the United States which the Administrator determines have a high probability of including schools which have elevated levels of radon.

(3) Basis of list

In compiling such list, the Administrator shall make such determinations on the basis of, among other things, each of the following:

(A) Geological data.

(B) Data on high radon levels in homes and other structures nearby any such school.

(C) Physical characteristics of the school buildings.

(4) Survey

In conducting such study the Administrator shall design a survey which when completed allows Congress to characterize the extent of radon contamination in schools in each State. The survey shall include testing from a representative sample of schools in each high-risk area identified in paragraph (1) and shall include additional testing, to the extent resources are available for such testing. The survey also shall include any reliable testing data supplied by States, schools, or other parties.

(5) Assistance

(A) The Administrator shall make available to the appropriate agency of each State, as designated by the Governor of such State, a list of high risk areas within each State, including a delineation of such areas and any other data available to the Administrator for schools in that State. To assist such agencies, the Administrator also shall provide guidance and data detailing the risks associated with high radon levels, technical guidance and related information concerning testing for radon within schools, and methods of reducing radon levels.

(B) In addition to the assistance authorized by subparagraph (A), the Administrator is authorized to make available to the appropriate agency of each State, as designated by the Governor of such State, devices suitable for use by such agencies in conducting tests for radon within the schools under the jurisdiction of any such State agency. The Administrator is authorized to make available to such agencies the use of laboratories of the Environmental Protection Agency, or to recommend laboratories, to evaluate any such devices for the presence of radon levels.

(6) Diagnostic and remedial efforts

The Administrator is authorized to select, from high-risk areas identified in paragraph (2), school buildings for purposes of enabling the Administrator to undertake diagnostic and remedial efforts to reduce the levels of radon in such school buildings. Such diagnostic and remedial efforts shall be carried out with a view to developing technology and expertise for the purpose of making such technology and expertise available to any local educational agency and the several States.

(7) Status report

On or before October 1, 1989, the Administrator shall submit to the Congress a status report with respect to action taken by the Administrator in conducting the study required by this section, including the results of the Administrator's diagnostic and remedial work. On or before October 1, 1989, the Administrator shall submit a final report setting forth the results of the study conducted pursuant to this section, including the results of the Administrator's diagnostic and remedial work, and the recommendations of the Administrator.

(b) Authorization

For the purpose of carrying out the provisions of paragraph (6) of subsection (a), there are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary. For the purpose of carrying out the provisions of this section other than such paragraph (6), there are authorized to be appropriated such sums, not to exceed $1,000,000, as may be necessary.

(Pub. L. 94–469, title III, §307, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2761.)

§2668. Regional radon training centers

(a) Funding program

Upon application of colleges, universities, institutions of higher learning, or consortia of such institutions, the Administrator may make a grant or cooperative agreement, subject to such terms and conditions as the Administrator considers appropriate, under this section to the applicant for the purpose of establishing and operating a regional radon training center.

(b) Purpose of centers

The purpose of a regional radon training center is to develop information and provide training to Federal and State officials, professional and private firms, and the public regarding the health risks posed by radon and demonstrated methods of radon measurement and mitigation.

(c) Applications

Any colleges, universities, institutions of higher learning or consortia of such institutions may submit an application for funding under this section. Such applications shall be submitted to the Administrator in such form and containing such information as the Administrator may require.

(d) Selection criteria

The Administrator shall support at least 3 eligible applications with the full amount of available funds. The Administrator shall select recipients of funding under this section to ensure that funds are equitably allocated among regions of the United States, and on the basis of each of the following criteria:

(1) The extent to which the applicant's program will promote the purpose described in subsection (b).

(2) The demonstrated expertise of the applicant regarding radon measurement and mitigation methods and other radon-related issues.

(3) The demonstrated expertise of the applicant in radon training and in activities relating to information development and dissemination.

(4) The seriousness of the radon problem in the region.

(5) The geographical coverage of the proposed center.

(6) Any other uniform criteria that the Administrator deems necessary to promote the purpose described in subsection (b) and that the Administrator provides to potential applicants prior to the application process.

(e) Termination of funding

No funding may be given under this section in any fiscal year to an applicant which in the preceding fiscal year received funding under this section unless the Administrator determines that the recipient satisfactorily implemented the activities that were funded in the preceding year.

(f) Authorization

There is authorized to be appropriated to carry out the program under this section not to exceed $1,000,000 for each of fiscal years 1989, 1990, and 1991.

(Pub. L. 94–469, title III, §308, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2762.)

§2669. Study of radon in Federal buildings

(a) Study requirement

The head of each Federal department or agency that owns a Federal building shall conduct a study for the purpose of determining the extent of radon contamination in such buildings. Such study shall include, in the case of a Federal building using a nonpublic water source (such as a well or other groundwater), radon contamination of the water.

(b) High-risk Federal buildings

(1) The Administrator shall identify and compile a list of areas within the United States which the Administrator, in consultation with Federal departments and agencies, determines have a high

probability of including Federal buildings which have elevated levels of radon.

(2) In compiling such list, the Administrator shall make such determinations on the basis of, among other things, the following:

(A) Geological data.

(B) Data on high radon levels in homes and other structures near any such Federal building.

(C) Physical characteristics of the Federal buildings.

(c) Study designs

Studies required under subsection (a) shall be based on design criteria specified by the Administrator. The head of each Federal department or agency conducting such a study shall submit, not later than July 1, 1989, a study design to the Administrator for approval. The study design shall follow the most recent Environmental Protection Agency guidance documents, including "A Citizen's Guide to Radon"; the "Interim Protocol for Screening and Follow Up: Radon and Radon Decay Products Measurements"; the "Interim Indoor Radon & Radon Decay Product Measurement Protocol"; and any other recent guidance documents. The study design shall include testing data from a representative sample of Federal buildings in each high-risk area identified in subsection (b). The study design also shall include additional testing data to the extent resources are available, including any reliable data supplied by Federal agencies, States, or other parties.

(d) Information on risks and testing

(1) The Administrator shall provide to the departments or agencies conducting studies under subsection (a) the following:

(A) Guidance and data detailing the risks associated with high radon levels.

(B) Technical guidance and related information concerning testing for radon within Federal buildings and water supplies.

(C) Technical guidance and related information concerning methods for reducing radon levels.

(2) In addition to the assistance required by paragraph (1), the Administrator is authorized to make available, on a cost reimbursable basis, to the departments or agencies conducting studies under subsection (a) devices suitable for use by such departments or agencies in conducting tests for radon within Federal buildings. For the purpose of assisting such departments or agencies in evaluating any such devices for the presence of radon levels, the Administrator is authorized to recommend laboratories or to make available to such departments or agencies, on a cost reimbursable basis, the use of laboratories of the Environmental Protection Agency.

(e) Study deadline

Not later than June 1, 1990, the head of each Federal department or agency conducting a study under subsection (a) shall complete the study and provide the study to the Administrator.

(f) Report to Congress

Not later than October 1, 1990, the Administrator shall submit a report to the Congress describing the results of the studies conducted pursuant to subsection (a).

(Pub. L. 94–469, title III, §309, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2763.)

§2670. Regulations

The Administrator is authorized to issue such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 94–469, title III, §310, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2764.)

§2671. Additional authorizations

Amounts authorized to be appropriated in this subchapter for purposes of carrying out the

provisions of this subchapter are in addition to amounts authorized to be appropriated under other provisions of law for radon-related activities.

(Pub. L. 94–469, title III, §311, as added Pub. L. 100–551, §1(a), Oct. 28, 1988, 102 Stat. 2764.)

SUBCHAPTER IV—LEAD EXPOSURE REDUCTION

§2681. Definitions

For the purposes of this subchapter:

(1) Abatement

The term "abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Administrator under this subchapter. Such term includes—

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(B) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) Accessible surface

The term "accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(3) Deteriorated paint

The term "deteriorated paint" means any interior or exterior paint that is peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

(4) Evaluation

The term "evaluation" means risk assessment, inspection, or risk assessment and inspection.

(5) Friction surface

The term "friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(6) Impact surface

The term "impact surface" means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

(7) Inspection

The term "inspection" means (A) a surface-by-surface investigation to determine the presence of lead-based paint, as provided in section 4822(c) of title 42, and (B) the provision of a report explaining the results of the investigation.

(8) Interim controls

The term "interim controls" means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(9) Lead-based paint

The term "lead-based paint" means paint or other surface coatings that contain lead in excess of

1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development, as defined in section 4822(c) of title 42, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

(10) Lead-based paint hazard

The term "lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Administrator under this subchapter.

(11) Lead-contaminated dust

The term "lead-contaminated dust" means surface dust in residential dwellings that contains an area or mass concentration of lead in excess of levels determined by the Administrator under this subchapter to pose a threat of adverse health effects in pregnant women or young children.

(12) Lead-contaminated soil

The term "lead-contaminated soil" means bare soil on residential real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Administrator under this subchapter.

(13) Reduction

The term "reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

(14) Residential dwelling

The term "residential dwelling" means—

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(15) Residential real property

The term "residential real property" means real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons.

(16) Risk assessment

The term "risk assessment" means an on-site investigation to determine and report the existence, nature, severity and location of lead-based paint hazards in residential dwellings, including—

(A) information gathering regarding the age and history of the housing and occupancy by children under age 6;

(B) visual inspection;

(C) limited wipe sampling or other environmental sampling techniques;

(D) other activity as may be appropriate; and

(E) provision of a report explaining the results of the investigation.

(17) Target housing

The term "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

(Pub. L. 94–469, title IV, §401, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3912; amended Pub. L. 115–31, div. K, title II, §237(c), May 5, 2017, 131 Stat. 789.)

EDITORIAL NOTES

AMENDMENTS

2017—Par. (17). Pub. L. 115–31, §237(c)(1), which directed insertion of "or any 0-bedroom dwelling" after "disabilities,", was executed by making the insertion after "disabilities" the first place appearing to reflect the probable intent of Congress.

Pub. L. 115–31, §237(c)(2), which directed substitution of "housing)" for "housing for the elderly or persons with disabilities) or any 0 bedroom dwelling", was executed by making the substitution for "housing for the elderly or persons with disabilities) or any 0-bedroom dwelling" to reflect the probable intent of Congress.

§2682. Lead-based paint activities training and certification

(a) Regulations

(1) In general

Not later than 18 months after October 28, 1992, the Administrator shall, in consultation with the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health), promulgate final regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Such regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. Such regulations shall require that all risk assessment, inspection, and abatement activities performed in target housing shall be performed by certified contractors, as such term is defined in section 4851b of title 42. The provisions of this section shall supersede the provisions set forth under the heading "Lead Abatement Training and Certification" and under the heading "Training Grants" in title III of the Act entitled "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes", Public Law 102–139 [105 Stat. 765, 42 U.S.C. 4822 note], and upon October 28, 1992, the provisions set forth in such public law under such headings shall cease to have any force and effect.

(2) Accreditation of training programs

Final regulations promulgated under paragraph (1) shall contain specific requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities, including, but not limited to, each of the following:

(A) Minimum requirements for the accreditation of training providers.
(B) Minimum training curriculum requirements.
(C) Minimum training hour requirements.
(D) Minimum hands-on training requirements.
(E) Minimum trainee competency and proficiency requirements.
(F) Minimum requirements for training program quality control.

(3) Accreditation and certification fees

The Administrator (or the State in the case of an authorized State program) shall impose a fee on—

(A) persons operating training programs accredited under this subchapter; and
(B) lead-based paint activities contractors certified in accordance with paragraph (1).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training

program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint activities contractors under subparagraph (A) for the purpose of training their own employees.

(b) Lead-based paint activities

For purposes of this subchapter, the term "lead-based paint activities" means—

(1) in the case of target housing, risk assessment, inspection, and abatement; and

(2) in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

For purposes of paragraph (2), the term "deleading" means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.

(c) Renovation and remodeling

(1) Guidelines

In order to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings constructed before 1978, and commercial buildings, the Administrator shall, within 18 months after October 28, 1992, promulgate guidelines for the conduct of such renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in such renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

(2) Study of certification

The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after October 28, 1992.

(3) Certification determination

Within 4 years after October 28, 1992, the Administrator shall revise the regulations under subsection (a) to apply the regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. In determining which contractors are engaged in such activities, the Administrator shall utilize the results of the study under paragraph (2) and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of contractors engaged in renovation or remodeling does not require certification, the Administrator shall publish an explanation of the basis for that determination.

(Pub. L. 94–469, title IV, §402, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3914.)

§2683. Identification of dangerous levels of lead

Within 18 months after October 28, 1992, the Administrator shall promulgate regulations which shall identify, for purposes of this subchapter and the Residential Lead-Based Paint Hazard Reduction Act of 1992 [42 U.S.C. 4851 et seq.], lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil.

(Pub. L. 94–469, title IV, §403, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3916.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Residential Lead-Based Paint Hazard Reduction Act of 1992, referred to in text, is title X of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3897, which is classified principally to chapter 63A (§4851 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4851 of Title 42 and Tables.

§2684. Authorized State programs

(a) Approval

Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 2682 or 2686 of this title, or both, may, after notice and opportunity for public hearing, develop and submit to the Administrator an application, in such form as the Administrator shall require, for authorization of such a State program. Any such State may also certify to the Administrator at the time of submitting such program that the State program meets the requirements of paragraphs (1) and (2) of subsection (b). Upon submission of such certification, the State program shall be deemed to be authorized under this section, and shall apply in such State in lieu of the corresponding Federal program under section 2682 or 2686 of this title, or both, as the case may be, until such time as the Administrator disapproves the program or withdraws the authorization.

(b) Approval or disapproval

Within 180 days following submission of an application under subsection (a), the Administrator shall approve or disapprove the application. The Administrator may approve the application only if, after notice and after opportunity for public hearing, the Administrator finds that—

(1) the State program is at least as protective of human health and the environment as the Federal program under section 2682 or 2686 of this title, or both, as the case may be, and

(2) such State program provides adequate enforcement.

Upon authorization of a State program under this section, it shall be unlawful for any person to violate or fail or refuse to comply with any requirement of such program.

(c) Withdrawal of authorization

If a State is not administering and enforcing a program authorized under this section in compliance with standards, regulations, and other requirements of this subchapter, the Administrator shall so notify the State and, if corrective action is not completed within a reasonable time, not to exceed 180 days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter.

(d) Model State program

Within 18 months after October 28, 1992, the Administrator shall promulgate a model State program which may be adopted by any State which seeks to administer and enforce a State program under this subchapter. Such model program shall, to the extent practicable, encourage States to utilize existing State and local certification and accreditation programs and procedures. Such program shall encourage reciprocity among the States with respect to the certification under section 2682 of this title.

(e) Other State requirements

Nothing in this subchapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are more stringent than those imposed by this subchapter.

(f) State and local certification

The regulations under this subchapter shall, to the extent appropriate, encourage States to seek program authorization and to use existing State and local certification and accreditation procedures,

except that a State or local government shall not require more than 1 certification under this section for any lead-based paint activities contractor to carry out lead-based paint activities in the State or political subdivision thereof.

(g) Grants to States

The Administrator is authorized to make grants to States to develop and carry out authorized State programs under this section. The grants shall be subject to such terms and conditions as the Administrator may establish to further the purposes of this subchapter.

(h) Enforcement by Administrator

If a State does not have a State program authorized under this section and in effect by the date which is 2 years after promulgation of the regulations under section 2682 or 2686 of this title, the Administrator shall, by such date, establish a Federal program for section 2682 or 2686 of this title (as the case may be) for such State and administer and enforce such program in such State.

(Pub. L. 94–469, title IV, §404, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3916.)

§2685. Lead abatement and measurement

(a) Program to promote lead exposure abatement

The Administrator, in cooperation with other appropriate Federal departments and agencies, shall conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection, and abatement of lead-based paint and other lead exposure hazards.

(b) Standards for environmental sampling laboratories

(1) The Administrator shall establish protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint films, soil, and dust. Within 2 years after October 28, 1992, the Administrator, in consultation with the Secretary of Health and Human Services, shall establish a program to certify laboratories as qualified to test substances for lead content unless the Administrator determines, by the date specified in this paragraph, that effective voluntary accreditation programs are in place and operating on a nationwide basis at the time of such determination. To be certified under such program, a laboratory shall, at a minimum, demonstrate an ability to test substances accurately for lead content.

(2) Not later than 24 months after October 28, 1992, and annually thereafter, the Administrator shall publish and make available to the public a list of certified or accredited environmental sampling laboratories.

(3) If the Administrator determines under paragraph (1) that effective voluntary accreditation programs are in place for environmental sampling laboratories, the Administrator shall review the performance and effectiveness of such programs within 3 years after such determination. If, upon such review, the Administrator determines that the voluntary accreditation programs are not effective in assuring the quality and consistency of laboratory analyses, the Administrator shall, not more than 12 months thereafter, establish a certification program that meets the requirements of paragraph (1).

(c) Exposure studies

(1) The Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary"), acting through the Director of the Centers for Disease Control,[1] (CDC), and the Director of the National Institute of Environmental Health Sciences, shall jointly conduct a study of the sources of lead exposure in children who have elevated blood lead levels (or other indicators of elevated lead body burden), as defined by the Director of the Centers for Disease Control.

(2) The Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health, shall conduct a comprehensive study of means to reduce hazardous occupational lead abatement exposures. This study shall include, at a minimum, each of the following—

(A) Surveillance and intervention capability in the States to identify and prevent hazardous

exposures to lead abatement workers.

(B) Demonstration of lead abatement control methods and devices and work practices to identify and prevent hazardous lead exposures in the workplace.

(C) Evaluation, in consultation with the National Institute of Environmental Health Sciences, of health effects of low and high levels of occupational lead exposures on reproductive, neurological, renal, and cardiovascular health.

(D) Identification of high risk occupational settings to which prevention activities and resources should be targeted.

(E) A study assessing the potential exposures and risks from lead to janitorial and custodial workers.

(3) The studies described in paragraphs (1) and (2) shall, as appropriate, examine the relative contributions to elevated lead body burden from each of the following:

(A) Drinking water.

(B) Food.

(C) Lead-based paint and dust from lead-based paint.

(D) Exterior sources such as ambient air and lead in soil.

(E) Occupational exposures, and other exposures that the Secretary determines to be appropriate.

(4) Not later than 30 months after October 28, 1992, the Secretary shall submit a report to the Congress concerning the studies described in paragraphs (1) and (2).

(d) Public education

(1) The Administrator, in conjunction with the Secretary of Health and Human Services, acting through the Director of the Agency for Toxic Substances and Disease Registry, and in conjunction with the Secretary of Housing and Urban Development, shall sponsor public education and outreach activities to increase public awareness of—

(A) the scope and severity of lead poisoning from household sources;

(B) potential exposure to sources of lead in schools and childhood day care centers;

(C) the implications of exposures for men and women, particularly those of childbearing age;

(D) the need for careful, quality, abatement and management actions;

(E) the need for universal screening of children;

(F) other components of a lead poisoning prevention program;

(G) the health consequences of lead exposure resulting from lead-based paint hazards;

(H) risk assessment and inspection methods for lead-based paint hazards; and

(I) measures to reduce the risk of lead exposure from lead-based paint.

(2) The activities described in paragraph (1) shall be designed to provide educational services and information to—

(A) health professionals;

(B) the general public, with emphasis on parents of young children;

(C) homeowners, landlords, and tenants;

(D) consumers of home improvement products;

(E) the residential real estate industry; and

(F) the home renovation industry.

(3) In implementing the activities described in paragraph (1), the Administrator shall assure coordination with the President's Commission on Environmental Quality's education and awareness campaign on lead poisoning.

(4) The Administrator, in consultation with the Chairman of the Consumer Product Safety Commission, shall develop information to be distributed by retailers of home improvement products to provide consumers with practical information related to the hazards of renovation and remodeling where lead-based paint may be present.

(e) Technical assistance

(1) Clearinghouse

Not later than 6 months after October 28, 1992, the Administrator shall establish, in consultation with the Secretary of Housing and Urban Development and the Director of the Centers for Disease Control, a National Clearinghouse on Childhood Lead Poisoning (hereinafter in this section referred to as "Clearinghouse"). The Clearinghouse shall—

(A) collect, evaluate, and disseminate current information on the assessment and reduction of lead-based paint hazards, adverse health effects, sources of exposure, detection and risk assessment methods, environmental hazards abatement, and clean-up standards;

(B) maintain a rapid-alert system to inform certified lead-based paint activities contractors of significant developments in research related to lead-based paint hazards; and

(C) perform any other duty that the Administrator determines necessary to achieve the purposes of this chapter.

(2) Hotline

Not later than 6 months after October 28, 1992, the Administrator, in cooperation with other Federal agencies and with State and local governments, shall establish a single lead-based paint hazard hotline to provide the public with answers to questions about lead poisoning prevention and referrals to the Clearinghouse for technical information.

(f) Products for lead-based paint activities

Not later than 30 months after October 28, 1992, the President shall, after notice and opportunity for comment, establish by rule appropriate criteria, testing protocols, and performance characteristics as are necessary to ensure, to the greatest extent possible and consistent with the purposes and policy of this subchapter, that lead-based paint hazard evaluation and reduction products introduced into commerce after a period specified in the rule are effective for the intended use described by the manufacturer. The rule shall identify the types or classes of products that are subject to such rule. The President, in implementation of the rule, shall, to the maximum extent possible, utilize independent testing laboratories, as appropriate, and consult with such entities and others in developing the rules. The President may delegate the authorities under this subsection to the Environmental Protection Agency or the Secretary of Commerce or such other appropriate agency.

(Pub. L. 94–469, title IV, §405, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3917.)

[1] So in original. The comma probably should not appear.

§2686. Lead hazard information pamphlet

(a) Lead hazard information pamphlet

Not later than 2 years after October 28, 1992, after notice and opportunity for comment, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development and with the Secretary of Health and Human Services, shall publish, and from time to time revise, a lead hazard information pamphlet to be used in connection with this subchapter and section 4852d of title 42. The pamphlet shall—

(1) contain information regarding the health risks associated with exposure to lead;

(2) provide information on the presence of lead-based paint hazards in federally assisted, federally owned, and target housing;

(3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation, and others residing in a dwelling with lead-based paint hazards;

(4) describe the risks of renovation in a dwelling with lead-based paint hazards;

(5) provide information on approved methods for evaluating and reducing lead-based paint

hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;

(6) advise persons how to obtain a list of contractors certified pursuant to this subchapter in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used;

(7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing;

(8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and

(9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

(b) Renovation of target housing

Within 2 years after October 28, 1992, the Administrator shall promulgate regulations under this subsection to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

(Pub. L. 94–469, title IV, §406, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3920.)

§2687. Regulations

The regulations of the Administrator under this subchapter shall include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of this subchapter. The regulations may be amended from time to time as necessary.

(Pub. L. 94–469, title IV, §407, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2688. Control of lead-based paint hazards at Federal facilities

Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for certification, licensing, recordkeeping, or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief) respecting lead-based paint, lead-based paint activities, and lead-based paint hazards in the same manner, and to the same extent as any nongovernmental entity is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of whether such penalties or fines are punitive or coercive in nature, or whether imposed for isolated, intermittent or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this section include, but are not limited to, fees or charges assessed for certification and licensing, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local lead-based paint, lead-based paint activities, or lead-based paint hazard activities program. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any

Federal, State, interstate, or local law relating to lead-based paint, lead-based paint activities, or lead-based paint hazards with respect to any act or omission within the scope of his official duties.

(Pub. L. 94–469, title IV, §408, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2689. Prohibited acts

It shall be unlawful for any person to fail or refuse to comply with a provision of this subchapter or with any rule or order issued under this subchapter.

(Pub. L. 94–469, title IV, §409, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2690. Relationship to other Federal law

Nothing in this subchapter shall affect the authority of other appropriate Federal agencies to establish or enforce any requirements which are at least as stringent as those established pursuant to this subchapter.

(Pub. L. 94–469, title IV, §410, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3921.)

§2691. General provisions relating to administrative proceedings

(a) Applicability

This section applies to the promulgation or revision of any regulation issued under this subchapter.

(b) Rulemaking docket

Not later than the date of proposal of any action to which this section applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be established in the appropriate regional office of the Environmental Protection Agency.

(c) Inspection and copying

(1) The rulemaking docket required under subsection (b) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(2)(A) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(B) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than

the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(d) Explanation

(1) The promulgated rule shall be accompanied by an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(2) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(3) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(e) Judicial review

The material referred to in subsection (c)(2)(B) shall not be included in the record for judicial review.

(f) Effective date

The requirements of this section shall take effect with respect to any rule the proposal of which occurs after 90 days after October 28, 1992.

(Pub. L. 94–469, title IV, §411, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3922.)

§2692. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this subchapter such sums as may be necessary.

(Pub. L. 94–469, title IV, §412, as added Pub. L. 102–550, title X, §1021(a), Oct. 28, 1992, 106 Stat. 3923.)

SUBCHAPTER V—HEALTHY HIGH-PERFORMANCE SCHOOLS

§2695. Grants for healthy school environments

(a) In general

The Administrator, in consultation with the Secretary of Education, may provide grants to States for use in—

(1) providing technical assistance for programs of the Environmental Protection Agency (including the Tools for Schools Program and the Healthy School Environmental Assessment Tool) to schools for use in addressing environmental issues; and

(2) development and implementation of State school environmental health programs that include—

(A) standards for school building design, construction, and renovation; and

(B) identification of ongoing school building environmental problems, including contaminants, hazardous substances, and pollutant emissions, in the State and recommended solutions to address those problems, including assessment of information on the exposure of children to environmental hazards in school facilities.

(b) Sunset

The authority of the Administrator to carry out this section shall expire 5 years after December 19, 2007.

(Pub. L. 94–469, title V, §501, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1640.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Subchapter effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§2695a. Model guidelines for siting of school facilities

Not later than 18 months after December 19, 2007, the Administrator, in consultation with the Secretary of Education and the Secretary of Health and Human Services, shall issue voluntary school site selection guidelines that account for—

(1) the special vulnerability of children to hazardous substances or pollution exposures in any case in which the potential for contamination at a potential school site exists;

(2) modes of transportation available to students and staff;

(3) the efficient use of energy; and

(4) the potential use of a school at the site as an emergency shelter.

(Pub. L. 94–469, title V, §502, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1640.)

§2695b. Public outreach

(a) Reports

The Administrator shall publish and submit to Congress an annual report on all activities carried out under this subchapter, until the expiration of authority described in section 2695(b) of this title.

(b) Public outreach

The Federal Director appointed under section 17092(a) of title 42 (in this subchapter referred to as the "Federal Director") shall ensure, to the maximum extent practicable, that the public clearinghouse established under section 17083(1) of title 42 receives and makes available information on the exposure of children to environmental hazards in school facilities, as provided by the Administrator.

(Pub. L. 94–469, title V, §503, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1640.)

§2695c. Environmental health program

(a) In general

Not later than 2 years after December 19, 2007, the Administrator, in consultation with the Secretary of Education, the Secretary of Health and Human Services, and other relevant agencies, shall issue voluntary guidelines for use by the State in developing and implementing an environmental health program for schools that—

(1) takes into account the status and findings of Federal initiatives established under this subchapter or subtitle C of title IV of the Energy Independence and Security Act of 2007 [42 U.S.C. 17091 et seq.] and other relevant Federal law with respect to school facilities, including relevant updates on trends in the field, such as the impact of school facility environments on student and staff—

(A) health, safety, and productivity; and

(B) disabilities or special needs;

(2) takes into account studies using relevant tools identified or developed in accordance with section 492 of the Energy Independence and Security Act of 2007 [42 U.S.C. 17122];

(3) takes into account, with respect to school facilities, each of—

(A) environmental problems, contaminants, hazardous substances, and pollutant emissions, including—

(i) lead from drinking water;

(ii) lead from materials and products;

(iii) asbestos;

(iv) radon;

(v) the presence of elemental mercury releases from products and containers;

(vi) pollutant emissions from materials and products; and

(vii) any other environmental problem, contaminant, hazardous substance, or pollutant emission that present or may present a risk to the health of occupants of the school facilities or environment;

(B) natural day lighting;

(C) ventilation choices and technologies;

(D) heating and cooling choices and technologies;

(E) moisture control and mold;

(F) maintenance, cleaning, and pest control activities;

(G) acoustics; and

(H) other issues relating to the health, comfort, productivity, and performance of occupants of the school facilities;

(4) provides technical assistance on siting, design, management, and operation of school facilities, including facilities used by students with disabilities or special needs;

(5) collaborates with federally funded pediatric environmental health centers to assist in on-site school environmental investigations;

(6) assists States and the public in better understanding and improving the environmental health of children; and

(7) takes into account the special vulnerability of children in low-income and minority communities to exposures from contaminants, hazardous substances, and pollutant emissions.

(b) Public outreach

The Federal Director and Commercial Director shall ensure, to the maximum extent practicable, that the public clearinghouse established under section 423 of the Energy Independence and Security Act of 2007 [42 U.S.C. 17083] receives and makes available—

(1) information from the Administrator that is contained in the report described in section 2695b(a) of this title; and

(2) information on the exposure of children to environmental hazards in school facilities, as provided by the Administrator.

(Pub. L. 94–469, title V, §504, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1641.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Independence and Security Act of 2007, referred to in subsec. (a)(1), is Pub. L. 110–140, Dec. 19, 2007, 121 Stat. 1492. Subtitle C of title IV of the Act enacted part C (§17091 et seq.) of subchapter III of chapter 152 of Title 42, The Public Health and Welfare, amended sections 6832, 6834, 8253, and 8254 of Title 42, and enacted provisions set out as a note under section 6834 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 17001 of Title 42 and Tables.

§2695d. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $1,000,000 for fiscal year 2009, and $1,500,000 for each of fiscal years 2010 through 2013, to remain available until expended.

(Pub. L. 94–469, title V, §505, as added Pub. L. 110–140, title IV, §461(a), Dec. 19, 2007, 121 Stat. 1642.)

SUBCHAPTER VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

§2697. Formaldehyde standards

(a) Definitions

In this section:

(1) Finished good

(A) In general

The term "finished good" means any good or product (other than a panel) containing—

(i) hardwood plywood;

(ii) particleboard; or

(iii) medium-density fiberboard.

(B) Exclusions

The term "finished good" does not include—

(i) any component part or other part used in the assembly of a finished good; or

(ii) any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale, such as—

(I) an antique; or

(II) secondhand furniture.

(2) Hardboard

The term "hardboard" has such meaning as the Administrator shall establish, by regulation, pursuant to subsection (d).

(3) Hardwood plywood

(A) In general

The term "hardwood plywood" means a hardwood or decorative panel that is—

(i) intended for interior use; and

(ii) composed of (as determined under the standard numbered ANSI/HPVA HP–1–2009) an assembly of layers or plies of veneer, joined by an adhesive with—

(I) lumber core;

(II) particleboard core;

(III) medium-density fiberboard core;

(IV) hardboard core; or

(V) any other special core or special back material.

(B) Exclusions

The term "hardwood plywood" does not include—

(i) military-specified plywood;

(ii) curved plywood; or

(iii) any other product specified in—

(I) the standard entitled "Voluntary Product Standard—Structural Plywood" and numbered PS 1–07; or

(II) the standard entitled "Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels" and numbered PS 2–04.

(C) Laminated products

(i) Rulemaking

(I) In general

The Administrator shall conduct a rulemaking process pursuant to subsection (d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term "hardwood plywood" should exempt engineered veneer or any laminated product.

(II) Modification

The Administrator may modify any aspect of the definition contained in clause (ii) before including that definition in the regulations promulgated pursuant to subclause (I).

(ii) Laminated product

The term "laminated product" means a product—

(I) in which a wood veneer is affixed to—

(aa) a particleboard platform;

(bb) a medium-density fiberboard platform; or

(cc) a veneer-core platform; and

(II) that is—

(aa) a component part;

(bb) used in the construction or assembly of a finished good; and

(cc) produced by the manufacturer or fabricator of the finished good in which the product is incorporated.

(4) Manufactured home

The term "manufactured home" has the meaning given the term in section 3280.2 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(5) Medium-density fiberboard

The term "medium-density fiberboard" means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under the standard numbered ANSI A208.2–2009).

(6) Modular home

The term "modular home" means a home that is constructed in a factory in 1 or more modules—

(A) each of which meet applicable State and local building codes of the area in which the home will be located; and

(B) that are transported to the home building site, installed on foundations, and completed.

(7) No-added formaldehyde-based resin

(A) In general

(i) The term "no-added formaldehyde-based resin" means a resin formulated with no added formaldehyde as part of the resin cross-linking structure in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) one test conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to

clause (ii), ASTM D–6007–02; and

(II) 3 months of routine quality control tests pursuant to ASTM D–6007–02 or ASTM D–5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) Inclusions

The term "no-added formaldehyde-based resin" may include any resin made from—

(i) soy;

(ii) polyvinyl acetate; or

(iii) methylene diisocyanate.

(C) Emission standards

The following are the emission standards for composite wood products made with no-added formaldehyde-based resins under this paragraph:

(i) No higher than 0.04 parts per million of formaldehyde for 90 percent of the 3 months of routine quality control testing data required under subparagraph (A)(ii).

(ii) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(8) Particleboard

(A) In general

The term "particleboard" means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under the standard numbered ANSI A208.1–2009).

(B) Exclusions

The term "particleboard" does not include any product specified in the standard entitled "Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels" and numbered PS 2–04.

(9) Recreational vehicle

The term "recreational vehicle" has the meaning given the term in section 3282.8 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(10) Ultra low-emitting formaldehyde resin

(A) In general

(i) The term "ultra low-emitting formaldehyde resin" means a resin in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) 2 quarterly tests conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to clause (ii), ASTM D–6007–02; and

(II) 6 months of routine quality control tests pursuant to ASTM D–6007–02 or ASTM D–5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) Inclusions

The term "ultra low-emitting formaldehyde resin" may include—

(i) melamine-urea-formaldehyde resin;

(ii) phenol formaldehyde resin; and

(iii) resorcinol formaldehyde resin.

(C) Emission standards

(i) The Administrator may, pursuant to regulations issued under subsection (d), reduce the testing requirements for a manufacturer only if its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) For hardwood plywood, no higher than 0.05 parts per million of formaldehyde.

(II) For medium-density fiberboard—

(aa) no higher than 0.06 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.09 parts per million of formaldehyde.

(III) For particleboard—

(aa) no higher than 0.05 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.08 parts per million of formaldehyde.

(IV) For thin medium-density fiberboard—

(aa) no higher than 0.08 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.11 parts per million of formaldehyde.

(ii) The Administrator may not, pursuant to regulations issued under subsection (d), exempt a manufacturer from third party certification requirements unless its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) No higher than 0.04 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii).

(II) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(b) Requirement

(1) In general

Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.

(2) Emission standards

The emission standards referred to in paragraph (1), based on test method ASTM E–1333–96 (2002), are as follows:

(A) For hardwood plywood with a veneer core, 0.05 parts per million of formaldehyde.

(B) For hardwood plywood with a composite core—

(i) 0.08 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.05 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(C) For medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described

in paragraph (1) and before July 1, 2011; and

(ii) 0.11 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(D) For thin medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.13 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(E) For particleboard—

(i) 0.18 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

(ii) 0.09 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(3) Compliance with emission standards

(A) Compliance with the emission standards described in paragraph (2) shall be measured by—

(i) quarterly tests shall be [1] conducted pursuant to test method ASTM E–1333–96 (2002) or, subject to subparagraph (B), ASTM D–6007–02; and

(ii) quality control tests shall be [1] conducted pursuant to ASTM D–6007–02, ASTM D–5582, or such other test methods as may be established by the Administrator through rulemaking.

(B) Test results obtained under subparagraph (A)(i) or (ii) by any test method other than ASTM E–1333–96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(C) Except where otherwise specified, the Administrator shall establish through rulemaking the number and frequency of tests required to demonstrate compliance with the emission standards.

(4) Applicability

The formaldehyde emission standard referred to in paragraph (1) shall apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is—

(A) in the form of an unfinished panel; or

(B) incorporated into a finished good.

(c) Exemptions

The formaldehyde emission standard referred to in subsection (b)(1) shall not apply to—

(1) hardboard;

(2) structural plywood, as specified in the standard entitled "Voluntary Product Standard—Structural Plywood" and numbered PS 1–07;

(3) structural panels, as specified in the standard entitled "Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels" and numbered PS 2–04;

(4) structural composite lumber, as specified in the standard entitled "Standard Specification for Evaluation of Structural Composite Lumber Products" and numbered ASTM D 5456–06;

(5) oriented strand board;

(6) glued laminated lumber, as specified in the standard entitled "Structural Glued Laminated Timber" and numbered ANSI A190.1–2002;

(7) prefabricated wood I-joists, as specified in the standard entitled "Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists" and numbered ASTM D 5055–05;

(8) finger-jointed lumber;

(9) wood packaging (including pallets, crates, spools, and dunnage);

(10) composite wood products used inside a new—

(A) vehicle (other than a recreational vehicle) constructed entirely from new parts that has

never been—

(i) the subject of a retail sale; or

(ii) registered with the appropriate State agency or authority responsible for motor vehicles or with any foreign state, province, or country;

(B) rail car;
(C) boat;
(D) aerospace craft; or
(E) aircraft;

(11) windows that contain composite wood products, if the window product contains less than 5 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished window product; or

(12) exterior doors and garage doors that contain composite wood products, if—

(A) the doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

(B) the doors contain less than 3 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished exterior door or garage door.

(d) Regulations

(1) In general

Not later than January 1, 2013, the Administrator shall promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).

(2) Inclusions

The regulations promulgated pursuant to paragraph (1) shall include provisions relating to—

(A) labeling;
(B) chain of custody requirements;
(C) sell-through provisions;
(D) ultra low-emitting formaldehyde resins;
(E) no-added formaldehyde-based resins;
(F) finished goods;
(G) third-party testing and certification;
(H) auditing and reporting of third-party certifiers;
(I) recordkeeping;
(J) enforcement;
(K) laminated products; and

(L) exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products.

The Administrator shall not provide under subparagraph (L) exceptions to the formaldehyde emission standard requirements in subsection (b).

(3) Sell-through provisions

(A) In general

Sell-through provisions established by the Administrator under this subsection, with respect to composite wood products and finished goods containing regulated composite wood products (including recreational vehicles, manufactured homes, and modular homes), shall—

(i) be based on a designated date of manufacture (which shall be no earlier than the date 180 days following the promulgation of the regulations pursuant to this subsection) of the composite wood product or finished good, rather than date of sale of the composite wood product or finished good; and

(ii) provide that any inventory of composite wood products or finished goods containing regulated composite wood products, manufactured before the designated date of manufacture of the composite wood products or finished goods, shall not be subject to the formaldehyde emission standard requirements under subsection (b)(1).

(B) Implementing regulations

The regulations promulgated under this subsection shall—

(i) prohibit the stockpiling of inventory to be sold after the designated date of manufacture; and

(ii) not require any labeling or testing of composite wood products or finished goods containing regulated composite wood products manufactured before the designated date of manufacture.

(C) Definition

For purposes of this paragraph, the term "stockpiling" means manufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between July 7, 2010, and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before July 7, 2010.

(4) Import regulations

Not later than July 1, 2013, the Administrator, in coordination with the Commissioner of U.S. Customs and Border Protection and other appropriate Federal departments and agencies, shall revise regulations promulgated pursuant to section 2612 of this title as the Administrator determines to be necessary to ensure compliance with this section.

(5) Successor standards and test methods

The Administrator may, after public notice and opportunity for comment, substitute an industry standard or test method referenced in this section with its successor version.

(e) Prohibited acts

An individual or entity that violates any requirement under this section (including any regulation promulgated pursuant to subsection (d)) shall be considered to have committed a prohibited act under section 2614 of this title.

(Pub. L. 94–469, title VI, §601, as added Pub. L. 111–199, §2(a), July 7, 2010, 124 Stat. 1359; amended Pub. L. 114–125, title VIII, §802(d)(2), Feb. 24, 2016, 130 Stat. 210.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Commissioner of U.S. Customs and Border Protection" substituted for "Commissioner of Customs and Border Protection" in subsec. (d)(4) to reflect the probable intent of section 802(d)(2) of Pub. L. 114–125, set out as a note under section 211 of Title 6, Domestic Security, which provided that on or after Feb. 24, 2016, any reference to the "Commissioner of Customs" or the "Commissioner of the Customs Service" would be deemed to be a reference to the Commissioner of U.S. Customs and Border Protection.

MODIFICATION OF REGULATION

Pub. L. 111–199, §4, July 7, 2010, 124 Stat. 1367, provided that: "Not later than 180 days after the date of promulgation of regulations pursuant to section 601(d) of the Toxic Substances Control Act [15 U.S.C. 2697(d)] (as amended by section 2), the Secretary of Housing and Urban Development shall update the regulation contained in section 3280.308 of title 24, Code of Federal Regulations (as in effect on the date of enactment of this Act [July 7, 2010]), to ensure that the regulation reflects the standards established by section 601 of the Toxic Substances Control Act [15 U.S.C. 2697]."

[1] *So in original.*

CHAPTER 54—AUTOMOTIVE PROPULSION RESEARCH AND DEVELOPMENT

Sec.

§2701. Congressional findings and purpose

(a) The Congress finds that—

(1) existing automobile propulsion systems, on the average, fall short of meeting the long-term goals of the Nation with respect to environmental protection, and energy conservation;

(2) advanced alternatives to existing automobile propulsion systems could, with sufficient research and development effort, meet these long-term goals, and have the potential to be mass produced at reasonable cost; and advanced automobile propulsion systems could operate with significantly less adverse environmental impact and fuel consumption than existing automobiles, while meeting all of the other requirements of Federal law;

(3) insufficient resources are being devoted to both research on and development of advanced automobile propulsion system technology;

(4) an expanded research and development effort with respect to advance automobile propulsion system technology would complement and stimulate corresponding efforts by the private sector and would encourage automobile manufacturers to consider seriously the incorporation of such advanced technology into automobiles and automobile components; and

(5) the Nation's energy and environmental problems are urgent, and therefore advanced automobile propulsion system technology should be developed, tested, demonstrated, and prepared for manufacture within the shortest practicable time.

(b) It is therefore the purpose of the Congress, in this chapter to—

(1)(A) direct the Department of Energy to make contracts and grants for research and development leading to the development of advanced automobile propulsion systems within 5 years of February 25, 1978, or within the shortest practicable time consistent with appropriate research and development techniques, and (B) evaluate and disseminate information with respect to advanced automobile propulsion system technology;

(2) preserve, enhance, and facilitate competition in research, development, and production with respect to existing and alternative automobile propulsion systems; and

(3) supplement, but neither supplant nor duplicate, the automotive propulsion system research and development efforts of private industry.

(Pub. L. 95–238, title III, §302, Feb. 25, 1978, 92 Stat. 78.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 95–238, title III, §301, Feb. 25, 1978, 92 Stat. 78, provided that: "This title [enacting this chapter and amending section 2451 of Title 42, The Public Health and Welfare] may be cited as the 'Automotive Propulsion Research and Development Act of 1978'."

§2702. Definitions

As used in this chapter, the term—

(1) "advanced automobile propulsion system" means an energy conversion system, including engine and drive train, which utilizes advanced technology and is suitable for use in an advanced automobile;

(2) "developer" means any person engaged in whole or in part in research or other efforts directed toward the development of advanced automobile technology;

(3) "fuel" means any energy source capable of propelling an automobile;

(4) "fuel economy" refers to the average distance traveled in representative driving conditions by an automobile per unit of fuel consumed, as determined by the Administrator of the Environmental Protection Agency in accordance with test procedures which shall be established by rule and shall require that fuel economy tests be conducted in conjunction with the exhaust emissions tests mandated by section 7525 of title 42;

(5) "intermodal adaptability" refers to any characteristics of an automobile which enable it to be operated or carried, or which facilitate its operation or carriage, by or on an alternative mode or other system of transportation;

(6) "reliability" refers to (A) the average time and distance over which normal automobile operation can be expected without significant repair or replacement of parts, and (B) the ease of diagnosis and repair of an automobile, its systems, and parts in the event of failure during use or damage from an accident;

(7) "safety" refers to the performance of an automobile propulsion system or equipment in such a manner that the public is protected against unreasonable risk of accident and against unreasonable risk of death or bodily injury in case of accident;

(8) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or any other territory or possession of the United States.

(Pub. L. 95–238, title III, §303, Feb. 25, 1978, 92 Stat. 79.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 7525 of title 42, referred to in par. (4), was in the original "section 206 of the Clean Air Act (42 U.S.C. 1857f–5)", meaning act July 14, 1955, ch. 360, §206, as added Dec. 31, 1970, Pub. L. 91–604, §8(a), 84 Stat. 1694, which was formerly classified to section 1857f–5 of Title 42, The Public Health and Welfare, and which is classified to section 7525 of Title 42 pursuant to the general revision of the Clean Air Act by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685.

§2703. Advanced systems program implementation by Secretary of Energy

(a) Establishment and conduct of program

The Secretary of Energy shall establish, within the Department of Energy, a program to insure the development of advanced automobile propulsion systems within 5 years after February 25, 1978, or within the shortest practicable time, consistent with appropriate research and development technique. In conducting such program, the Secretary of Energy shall—

(1) establish and conduct new projects and accelerate existing projects which may contribute to the development of advanced automobile propulsion systems;

(2) give priority attention to the development of advanced propulsion systems with appropriate

attention to those advanced propulsion systems which are flexible in the type of fuel used; and

(3) insure that research and development under this chapter supplements, but neither supplants nor duplicates, the automotive research and development efforts of private industry.

(b) Contracts and grants with Federal agencies, laboratories, etc.

The Secretary of Energy shall, in fulfilling his responsibilities under this chapter, make contracts and grants with any Federal agency, laboratory, university, nonprofit organization, industrial organization, public or private agency, institution, organization, corporation, partnership, or individual for research and development leading to advanced automobile propulsion systems which are likely to help meet the Nation's long-term goals with respect to fuel economy, environmental protection, and other objectives.

(c) Federal laboratories; priority for financial assistance; functions

In providing financial assistance under this chapter, the Secretary of Energy shall give full consideration to the capabilities of Federal laboratories, except that not more than 60 per centum of the funds appropriated pursuant to the authorization under section 2710 of this title shall be directly expended in Federal laboratories. In accordance with section 2706 of this title, such laboratories shall be available for testing components and subsystems which, in the Secretary of Energy's judgment, is likely to contribute to the development of advanced automobile propulsion systems.

(d) Evaluations, testing, information dissemination, and reporting functions

The Secretary of Energy shall conduct evaluations, arrange for tests, and disseminate information pursuant to section 2706 of this title and submit reports required under section 2709 of this title.

(e) Intensification of research in basic areas by Department of Energy

The Department of Energy shall intensify research in key basic science areas in which the lack of knowledge limits development of advanced automobile propulsion systems.

(f) Program provisions and requirements; administrative and judicial procedures applicable to contracts, grants, or projects; additional information for reports and budget submissions; nonretroactivity of provisions and requirements

(1) The Secretary of Energy shall insure that the conduct of the program as defined in subsection (a) of this section—

(A) supplements the automotive propulsion system research and development efforts of industry;

(B) is not formulated in a manner that will supplant private industry research and development or displace or lessen industry's research and development; and

(C) avoids duplication of private research and development.

(2) To that end, the Secretary of Energy shall issue administrative regulations, within 60 days after February 25, 1978, which shall specify procedures, standards, and criteria for the timely review for compliance of each new contract, grant, Department of Energy project, or other agency project funded or to be funded under the authority of this Act. Such regulations shall require that the Secretary of Energy or his designee shall certify that each such contract, grant, or project satisfies the requirement of this subsection, and shall include in such certification a discussion of the relationship of any related or comparable industry research and development, in terms of this subsection, to the proposed research and development under the authority of this Act. The discussion shall also address related issues, such as cost sharing and patent rights.

(3) Such certifications shall be available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The provisions of chapter 5 of title 5 shall not apply to such certifications and no court shall have any jurisdiction to review the preparation or adequacy of such certifications; but section 553 of title 5 and section 5916 of title 42 shall apply to public disclosure of such certifications.

(4) The Secretary of Energy also shall include in the report required by section 2709(a) of this title a detailed discussion of how each research and development contract, grant, or project funded under

the authority of this Act satisfies the requirement of this subsection.

(5) Further, the Secretary of Energy in each annual budget submission to the Congress, or amendment thereto, for the programs authorized by this Act shall describe how each identified research and development effort in such submission satisfies the requirements of this subsection.

(6) The provisions and requirements of this subsection shall not apply with respect to any contract, grant, or project which was entered into, made, or formally approved and initiated prior to February 25, 1978, or with respect to any renewal or extension thereof.

(Pub. L. 95–238, title III, §304, Feb. 25, 1978, 92 Stat. 79; Pub. L. 103–437, §5(b)(4), Nov. 2, 1994, 108 Stat. 4582.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (f), is Pub. L. 95–238, Feb. 25, 1978, 92 Stat. 47, known as the Department of Energy Act of 1978—Civilian Applications. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1994—Subsec. (f)(3). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

§2704. Evaluation by Secretary of Transportation on utilization of advanced technology by automobile industry

The Secretary of Transportation, in furtherance of the purposes of this chapter, shall evaluate the extent to which the automobile industry utilizes advanced automotive technology which is or could be made available to it.

(Pub. L. 95–238, title III, §305, Feb. 25, 1978, 92 Stat. 81; Pub. L. 104–66, title I, §1121(i), Dec. 21, 1995, 109 Stat. 724.)

EDITORIAL NOTES

AMENDMENTS

1995—Pub. L. 104–66 struck out at end "The Secretary of Transportation shall submit a report to the Congress each year on the results of such evaluation including any appropriate recommendations which may encourage the utilization of advanced automobile technology by the automobile industry."

§2705. Coordinating and consulting requirements and authorities of Secretary of Energy

(a) Conduct of overall management responsibilities

The Secretary of Energy shall have overall management responsibility for carrying out the program under section 2703 of this title. In carrying out such program, the Secretary of Energy, consistent with such overall management responsibility—

(1) shall utilize the expertise of the Department of Transportation to the extent deemed appropriate by the Secretary of Energy; and

(2) may utilize any other Federal agency (except as provided in paragraph (1)) in accordance with subsection (c) in carrying out any activities under this chapter, to the extent that the Secretary of Energy determines that any such agency has capabilities which would allow such agency to contribute to the purposes of this chapter.

(b) Exercise of powers by Secretary of Transportation

The Secretary of Transportation, whenever the expertise of the Department of Transportation is

utilized in accordance with subsection (a), may exercise the powers granted to the Secretary of Energy under subsection (c) and shall enter into contracts and make grants for such purpose, subject to the overall management responsibility of the Secretary of Energy.

(c) Requests for assistance of Federal departments, etc.

The Secretary of Energy may, in accordance with subsection (a), obtain the assistance of any department, agency, or instrumentality of the executive branch of the Federal Government upon written request, on a reimbursable basis or otherwise and with the consent of such department, agency, or instrumentality. Each such request shall identify the assistance the Secretary of Energy deems necessary to carry out any duty under this chapter.

(d) Consultations with Administrator of Environmental Protection Agency and Secretary of Transportation; establishment of procedures for periodic consultation with interested groups; establishment and functions of advisory panels

The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Transportation, and shall establish procedures for periodic consultation with representatives of science, industry, and such other groups as may have special expertise in the area of automobile propulsion system research, development, and technology. The Secretary of Energy may establish such advisory panels as he deems appropriate to review and make recommendations with respect to applications for funding under this chapter.

(e) Responsibilities under other Federal automotive research, development, and demonstration provisions unaffected

Nothing contained in this chapter shall be construed to reduce in any way the responsibilities of the Secretary of Energy for automotive research, development, and demonstration under the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.) and the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.).

(Pub. L. 95–238, title III, §306, Feb. 25, 1978, 92 Stat. 81.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), referred to in subsec. (e), is Pub. L. 93–438, Oct. 11, 1974, 88 Stat. 1233, which is classified principally to chapter 73 (§5801 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of Title 42 and Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), referred to in subsec. (e), is Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, which is classified generally to chapter 74 (§5901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

§2706. Informational and testing functions of Secretary of Energy

(a) Evaluations of new or improved technologies pursuant to written submissions

The Secretary of Energy shall, for the purposes of performing his responsibilities under this chapter, consider any reasonable new or improved technology, a description of which is submitted to the Secretary of Energy in writing, which could lead or contribute to the development of advanced automobile propulsion system technology.

(b) Testing by Administrator of Environmental Protection Agency of systems developed under research and development program or submitted by Secretary; scope and purposes of tests; submission of test data and results to Secretary

The Administrator of the Environmental Protection Agency shall test, or cause to be tested, in a facility subject to Environmental Protection Agency supervision, each advanced automobile

propulsion system in an appropriately modified production vehicle equipped with such a system developed in whole or in part with Federal financial assistance under this chapter, or referred to the Administrator of the Environmental Protection Agency for such purpose by the Secretary of Energy, to determine whether such vehicle complies with any exhaust emission standards or any other requirements promulgated or reasonably expected to be promulgated under any provision of the Clean Air Act (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.], the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), or any other provision of Federal law administered by the Administrator of the Environmental Protection Agency. In conjunction with any test for compliance with exhaust emission standards under this section, the Administrator of the Environmental Protection Agency shall also conduct tests to determine the fuel economy of such vehicle. The Administrator of the Environmental Protection Agency shall submit all test data and the results of such tests to the Secretary of Energy.

(c) Collection, analysis, and dissemination of information, data, and materials to developers

The Secretary of Energy shall collect, analyze, and disseminate to developers information, data, and materials that may be relevant to the development of advanced automobile propulsion system technology.

(Pub. L. 95–238, title III, §307, Feb. 25, 1978, 92 Stat. 82.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), referred to in subsec. (b), is Pub. L. 92–574, Oct. 27, 1972, 86 Stat. 1234, which is classified principally to chapter 65 (§4901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of Title 42 and Tables.

§2707. Patents and inventions; statutory provisions applicable; contracts or grants covered

Section 5908 of title 42 shall apply to any contract (including any assignment, substitution of parties, or subcontract thereunder) or grant, entered into, made, or issued by the Secretary of Energy under this chapter.

(Pub. L. 95–238, title III, §308, Feb. 25, 1978, 92 Stat. 82.)

§2708. Comptroller General audit and examination of books, etc.; statutory provisions applicable; contracts or grants covered

Section 5876 of title 42 shall apply with respect to the authority of the Comptroller General to have access to and rights of examination of books, documents, papers, and records of recipients of financial assistance under this chapter; except that for the purposes of this chapter, the term "contract" (as used in section 2206 of title 42, insofar as it relates to such section 5876 of title 42) means "contract or grant".

(Pub. L. 95–238, title III, §309, Feb. 25, 1978, 92 Stat. 82.)

§2709. Reports to Congress by Secretary of Energy

(a) Comprehensive program, etc.

As a separate part of the annual report submitted under section 5914(a) [1] of title 42 with respect to

the comprehensive plan and program then in effect under section 5905(a) and (b) of title 42, the Secretary of Energy shall submit to Congress an annual report of activities under this chapter. Such report shall include—

(1) a current comprehensive program definition for implementing this chapter;

(2) an evaluation of the state of automobile propulsion system research and development in the United States;

(3) the number and amount of contracts and grants made under this chapter;

(4) an analysis of the progress made in developing advanced automobile propulsion system technology; and

(5) suggestions for improvements in advanced automobile propulsion system research and development, including recommendations for legislation.

(b) Study on financial obligation guarantees

The Secretary of Energy shall conduct a survey of developers, lending institutions, and other appropriate persons or institutions and shall otherwise make a study for the purpose of determining whether, and under what conditions, research, development, demonstration, and commercial availability of advanced automobile propulsion system technology may be aided by the guarantee of financial obligations by the Federal Government. The Secretary of Energy shall report the results of such survey and study to the Congress within 1 year after February 25, 1978. Such report shall include an examination of those stages of advanced automobile propulsion system technology research, development, demonstration, and commercialization for which financial obligation guarantees may be useful or appropriate and shall contain such legislative recommendations as may be necessary.

(Pub. L. 95–238, title III, §310, Feb. 25, 1978, 92 Stat. 83.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 5914 of title 42, referred to in subsec. (a), was omitted from the Code.

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

§2710. Authorization of appropriations

There is authorized to be appropriated to carry out the purposes of this chapter, in addition to any amounts made available for such purposes pursuant to title I of this Act, the sum of $12,500,000 for the fiscal year ending September 30, 1978.

(Pub. L. 95–238, title III, §312, Feb. 25, 1978, 92 Stat. 83.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title I of this Act, referred to in text, is title I (§§101–107) of Pub. L. 95–238, Feb. 25, 1978, 92 Stat. 47. For complete classification of this title to the Code, see Tables.

CHAPTER 55—PETROLEUM MARKETING PRACTICES

SUBCHAPTER I—FRANCHISE PROTECTION

Sec.

SUBCHAPTER I—FRANCHISE PROTECTION

§2801. Definitions

As used in this subchapter:

(1)(A) The term "franchise" means any contract—

(i) between a refiner and a distributor,

(ii) between a refiner and a retailer,

(iii) between a distributor and another distributor, or

(iv) between a distributor and a retailer,

under which a refiner or distributor (as the case may be) authorizes or permits a retailer or distributor to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such use.

(B) The term "franchise" includes—

(i) any contract under which a retailer or distributor (as the case may be) is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies motor fuel to the distributor which authorizes or permits such occupancy;

(ii) any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed—

(I) under a trademark owned or controlled by a refiner; or

(II) under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trademark owned or controlled on such date by a refiner; and

(iii) the unexpired portion of any franchise, as defined by the preceding provisions of this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(2) The term "franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(3) The term "franchisor" means a refiner or distributor (as the case may be) who authorizes or permits, under a franchise, a retailer or distributor to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) The term "franchisee" means a retailer or distributor (as the case may be) who is authorized or permitted, under a franchise, to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(5) The term "refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person.

(6) The term "distributor" means any person, including any affiliate of such person, who—

(A) purchases motor fuel for sale, consignment, or distribution to another; or

(B) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

(7) The term "retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(8) The term "marketing premises" means, in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with sale, consignment, or distribution of motor fuel.

(9) The term "leased marketing premises" means marketing premises owned, leased, or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment, or distribution of motor fuel.

(10) The term "contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(11) The term "trademark" means any trademark, trade name, service mark, or other identifying symbol or name.

(12) The term "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

(13) The term "failure" does not include—

(A) any failure which is only technical or unimportant to the franchise relationship;

(B) any failure for a cause beyond the reasonable control of the franchisee; or

(C) any failure based on a provision of the franchise which is illegal or unenforceable under the law of any State (or subdivision thereof).

(14) The terms "fail to renew" and "nonrenewal" mean, with respect to any franchise relationship, a failure to reinstate, continue, or extend the franchise relationship—

(A) at the conclusion of the term, or on the expiration date, stated in the relevant franchise;

(B) at any time, in the case of the relevant franchise which does not state a term of duration or an expiration date; or

(C) following a termination (on or after June 19, 1978) of the relevant franchise which was entered into prior to June 19, 1978, and has not been renewed after such date.

(15) The term "affiliate" means any person who (other than by means of a franchise) controls, is controlled by, or is under common control with, any other person.

(16) The term "relevant geographic market area" includes a State or a standard metropolitan statistical area as periodically established by the Office of Management and Budget.

(17) The term "termination" includes cancellation.

(18) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(19) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 95–297, title I, §101, June 19, 1978, 92 Stat. 322; Pub. L. 103–371, §6, Oct. 19, 1994, 108 Stat. 3486; Pub. L. 110–140, title II, §241(c)(1), Dec. 19, 2007, 121 Stat. 1540.)

EDITORIAL NOTES

AMENDMENTS

2007—Par. (13)(C). Pub. L. 110–140 aligned margins.
1994—Par. (13)(C). Pub. L. 103–371 added subpar. (C).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–371, §1, Oct. 19, 1994, 108 Stat. 3484, provided that: "This Act [amending this section and sections 2802, 2805, and 2806 of this title] may be cited as the 'Petroleum Marketing Practices Act Amendments of 1994'."

SHORT TITLE

Pub. L. 95–297, §1, June 19, 1978, 92 Stat. 322, provided: "That this Act [enacting this chapter and provisions set out as a note under section 2822 of this title] may be cited as the 'Petroleum Marketing Practices Act'."

§2802. Franchise relationship

(a) General prohibition against termination or nonrenewal

Except as provided in subsection (b) and section 2803 of this title, no franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce may—

(1) terminate any franchise (entered into or renewed on or after June 19, 1978) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

(2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed).

(b) Precondition and grounds for termination or nonrenewal

(1) Any franchisor may terminate any franchise (entered into or renewed on or after June 19, 1978) or may fail to renew any franchise relationship, if—

(A) the notification requirements of section 2804 of this title are met; and

(B) such termination is based upon a ground described in paragraph (2) or such nonrenewal is based upon a ground described in paragraph (2) or (3).

(2) For purposes of this subsection, the following are grounds for termination of a franchise or nonrenewal of a franchise relationship:

(A) A failure by the franchisee to comply with any provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, if the franchisor first acquired actual or constructive knowledge of such failure—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or

nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(B) A failure by the franchisee to exert good faith efforts to carry out the provisions of the franchise, if—

(i) the franchisee was apprised by the franchisor in writing of such failure and was afforded a reasonable opportunity to exert good faith efforts to carry out such provisions; and

(ii) such failure thereafter continued within the period which began not more than 180 days before the date notification of termination or nonrenewal was given pursuant to section 2804 of this title.

(C) The occurrence of an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable, if such event occurs during the period the franchise is in effect and the franchisor first acquired actual or constructive knowledge of such occurrence—

(i) not more than 120 days prior to the date on which notification of termination or nonrenewal is given, if notification is given pursuant to section 2804(a) of this title; or

(ii) not more than 60 days prior to the date on which notification of termination or nonrenewal is given, if less than 90 days notification is given pursuant to section 2804(b)(1) of this title.

(D) An agreement, in writing, between the franchisor and the franchisee to terminate the franchise or not to renew the franchise relationship, if—

(i) such agreement is entered into not more than 180 days prior to the date of such termination or, in the case of nonrenewal, not more than 180 days prior to the conclusion of the term, or the expiration date, stated in the franchise;

(ii) the franchisee is promptly provided with a copy of such agreement, together with the summary statement described in section 2804(d) of this title; and

(iii) within 7 days after the date on which the franchisee is provided a copy of such agreement, the franchisee has not posted by certified mail a written notice to the franchisor repudiating such agreement.

(E) In the case of any franchise entered into prior to June 19, 1978, and in the case of any franchise entered into or renewed on or after such date (the term of which is 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, if—

(i) such determination—

(I) was made after the date such franchise was entered into or renewed, and

(II) was based upon the occurrence of changes in relevant facts and circumstances after such date;

(ii) the termination or nonrenewal is not for the purpose of converting the premises, which are the subject of the franchise, to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises—

(I) the franchisor, during the 180-day period after notification was given pursuant to section 2804 of this title, either made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises, or, if applicable, offered the franchisee a right of first refusal of at least 45 days duration of an offer, made by another, to purchase such franchisor's interest in such premises; or

(II) in the case of the sale, transfer, or assignment to another person of the franchisor's

interest in such premises in connection with the sale, transfer, or assignment to such other person of the franchisor's interest in one or more other marketing premises, if such other person offers, in good faith, a franchise to the franchisee on terms and conditions which are not discriminatory to the franchisee as compared to franchises then currently being offered by such other person or franchises then in effect and with respect to which such other person is the franchisor.

(3) For purposes of this subsection, the following are grounds for nonrenewal of a franchise relationship:

(A) The failure of the franchisor and the franchisee to agree to changes or additions to the provisions of the franchise, if—

(i) such changes or additions are the result of determinations made by the franchisor in good faith and in the normal course of business; and

(ii) such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise preventing the renewal of the franchise relationship.

(B) The receipt of numerous bona fide customer complaints by the franchisor concerning the franchisee's operation of the marketing premises, if—

(i) the franchisee was promptly apprised of the existence and nature of such complaints following receipt of such complaints by the franchisor; and

(ii) if such complaints related to the condition of such premises or to the conduct of any employee of such franchisee, the franchisee did not promptly take action to cure or correct the basis of such complaints.

(C) A failure by the franchisee to operate the marketing premises in a clean, safe, and healthful manner, if the franchisee failed to do so on two or more previous occasions and the franchisor notified the franchisee of such failures.

(D) In the case of any franchise entered into prior to June 19, 1978, (the unexpired term of which, on such date, is 3 years or longer) and, in the case of any franchise entered into or renewed on or after such date (the term of which was 3 years or longer, or with respect to which the franchisee was offered a term of 3 years or longer), a determination made by the franchisor in good faith and in the normal course of business, if—

(i) such determination is—

(I) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(II) to materially alter, add to, or replace such premises,

(III) to sell such premises, or

(IV) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee;

(ii) with respect to a determination referred to in subclause (II) or (IV), such determination is not made for the purpose of converting the leased marketing premises to operation by employees or agents of the franchisor for such franchisor's own account; and

(iii) in the case of leased marketing premises such franchisor, during the 90-day period after notification was given pursuant to section 2804 of this title, either—

(I) made a bona fide offer to sell, transfer, or assign to the franchisee such franchisor's interests in such premises; or

(II) if applicable, offered the franchisee a right of first refusal of at least 45-days duration of an offer, made by another, to purchase such franchisor's interest in such premises.

(c) Definition

As used in subsection (b)(2)(C), the term "an event which is relevant to the franchise relationship and as a result of which termination of the franchise or nonrenewal of the franchise relationship is reasonable" includes events such as—

(1) fraud or criminal misconduct by the franchisee relevant to the operation of the marketing premises;

(2) declaration of bankruptcy or judicial determination of insolvency of the franchisee;

(3) continuing severe physical or mental disability of the franchisee of at least 3 months duration which renders the franchisee unable to provide for the continued proper operation of the marketing premises;

(4) loss of the franchisor's right to grant possession of the leased marketing premises through expiration of an underlying lease, if—

(A) the franchisee was notified in writing, prior to the commencement of the term of the then existing franchise—

(i) of the duration of the underlying lease; and

(ii) of the fact that such underlying lease might expire and not be renewed during the term of such franchise (in the case of termination) or at the end of such term (in the case of nonrenewal);

(B) during the 90-day period after notification was given pursuant to section 2804 of this title, the franchisor offers to assign to the franchisee any option to extend the underlying lease or option to purchase the marketing premises that is held by the franchisor, except that the franchisor may condition the assignment upon receipt by the franchisor of—

(i) an unconditional release executed by both the landowner and the franchisee releasing the franchisor from any and all liability accruing after the date of the assignment for—

(I) financial obligations under the option (or the resulting extended lease or purchase agreement);

(II) environmental contamination to (or originating from) the marketing premises; or

(III) the operation or condition of the marketing premises; and

(ii) an instrument executed by both the landowner and the franchisee that ensures the franchisor and the contractors of the franchisor reasonable access to the marketing premises for the purpose of testing for and remediating any environmental contamination that may be present at the premises; and

(C) in a situation in which the franchisee acquires possession of the leased marketing premises effective immediately after the loss of the right of the franchisor to grant possession (through an assignment pursuant to subparagraph (B) or by obtaining a new lease or purchasing the marketing premises from the landowner), the franchisor (if requested in writing by the franchisee not later than 30 days after notification was given pursuant to section 2804 of this title), during the 90-day period after notification was given pursuant to section 2804 of this title—

(i) made a bona fide offer to sell, transfer, or assign to the franchisee the interest of the franchisor in any improvements or equipment located on the premises; or

(ii) if applicable, offered the franchisee a right of first refusal (for at least 45 days) of an offer, made by another person, to purchase the interest of the franchisor in the improvements and equipment.

(5) condemnation or other taking, in whole or in part, of the marketing premises pursuant to the power of eminent domain;

(6) loss of the franchisor's right to grant the right to use the trademark which is the subject of the franchise, unless such loss was due to trademark abuse, violation of Federal or State law, or other fault or negligence of the franchisor, which such abuse, violation, or other fault or negligence is related to action taken in bad faith by the franchisor;

(7) destruction (other than by the franchisor) of all or a substantial part of the marketing premises;

(8) failure by the franchisee to pay to the franchisor in a timely manner when due all sums to which the franchisor is legally entitled;

(9) failure by the franchisee to operate the marketing premises for—

(A) 7 consecutive days, or

(B) such lesser period which under the facts and circumstances constitutes an unreasonable period of time;

(10) willful adulteration, mislabeling or misbranding of motor fuels or other trademark violations by the franchisee;

(11) knowing failure of the franchisee to comply with Federal, State, or local laws or regulations relevant to the operation of the marketing premises; and

(12) conviction of the franchisee of any felony involving moral turpitude.

(d) Compensation, etc., for franchisee upon condemnation or destruction of marketing premises

In the case of any termination of a franchise (entered into or renewed on or after June 19, 1978), or in the case of any nonrenewal of a franchise relationship (without regard to the date on which such franchise relationship was entered into or renewed)—

(1) if such termination or nonrenewal is based upon an event described in subsection (c)(5), the franchisor shall fairly apportion between the franchisor and the franchisee compensation, if any, received by the franchisor based upon any loss of business opportunity or good will; and

(2) if such termination or nonrenewal is based upon an event described in subsection (c)(7) and the leased marketing premises are subsequently rebuilt or replaced by the franchisor and operated under a franchise, the franchisor shall, within a reasonable period of time, grant to the franchisee a right of first refusal of the franchise under which such premises are to be operated.

(Pub. L. 95–297, title I, §102, June 19, 1978, 92 Stat. 324; Pub. L. 103–371, §§2, 3, Oct. 19, 1994, 108 Stat. 3484.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (b)(3)(A)(ii). Pub. L. 103–371, §2, inserted "converting the leased marketing premises to operation by employees or agents of the franchisor for the benefit of the franchisor or otherwise" after "purpose of".

Subsec. (c)(4). Pub. L. 103–371, §3, redesignated portion of introductory language of par. (4) as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpars. (B) and (C).

§2803. Trial and interim franchises

(a) Nonapplicability of statutory nonrenewal provisions

The provisions of section 2802 of this title shall not apply to the nonrenewal of any franchise relationship—

(1) under a trial franchise; or

(2) under an interim franchise.

(b) Definitions

For purposes of this section—

(1) The term "trial franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the franchisee of which has not previously been a party to a franchise with the franchisor;

(C) the initial term of which is for a period of not more than 1 year; and

(D) which is in writing and states clearly and conspicuously—

(i) that the franchise is a trial franchise;

(ii) the duration of the initial term of the franchise;

(iii) that the franchisor may fail to renew the franchise relationship at the conclusion of the initial term stated in the franchise by notifying the franchisee, in accordance with the provisions of section 2804 of this title, of the franchisor's intention not to renew the franchise relationship; and

(iv) that the provisions of section 2802 of this title, limiting the right of a franchisor to fail to renew a franchise relationship, are not applicable to such trial franchise.

(2) The term "trial franchise" does not include any unexpired period of any term of any franchise (other than a trial franchise, as defined by paragraph (1)) which was transferred or assigned by a franchisee to the extent authorized by the provisions of the franchise or any applicable provision of State law which permits such transfer or assignment, without regard to any provision of the franchise.

(3) The term "interim franchise" means any franchise—

(A) which is entered into on or after June 19, 1978;

(B) the term of which, when combined with the terms of all prior interim franchises between the franchisor and the franchisee, does not exceed 3 years;

(C) the effective date of which occurs immediately after the expiration of a prior franchise, applicable to the marketing premises, which was not renewed if such nonrenewal—

(i) was based upon a determination described in section 2802(b)(2)(E) of this title, and

(ii) the requirements of section 2802(b)(2)(E) of this title were satisfied; and

(D) which is in writing and states clearly and conspicuously—

(i) that the franchise is an interim franchise;

(ii) the duration of the franchise; and

(iii) that the franchisor may fail to renew the franchise at the conclusion of the term stated in the franchise based upon a determination made by the franchisor in good faith and in the normal course of business to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located if the requirements of section 2802(b)(2)(E)(ii) and (iii) of this title are satisfied.

(c) Nonrenewal upon meeting statutory notification requirements

If the notification requirements of section 2804 of this title are met, any franchisor may fail to renew any franchise relationship—

(1) under any trial franchise, at the conclusion of the initial term of such trial franchise; and

(2) under any interim franchise, at the conclusion of the term of such interim franchise, if—

(A) such nonrenewal is based upon a determination described in section 2802(b)(2)(E) of this title; and

(B) the requirements of section 2802(b)(2)(E)(ii) and (iii) of this title are satisfied.

(Pub. L. 95–297, title I, §103, June 19, 1978, 92 Stat. 328.)

§2804. Notification of termination or nonrenewal of franchise relationship

(a) General requirements applicable to franchisor

Prior to termination of any franchise or nonrenewal of any franchise relationship, the franchisor shall furnish notification of such termination or such nonrenewal to the franchisee who is a party to such franchise or such franchise relationship—

(1) in the manner described in subsection (c); and

(2) except as provided in subsection (b), not less than 90 days prior to the date on which such

termination or nonrenewal takes effect.

(b) Additional requirements applicable to franchisor

(1) In circumstances in which it would not be reasonable for the franchisor to furnish notification, not less than 90 days prior to the date on which termination or nonrenewal takes effect, as required by subsection (a)(2)—

(A) such franchisor shall furnish notification to the franchisee affected thereby on the earliest date on which furnishing of such notification is reasonably practicable; and

(B) in the case of leased marketing premises, such franchisor—

(i) may not establish a new franchise relationship with respect to such premises before the expiration of the 30-day period which begins—

(I) on the date notification was posted or personally delivered, or

(II) if later, on the date on which such termination or nonrenewal takes effect; and

(ii) may, if permitted to do so by the franchise agreement, repossess such premises and, in circumstances under which it would be reasonable to do so, operate such premises through employees or agents.

(2) In the case of any termination of any franchise or any nonrenewal of any franchise relationship pursuant to the provisions of section 2802(b)(2)(E) of this title or section 2803(c)(2) of this title, the franchisor shall—

(A) furnish notification to the franchisee not less than 180 days prior to the date on which such termination or nonrenewal takes effect; and

(B) promptly provide a copy of such notification, together with a plan describing the schedule and conditions under which the franchisor will withdraw from the marketing of motor fuel through retail outlets in the relevant geographic area, to the Governor of each State which contains a portion of such area.

(c) Manner and form of notification

Notification under this section—

(1) shall be in writing;

(2) shall be posted by certified mail or personally delivered to the franchisee; and

(3) shall contain—

(A) a statement of intention to terminate the franchise or not to renew the franchise relationship, together with the reasons therefor;

(B) the date on which such termination or nonrenewal takes effect; and

(C) the summary statement prepared under subsection (d).

(d) Preparation, publication, etc., of statutory summaries

(1) Not later than 30 days after June 19, 1978, the Secretary of Energy shall prepare and publish in the Federal Register a simple and concise summary of the provisions of this subchapter, including a statement of the respective responsibilities of, and the remedies and relief available to, any franchisor and franchisee under this subchapter.

(2) In the case of summaries required to be furnished under the provisions of section 2802(b)(2)(D) of this title or subsection (c)(3)(C) of this section before the date of publication of such summary in the Federal Register, such summary may be furnished not later than 5 days after it is so published rather than at the time required under such provisions.

(Pub. L. 95–297, title I, §104, June 19, 1978, 92 Stat. 329.)

§2805. Enforcement provisions

(a) Maintenance of civil action by franchisee against franchisor; jurisdiction and venue; time for commencement of action

If a franchisor fails to comply with the requirements of section 2802, 2803, or 2807 of this title, the franchisee may maintain a civil action against such franchisor. Such action may be brought, without regard to the amount in controversy, in the district court of the United States in any judicial district in which the principal place of business of such franchisor is located or in which such franchisee is doing business, except that no such action may be maintained unless commenced within 1 year after the later of—

(1) the date of termination of the franchise or nonrenewal of the franchise relationship; or

(2) the date the franchisor fails to comply with the requirements of section 2802, 2803, or 2807 of this title.

(b) Equitable relief by court; bond requirements; grounds for nonexercise of court's equitable powers

(1) In any action under subsection (a), the court shall grant such equitable relief as the court determines is necessary to remedy the effects of any failure to comply with the requirements of section 2802, 2803, or 2807 of this title, including declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief.

(2) Except as provided in paragraph (3), in any action under subsection (a), the court shall grant a preliminary injunction if—

(A) the franchisee shows—

(i) the franchise of which he is a party has been terminated or the franchise relationship of which he is a party has not been renewed, and

(ii) there exist sufficiently serious questions going to the merits to make such questions a fair ground for litigation; and

(B) the court determines that, on balance, the hardships imposed upon the franchisor by the issuance of such preliminary injunctive relief will be less than the hardship which would be imposed upon such franchisee if such preliminary injunctive relief were not granted.

(3) Nothing in this subsection prevents any court from requiring the franchisee in any action under subsection (a) to post a bond, in an amount established by the court, prior to the issuance or continuation of any equitable relief.

(4) In any action under subsection (a), the court need not exercise its equity powers to compel continuation or renewal of the franchise relationship if such action was commenced—

(A) more than 90 days after the date on which notification pursuant to section 2804(a) of this title was posted or personally delivered to the franchisee;

(B) more than 180 days after the date on which notification pursuant to section 2804(b)(2) of this title was posted or personally delivered to the franchisee; or

(C) more than 30 days after the date on which the termination of such franchise or the nonrenewal of such franchise relationship takes effect if less than 90 days notification was provided pursuant to section 2804(b)(1) of this title.

(c) Burden of proof; burden of going forward with evidence

In any action under subsection (a), the franchisee shall have the burden of proving the termination of the franchise or the nonrenewal of the franchise relationship. The franchisor shall bear the burden of going forward with evidence to establish as an affirmative defense that such termination or nonrenewal was permitted under section 2802(b) or 2803 of this title, and, if applicable, that such franchisor complied with the requirements of section 2802(d) of this title.

(d) Actual and exemplary damages and attorney and expert witness fees to franchisee; determination by court of right to exemplary damages and amount; attorney and expert witness fees to franchisor for frivolous actions

(1) If the franchisee prevails in any action under subsection (a), such franchisee shall be entitled—

(A) consistent with the Federal Rules of Civil Procedure, to actual damages;

(B) in the case of any such action which is based upon conduct of the franchisor which was in

willful disregard of the requirements of section 2802, 2803, or 2807 of this title, or the rights of the franchisee thereunder, to exemplary damages, where appropriate; and

(C) to reasonable attorney and expert witness fees to be paid by the franchisor, unless the court determines that only nominal damages are to be awarded to such franchisee, in which case the court, in its discretion, need not direct that such fees be paid by the franchisor.

(2) The question of whether to award exemplary damages and the amount of any such award shall be determined by the court and not by a jury.

(3) In any action under subsection (a), the court may, in its discretion, direct that reasonable attorney and expert witness fees be paid by the franchisee if the court finds that such action is frivolous.

(e) Discretionary power of court to compel continuation or renewal of franchise relationship; grounds for noncompulsion; right of franchisee to actual damages and attorney and expert witness fees unaffected

(1) In any action under subsection (a) with respect to a failure of a franchisor to renew a franchise relationship in compliance with the requirements of section 2802 of this title, the court may not compel a continuation or renewal of the franchise relationship if the franchisor demonstrates to the satisfaction of the court that—

(A) the basis for such nonrenewal is a determination made by the franchisor in good faith and in the normal course of business—

(i) to convert the leased marketing premises to a use other than the sale or distribution of motor fuel,

(ii) to materially alter, add to, or replace such premises,

(iii) to sell such premises,

(iv) to withdraw from the marketing of motor fuel through retail outlets in the relevant geographic market area in which the marketing premises are located, or

(v) that renewal of the franchise relationship is likely to be uneconomical to the franchisor despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the franchisee; and

(B) the requirements of section 2804 of this title have been complied with.

(2) The provisions of paragraph (1) shall not affect any right of any franchisee to recover actual damages and reasonable attorney and expert witness fees under subsection (d) if such nonrenewal is prohibited by section 2802 of this title.

(f) Release or waiver of rights

(1) No franchisor shall require, as a condition of entering into or renewing the franchise relationship, a franchisee to release or waive—

(A) any right that the franchisee has under this subchapter or other Federal law; or

(B) any right that the franchisee may have under any valid and applicable State law.

(2) No provision of any franchise shall be valid or enforceable if the provision specifies that the interpretation or enforcement of the franchise shall be governed by the law of any State other than the State in which the franchisee has the principal place of business of the franchisee.

(Pub. L. 95–297, title I, §105, June 19, 1978, 92 Stat. 331; Pub. L. 103–371, §4, Oct. 19, 1994, 108 Stat. 3485; Pub. L. 110–140, title II, §241(b), Dec. 19, 2007, 121 Stat. 1540.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2007—Subsecs. (a), (b)(1), (d)(1)(B). Pub. L. 110–140 substituted "2802, 2803, or 2807" for "2802 or 2803" wherever appearing.

1994—Subsec. (f). Pub. L. 103–371 added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

§2806. Relationship of statutory provisions to State and local laws

(a) Termination or nonrenewal of franchise

(1) To the extent that any provision of this subchapter applies to the termination (or the furnishing of notification with respect thereto) of any franchise, or to the nonrenewal (or the furnishing of notification with respect thereto) of any franchise relationship, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

(2) No State or political subdivision of a State may adopt, enforce, or continue in effect any provision of law (including a regulation) that requires a payment for the goodwill of a franchisee on the termination of a franchise or nonrenewal of a franchise relationship authorized by this subchapter.

(b) Transfer or assignment of franchise

(1) Nothing in this subchapter authorizes any transfer or assignment of any franchise or prohibits any transfer or assignment of any franchise as authorized by the provisions of such franchise or by any applicable provision of State law which permits such transfer or assignment without regard to any provision of the franchise.

(2) Nothing in this subchapter shall prohibit any State from specifying the terms and conditions under which any franchise or franchise relationship may be transferred to the designated successor of a franchisee upon the death of the franchisee.

(Pub. L. 95–297, title I, §106, June 19, 1978, 92 Stat. 332; Pub. L. 103–371, §5, Oct. 19, 1994, 108 Stat. 3485.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–371, §5(1), redesignated existing provisions as par. (1) and added par. (2).
Subsec. (b). Pub. L. 103–371, §5(2), redesignated existing provisions as par. (1) and added par. (2).

§2807. Prohibition on restriction of installation of renewable fuel pumps

(a) Definition

In this section:

(1) Renewable fuel

The term "renewable fuel" means any fuel—

(A) at least 85 percent of the volume of which consists of ethanol; or

(B) any mixture of biodiesel and diesel or renewable diesel (as defined in regulations adopted pursuant to section 7545(o) of title 42 (40 CFR, part 80)), determined without regard to any use of kerosene and containing at least 20 percent biodiesel or renewable diesel.

(2) Franchise-related document

The term "franchise-related document" means—

(A) a franchise under this chapter; and

(B) any other contract or directive of a franchisor relating to terms or conditions of the sale of fuel by a franchisee.

(b) Prohibitions

(1) In general

No franchise-related document entered into or renewed on or after December 19, 2007, shall contain any provision allowing a franchisor to restrict the franchisee or any affiliate of the franchisee from—

(A) installing on the marketing premises of the franchisee a renewable fuel pump or tank, except that the franchisee's franchisor may restrict the installation of a tank on leased marketing premises of such franchisor;

(B) converting an existing tank or pump on the marketing premises of the franchisee for renewable fuel use, so long as such tank or pump and the piping connecting them are either warranted by the manufacturer or certified by a recognized standards setting organization to be suitable for use with such renewable fuel;

(C) advertising (including through the use of signage) the sale of any renewable fuel;

(D) selling renewable fuel in any specified area on the marketing premises of the franchisee (including any area in which a name or logo of a franchisor or any other entity appears);

(E) purchasing renewable fuel from sources other than the franchisor if the franchisor does not offer its own renewable fuel for sale by the franchisee;

(F) listing renewable fuel availability or prices, including on service station signs, fuel dispensers, or light poles; or

(G) allowing for payment of renewable fuel with a credit card,

so long as such activities described in subparagraphs (A) through (G) do not constitute mislabeling, misbranding, willful adulteration, or other trademark violations by the franchisee.

(2) Effect of provision

Nothing in this section shall be construed to preclude a franchisor from requiring the franchisee to obtain reasonable indemnification and insurance policies.

(c) Exception to 3-grade requirement

No franchise-related document that requires that 3 grades of gasoline be sold by the applicable franchisee shall prevent the franchisee from selling a renewable fuel in lieu of 1, and only 1, grade of gasoline.

(Pub. L. 95–297, title I, §107, as added Pub. L. 110–140, title II, §241(a), Dec. 19, 2007, 121 Stat. 1538.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

SUBCHAPTER II—OCTANE DISCLOSURE

§2821. Definitions

As used in this subchapter:

(1) The term "octane rating" means the rating of the antiknock characteristics of a grade or type of automotive fuel as determined by dividing by 2 the sum of the research octane number plus the motor octane number, unless another procedure is prescribed under section 2823(c)(3) of this title, in which case such term means the rating of such characteristics as determined under the procedure so prescribed.

(2) The terms "research octane number" and "motor octane number" have the meanings given such terms in the specifications of the American Society for Testing and Materials (ASTM) entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel" designated D4814 (as in effect on June 19, 1978) and, with respect to any grade or type of automotive gasoline, are determined in accordance with test methods set forth in ASTM standard test methods designated D 2699 and D 2700 (as in effect on such date).

(3) The term "knock" means the combustion of a fuel spontaneously in localized areas of a cylinder of a spark-ignition engine, instead of the combustion of such fuel progressing from the spark.

(4) The term "automotive fuel retailer" means any person who markets automotive fuel to the general public for ultimate consumption.

(5) The term "refiner" means any person engaged in the production or importation of automotive fuel.

(6) The term "automotive fuel" means liquid fuel of a type distributed for use as a fuel in any motor vehicle.

(7) The term "motor vehicle" means any self-propelled four-wheeled vehicle, of less than 6,000 pounds gross vehicle weight, which is designed primarily for use on public streets, roads, and highways.

(8) The term "new motor vehicle" means any motor vehicle the equitable or legal title to which has not previously been transferred to an ultimate purchaser.

(9) The term "ultimate purchaser" means, with respect to any item, the first person who purchases such item for purposes other than resale.

(10) The term "manufacturer" means any person who imports, manufactures, or assembles motor vehicles for sale.

(11) The term "automotive fuel requirement" means, with respect to automotive fuel for use in a motor vehicle or a class thereof, imported, manufactured, or assembled by a manufacturer, the minimum automotive fuel rating of such automotive fuel which such manufacturer recommends for the efficient operation of such motor vehicle, or a substantial portion of such class, without knocking.

(12) The term "model year" means a manufacturer's annual production period (as determined by the Federal Trade Commission) for motor vehicles or a class of motor vehicles. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(14) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(15) the [1] term "person", for purposes of applying any provision of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] with respect to any provision of the subchapter, includes a partnership and a corporation.

(16) The term "distributor" means any person who receives automotive fuel and distributes such automotive fuel to another person other than the ultimate purchaser.

(17) The term "automotive fuel rating" means—

(A) the octane rating of an automotive spark-ignition engine fuel; and

(B) if provided for by the Federal Trade Commission by rule, the cetane rating of diesel fuel oils; or

(C) another form of rating determined by the Federal Trade Commission, after consultation with the American Society for Testing and Materials, to be more appropriate to carry out the purposes of this subchapter with respect to the automotive fuel concerned.

(18)(A) The term "cetane rating" means a measure, as indicated by a cetane index or cetane number, of the ignition quality of diesel fuel oil and of the influence of the diesel fuel oil on combustion roughness.

(B) The term "cetane index" and the term "cetane number" have the meanings determined in accordance with the test methods set forth in the American Society for Testing and Materials standard test methods—

(i) designated D976 or D4737 in the case of cetane index; and

(ii) designated D613 in the case of cetane number,

(as in effect on October 24, 1992) and shall apply to any grade or type of diesel fuel oils defined in the specification of the American Society for Testing and Materials entitled "Standard Specification for Diesel Fuel Oils" designated D975 (as in effect on October 24, 1992).

(Pub. L. 95–297, title II, §201, June 19, 1978, 92 Stat. 333; Pub. L. 102–486, title XV, §1501(a)–(c)(1), Oct. 24, 1992, 106 Stat. 2996.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (15), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

October 24, 1992, referred to in par. (18)(B), was in the original "the date of the enactment of this Act" and "such date", which were translated as meaning the date of enactment of Pub. L. 102–486, which enacted par. (18), to reflect the probable intent of Congress.

AMENDMENTS

1992—Par. (1). Pub. L. 102–486, §1501(c)(1)(A), substituted "fuel" for "gasoline".

Par. (2). Pub. L. 102–486, §1501(c)(1)(B), substituted "Standard Specification for Automotive Spark-Ignition Engine Fuel" for "Standard Specifications for Automotive Gasoline" and "D4814 for "D 439".

Par. (4). Pub. L. 102–486, §1501(c)(1)(C), substituted "automotive fuel" for first reference to "gasoline" and "fuel" for second reference to "gasoline".

Par. (5). Pub. L. 102–486, §1501(c)(1)(D), added par. (5) and struck out former par. (5) which read as follows: "The term 'refiner' means any person engaged in—

"(A) the refining of crude oil to produce automotive gasoline; or

"(B) the importation of automotive gasoline."

Par. (6). Pub. L. 102–486, §1501(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term 'automotive gasoline' means gasoline of a type distributed for use as a fuel in any motor vehicle."

Par. (11). Pub. L. 102–486, §1501(c)(1)(E), substituted "automotive fuel" for "octane" before "requirement" and before "rating", and "fuel" for "gasoline" before "for use" and before "which such".

Par. (16). Pub. L. 102–486, §1501(c)(1)(F), substituted "automotive fuel" for "gasoline" in two places.

Pars. (17), (18). Pub. L. 102–486, §1501(b), added pars. (17) and (18).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–486, title XV, §1501(d)(1), Oct. 24, 1992, 106 Stat. 2997, provided that: "The amendments made by this section [amending this section and sections 2822 and 2823 of this title] shall become effective at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 24, 1992]."

REGULATIONS

Pub. L. 102–486, title XV, §1501(d)(2), Oct. 24, 1992, 106 Stat. 2997, provided that: "The Federal Trade Commission shall, within 270 days after the date of the enactment of this Act [Oct. 24, 1992], prescribe rules for the purpose of implementing the amendments made in this section [amending this section and sections 2822 and 2823 of this title]."

[1] *So in original. Probably should be capitalized.*

§2822. Automotive fuel rating testing and disclosure requirements

(a) Determination and certification of automotive fuel rating by refiner distributing automotive fuel

Each refiner who distributes automotive fuel in commerce shall—

(1) determine the automotive fuel rating of any such fuel; and

(2) if such refiner distributes such fuel to any person other than the ultimate purchaser, certify, consistent with the determination made under paragraph (1), the automotive fuel rating of such fuel.

(b) Certification of automotive fuel rating by distributor receiving and distributing automotive fuel with certified automotive fuel rating; use of automotive fuel rating for certification by distributor

Each distributor who receives automotive fuel, the automotive fuel rating of which is certified to him under this section, and distributes such fuel in commerce to another person other than the ultimate purchaser shall certify to such other person the automotive fuel rating of such fuel consistent with—

(1) the automotive fuel rating of such fuel certified to such distributor; or

(2) if such distributor elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the automotive fuel rating of such fuel determined by such distributor.

(c) Display of automotive fuel rating by automotive fuel retailer; use of automotive fuel rating for display

Each automotive fuel retailer shall display in a clear and conspicuous manner, at the point of sale to ultimate purchasers of automotive fuel, the automotive fuel rating of such automotive fuel, which automotive fuel rating shall be consistent with—

(1) the automotive fuel rating of such automotive fuel certified to such retailer under subsection (a)(2) or (b);

(2) if such automotive fuel retailer elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the automotive fuel rating of such automotive fuel determined by such retailer for such automotive fuel; or

(3) if such automotive fuel retailer is a refiner, the automotive fuel rating of such automotive fuel determined under subsection (a)(1).

(d) Display or representation of automotive fuel requirements for new motor vehicles by manufacturer of such vehicles; promulgation of rules by Federal Trade Commission

The Federal Trade Commission shall, by rule, prescribe requirements, applicable to any manufacturer of new motor vehicles, with respect to the display on each such motor vehicle (or representation in connection with the sale of each such motor vehicle) of the automotive fuel

requirement of such motor vehicle.

(e) Representation of antiknock characteristics of automotive fuel by person distributing automotive fuel; use of automotive fuel rating in representation

No person who distributes automotive fuel in commerce may make any representation respecting the antiknock characteristics of such fuel unless such representation fairly discloses the automotive fuel rating of such fuel consistent with such fuel's automotive fuel rating as certified to or determined by such person under the foregoing provisions of this section.

(f) Additional statutory considerations respecting certification, display, or representation of automotive fuel rating of automotive fuel

For purposes of this section, the automotive fuel rating of any automotive fuel shall be considered to be certified, displayed, or represented by any person consistent with the rating certified to, or determined by, such person—

(1) in the case of automotive fuel which consists of a blend of two or more quantities of automotive fuel of differing automotive fuel ratings, only if the rating certified, displayed, or represented by such person is the average of the automotive fuel ratings of such quantities, weighted by volume; or

(2) in the case of fuel which does not consist of such a blend, only if the automotive fuel rating such person certifies, displays, or represents is the same as the automotive fuel rating of such fuel certified to, or determined by, such person.

(g) Nonapplicability of statutory requirements

The foregoing provisions of this section shall not apply—

(1) to any representation (by display at the point of sale or by other means) of any characteristics of any automotive fuel other than its automotive fuel rating; or

(2) to the identification of automotive fuel at the point of sale (or elsewhere) by the trademark, trade name, or other identifying symbol or mark used in connection with the sale of such fuel.

(h) Display or representation of automotive fuel requirement of motor vehicle not to create express or implied warranty under State or Federal law respecting knocking characteristics of automotive fuel

Any display or representation, with respect to the automotive fuel requirement of any motor vehicle, required to be made under any rule prescribed under subsection (d) shall not create an express or implied warranty under State or Federal law that any automotive fuel the automotive fuel rating of which equals or exceeds such automotive fuel requirement—

(1) may be used as a fuel in all motor vehicles of the same class as that motor vehicle without knocking; or

(2) may be used as a fuel in such motor vehicle under all operating conditions without knocking.

(Pub. L. 95–297, title II, §202, June 19, 1978, 92 Stat. 334; Pub. L. 102–486, title XV, §1501(c)(2), Oct. 24, 1992, 106 Stat. 2997.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–486 amended section as follows: substituted "Automotive fuel rating" for "Octane" in section catchline; substituted "automotive fuel rating" and "automotive fuel ratings" for "octane rating" and "octane ratings", respectively, wherever appearing; in subsecs. (a) and (b), substituted "fuel" for "gasoline" wherever appearing; in subsec. (c), substituted "automotive fuel" for "gasoline" wherever appearing except that "fuel" substituted for second reference to "gasoline"; in subsec. (d), substituted "automotive fuel" for "octane"; in subsec. (e), substituted "fuel" for "gasoline" wherever appearing and substituted "fuel's" for "gasoline's"; in subsecs. (f), (g), and (h), substituted "fuel" for "gasoline" wherever appearing; and in subsec. (h), substituted "automotive fuel requirement" for "octane requirement" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 effective at end of one-year period beginning Oct. 24, 1992, see section 1501(d)(1) of Pub. L. 102–486, set out as a note under section 2821 of this title.

EFFECTIVE DATE

Pub. L. 95–297, title II, §205, June 19, 1978, 92 Stat. 337, provided that:

"(a) Sections 202(a)(1) [subsec. (a)(1) of this section] and 203(b) [section 2823(b) of this title] shall take effect on the first day of the first calendar month beginning more than 6 months after the date of the enactment of this Act [June 19, 1978].

"(b) Subsections (a)(2), (b), (c), and (e) of section 202 [subsecs. (a)(2), (b), (c), and (e) of this section] shall take effect on the first day of the first calendar month beginning more than 9 months after such date of enactment [June 19, 1978].

"(c) Rules under section 202(d) [subsec. (d) of this section] may not take effect earlier than the beginning of the first motor vehicle model year which begins more than 9 months after such date of enactment [June 19, 1978]."

STUDIES

Section 1503 of Pub. L. 102–486 directed Administrator of Environmental Protection Agency to carry out a study to determine whether the anti-knock characteristics of nonliquid fuels usable as a fuel for motor vehicles could be determined and further directed Federal Trade Commission to carry out a study to determine the need for a uniform national label on devices used to dispense automotive fuel to consumers that would consolidate all information required by Federal law to be posted on such devices, with reports of the results of the studies to be submitted to Congress within one year of Oct. 24, 1992, together with recommendations and a description of the administrative and legislative actions needed to implement the recommendations.

§2823. Administration and enforcement provisions

(a) Procedural, investigative, and enforcement powers of Federal Trade Commission

The Federal Trade Commission shall have procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements of this subchapter and rules prescribed pursuant to the requirements of this subchapter, to further define terms used in this subchapter, and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were part of this subchapter.

(b) Testing, certification, and notice requirements of Environmental Protection Agency; interagency enforcement agreements between Federal Trade Commission and Environmental Protection Agency and other Federal agencies

(1) The Environmental Protection Agency—

(A) may conduct field testing of the automotive fuel rating of automotive fuel, comparing the tested automotive fuel rating of fuel at retail outlets with the automotive fuel rating posted at those outlets;

(B) shall certify the results of such tests and comparisons to the Federal Trade Commission; and

(C) shall notify the Federal Trade Commission of any failure to post the automotive fuel rating.

(2) The Federal Trade Commission may enter into interagency agreements with the Environmental Protection Agency and such other agencies of the United States as the Commission determines appropriate for the purpose of assuring enforcement of the provisions of this subchapter in a manner which is consistent with—

(A) minimizing the cost of field inspection and related compliance activities; and

(B) reducing duplication of similar or related field compliance activities performed by agencies of the United States.

(c) Promulgation of rules by Federal Trade Commission; contents; requirements for

compliance with rules

(1) Not later than 6 months after June 19, 1978, the Federal Trade Commission shall, by rule, prescribe and make effective—

(A) a uniform method by which a person may certify to another the automotive fuel rating of automotive fuel; and

(B) a uniform method of displaying the automotive fuel rating of automotive fuel at the point of sale to ultimate purchasers.

(2) Effective on and after the effective date of the rule prescribed under paragraph (1), any person—

(A) shall be considered to satisfy the requirements of subsection (a) or (b) of section 2822 of this title, as the case may be, only if such person complies with the requirements established pursuant to paragraph (1)(A); and

(B) shall be considered to satisfy the requirements of section 2822(c) of this title only if such person complies with the requirements established pursuant to paragraph (1)(B).

(3) The Federal Trade Commission may, by rule, prescribe procedures for determination of the automotive fuel rating of automotive fuel which varies from that prescribed in section 2821 of this title. In prescribing such rule, the Commission—

(A) shall consider—

(i) ease of administration and enforcement, and

(ii) industry practices in the distribution and marketing of automotive fuel; and

(B) may permit adjustments in such automotive fuel rating to take into account the effects of altitude, temperature, and humidity.

(4) The Federal Trade Commission may, by rule, prescribe and make effective a method of determining the automotive fuel rating of automotive fuel which consists of a blend of two or more quantities of automotive fuel of different automotive fuel ratings if the Federal Trade Commission finds that the method prescribed more accurately reflects the automotive fuel rating of such blend than the weighted-average method set forth in section 2822(f)(1) of this title. Effective on and after the effective date of such rule, any person shall be considered to satisfy the requirements of section 2822(f)(1) of this title only if such person utilizes the method prescribed in such rule (in lieu of the method set forth in section 2822(f)(1) of this title).

(d) Statutory provisions applicable for promulgation of rules

(1) Except as provided in paragraph (2), rules under this subchapter shall be prescribed in accordance with section 553 of title 5, except that interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) Rules prescribed under subsection (c)(3) and section 2822(d) of this title shall be prescribed on the record after opportunity for an agency hearing.

(3) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) shall not apply with respect to any rule prescribed under this subchapter.

(e) Acts or practices constituting violations

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C. 45(a)(1)]) for any person to violate subsection (a), (b), (c), or (e) of section 2822 of this title, or a rule prescribed under subsection (d) of section 2822 of this title. For purposes of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] (including any remedy or penalty applicable to any violation thereof) such a violation shall be treated as a violation of a rule under such Act respecting unfair or deceptive acts or practices.

(Pub. L. 95–297, title II, §203, June 19, 1978, 92 Stat. 335; Pub. L. 102–486, title XV, §§1501(c)(3), 1502(b), (c), Oct. 24, 1992, 106 Stat. 2997, 2998.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (e), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–486, §1502(c), struck out "shall" after "Agency" in introductory provisions, inserted "may" before "conduct" in subpar. (A), inserted "shall" before "certify" in subpar. (B), and in subpar. (C) inserted "shall" before "notify" and struck out before period at end "discovered in the course of such field testing".

Pub. L. 102–486, §1501(c)(3)(A), (B), substituted "automotive fuel rating" for "octane rating" and "fuel" for "gasoline" wherever appearing.

Subsec. (c). Pub. L. 102–486, §1501(c)(3), substituted "automotive fuel rating" for "octane rating" and "fuel" for "gasoline" wherever appearing, "section 2821" for "section 2821(1)" in par. (3), and "automotive fuel ratings" for "octane ratings" in par. (4).

Subsec. (e). Pub. L. 102–586, §1502(b), struck out before end of second sentence "; except that for purposes of section 5(m)(1)(A) of such Act, the term 'or knowledge fairly implied on the basis of objective circumstances' shall not apply to any violation by any gasoline retailer of the requirements of section 2822(c) or (e) of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1501(c)(3) of Pub. L. 102–486 effective at the end of the one-year period beginning Oct. 24, 1992, see section 1501(d)(1) of Pub. L. 102–486, set out as a note under section 2821 of this title.

EFFECTIVE DATE

Subsec. (b) of this section effective on first day of first calendar month beginning more than 6 months after June 19, 1978, see section 205(a) of Pub. L. 95–297, set out as a note under section 2822 of this title.

§2824. Relationship of statutory provisions to State and local laws

(a) To the extent that any provision of this subchapter applies to any act or omission, no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a).

(Pub. L. 95–297, title II, §204, June 19, 1978, 92 Stat. 337; Pub. L. 102–486, title XV, §1502(a), Oct. 24, 1992, 106 Stat. 2997.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–486 amended section generally. Prior to amendment, section read as follows: "To the extent that any provision of this subchapter applies to any act or omission, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this subchapter."

SUBCHAPTER III—SUBSIDIZATION OF MOTOR FUEL MARKETING

§2841. Study by Secretary of Energy

(a) Consultation with Chairman of Federal Trade Commission, Attorney General, and other agencies deemed appropriate by Secretary

The Secretary of Energy, in consultation with the Chairman of the Federal Trade Commission and the Attorney General and other agencies as the Secretary deems appropriate, shall conduct a study of the extent to which producers, refiners, and other suppliers of motor fuel subsidize the sale of such motor fuel at retail or wholesale with profits obtained from other operations.

(b) Scope

Such study shall examine—

(1) the role of vertically integrated operations in facilitating subsidization of sales of motor fuel at wholesale or retail;

(2) the extent to which such subsidization is predatory and presents a threat to competition;

(3) the profitability of various segments of the petroleum industry;

(4) the impact of prohibiting such subsidization on the competitive viability of various segments of the petroleum industry, on prices of motor fuel to consumers and on the health and structure of the petroleum industry as a whole; and

(5) such other matters as the Secretary considers appropriate.

(c) Notice to interested parties and opportunity to present written and oral data, views and arguments

In conducting the study required by this section, the Secretary shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views and arguments concerning such study.

(d) Report to Congress; contents and time for submission; Presidential promulgation of rules establishing interim measures; submission date and duration of interim measures; Congressional approval of interim measures

(1) The Secretary shall report the results of the study required by this section, together with such recommendations for legislative action and such statistical evidence as he deems appropriate to the Congress on or before the expiration of the eighteenth month after June 19, 1978.

(2) If the President determines that interim measures are necessary and appropriate to maintain the competitive viability of the marketing sector of the petroleum industry during Congressional consideration of the recommendations contained in the report submitted under paragraph (1), he shall prescribe, by rule, in accordance with the procedures set forth in section 6393(a) of title 42 such interim measures.

(3) No interim measure proposed by the President under this section may be submitted after January 1, 1980, and the effect of such measure if approved by the Congress under paragraph (4) may not extend beyond 18 months after such Congressional approval.

(4) Such interim measure shall not take effect unless approved by both Houses of Congress as if it were a contingency plan under section 6422 of title 42: *Provided*, That the 60-day period referred to in such section shall be extended to 90 days for purposes of this section.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 95–297, title III, §301, June 19, 1978, 92 Stat. 337.)

CHAPTER 56—NATIONAL CLIMATE PROGRAM

Sec.

§2901. Findings

The Congress finds and declares the following:

(1) Weather and climate change affect food production, energy use, land use, water resources and other factors vital to national security and human welfare.

(2) An ability to anticipate natural and man-induced changes in climate would contribute to the soundness of policy decisions in the public and private sectors.

(3) Significant improvements in the ability to forecast climate on an intermediate and long-term basis are possible.

(4) Information regarding climate is not being fully disseminated or used, and Federal efforts have given insufficient attention to assessing and applying this information.

(5) Climate fluctuation and change occur on a global basis, and deficiencies exist in the system for monitoring global climate changes. International cooperation for the purpose of sharing the benefits and costs of a global effort to understand climate is essential.

(6) The United States lacks a well-defined and coordinated program in climate-related research, monitoring, assessment of effects, and information utilization.

(Pub. L. 95–367, §2, Sept. 17, 1978, 92 Stat. 601.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 95–367, §1, Sept. 17, 1978, 92 Stat. 601, provided: "That this Act [enacting this chapter, amending section 25 of former Title 31, Money and Finance, and enacting provisions set out as a note under section 25 of former Title 31] may be cited as the 'National Climate Program Act'."

GLOBAL CLIMATE PROTECTION

Pub. L. 100–204, title XI, Dec. 22, 1987, 101 Stat. 1407, as amended by Pub. L. 103–199, title VI, §603(1), Dec. 17, 1993, 107 Stat. 2327, provided that:

"SEC. 1101. SHORT TITLE.

"This title [this note] may be cited as the 'Global Climate Protection Act of 1987'.

"SEC. 1102. FINDINGS.

"The Congress finds as follows:

"(1) There exists evidence that manmade pollution—the release of carbon dioxide, chlorofluorocarbons, methane, and other trace gases into the atmosphere—may be producing a long-term and substantial increase in the average temperature on Earth, a phenomenon known as global warming through the greenhouse effect.

"(2) By early in the next century, an increase in Earth temperature could—

"(A) so alter global weather patterns as to have an effect on existing agricultural production and on the habitability of large portions of the Earth; and

"(B) cause thermal expansion of the oceans and partial melting of the polar ice caps and glaciers, resulting in rising sea levels.

"(3) Important research into the problem of climate change is now being conducted by various United States Government and international agencies, and the continuation and intensification of those efforts will

be crucial to the development of an effective United States response.

"(4) While the consequences of the greenhouse effect may not be fully manifest until the next century, ongoing pollution and deforestation may be contributing now to an irreversible process. Necessary actions must be identified and implemented in time to protect the climate.

"(5) The global nature of this problem will require vigorous efforts to achieve international cooperation aimed at minimizing and responding to adverse climate change; such international cooperation will be greatly enhanced by United States leadership. A key step in international cooperation will be the meeting of the Governing Council of the United Nations Environment Program, scheduled for June 1989, which will seek to determine a direction for worldwide efforts to control global climate change.

"(6) Effective United States leadership in the international arena will depend upon a coordinated national policy.

"SEC. 1103. MANDATE FOR ACTION ON THE GLOBAL CLIMATE.

"(a) GOALS OF UNITED STATES POLICY.—United States policy should seek to—

"(1) increase worldwide understanding of the greenhouse effect and its environmental and health consequences;

"(2) foster cooperation among nations to develop more extensive and coordinated scientific research efforts with respect to the greenhouse effect;

"(3) identify technologies and activities to limit mankind's adverse effect on the global climate by—

"(A) slowing the rate of increase of concentrations of greenhouse gases in the atmosphere in the near term; and

"(B) stabilizing or reducing atmospheric concentrations of greenhouse gases over the long term; and

"(4) work toward multilateral agreements.

"(b) FORMULATION OF UNITED STATES POLICY.—The President, through the Environmental Protection Agency, shall be responsible for developing and proposing to Congress a coordinated national policy on global climate change. Such policy formulation shall consider research findings of the Committee on Earth Sciences of the Federal Coordinating Council on Science and Engineering Technology, the National Academy of Sciences, the National Oceanic and Atmospheric Administration, the National Science Foundation, the National Aeronautic and Space Administration, the Department of Energy, the Environmental Protection Agency, and other organizations engaged in the conduct of scientific research.

"(c) COORDINATION OF UNITED STATES POLICY IN THE INTERNATIONAL ARENA.—The Secretary of State shall be responsible to coordinate those aspects of United States policy requiring action through the channels of multilateral diplomacy, including the United Nations Environment Program and other international organizations. In the formulation of these elements of United States policy, the Secretary of State shall, under the direction of the President, work jointly with the Administrator of the Environmental Protection Agency and other United States agencies concerned with environmental protection, consistent with applicable Federal law.

"SEC. 1104. REPORT TO CONGRESS.

"Not later than 24 months after the date of enactment of this Act [Dec. 22, 1987], the Secretary of State and the Administrator of the Environmental Protection Agency shall jointly submit to all committees of jurisdiction in the Congress a report which shall include—

"(1) a summary analysis of current international scientific understanding of the greenhouse effect, including its environmental and health consequences;

"(2) an assessment of United States efforts to gain international cooperation in limiting global climate change; and

"(3) a description of the strategy by which the United States intends to seek further international cooperation to limit global climate change.

"SEC. 1105. INTERNATIONAL YEAR OF GLOBAL CLIMATE PROTECTION.

"In order to focus international attention and concern on the problem of global warming, and to foster further work on multilateral treaties aimed at protecting the global climate, the Secretary of State shall undertake all necessary steps to promote, within the United Nations system, the early designation of an International Year of Global Climate Protection.

"SEC. 1106. CLIMATE PROTECTION AND UNITED STATES RELATIONS WITH THE INDEPENDENT STATES OF THE FORMER SOVIET UNION.

"In recognition of the respective leadership roles of the United States and the independent states of the former Soviet Union in the international arena, and of the extent to which they are producers of atmospheric

pollutants, the Congress urges that the President accord the problem of climate protection a high priority on the agenda of United States relations with the independent states."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 14030. CLIMATE-RELATED FINANCIAL RISK

Ex. Ord. No. 14030, May 20, 2021, 86 F.R. 27967, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy*. The intensifying impacts of climate change present physical risk to assets, publicly traded securities, private investments, and companies—such as increased extreme weather risk leading to supply chain disruptions. In addition, the global shift away from carbon-intensive energy sources and industrial processes presents transition risk to many companies, communities, and workers. At the same time, this global shift presents generational opportunities to enhance U.S. competitiveness and economic growth, while also creating well-paying job opportunities for workers. The failure of financial institutions to appropriately and adequately account for and measure these physical and transition risks threatens the competitiveness of U.S. companies and markets, the life savings and pensions of U.S. workers and families, and the ability of U.S. financial institutions to serve communities. In this effort, the Federal Government should lead by example by appropriately prioritizing Federal investments and conducting prudent fiscal management.

It is therefore the policy of my Administration to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk (consistent with Executive Order 13707 of September 15, 2015 (Using Behavioral Science Insights to Better Serve the American People) [5 U.S.C. 601 note]), including both physical and transition risks; act to mitigate that risk and its drivers, while accounting for and addressing disparate impacts on disadvantaged communities and communities of color (consistent with Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) [5 U.S.C. 601 note]) and spurring the creation of well-paying jobs; and achieve our target of a net-zero emissions economy by no later than 2050. This policy will marshal the creativity, courage, and capital of the United States necessary to bolster the resilience of our rural and urban communities, States, Tribes, territories, and financial institutions in the face of the climate crisis, rather than exacerbate its causes, and position the United States to lead the global economy to a more prosperous and sustainable future.

SEC. 2. *Climate-Related Financial Risk Strategy*. The Assistant to the President for Economic Policy and Director of the National Economic Council (Director of the National Economic Council) and the Assistant to the President and National Climate Advisor (National Climate Advisor), in coordination with the Secretary of the Treasury and the Director of the Office of Management and Budget (OMB), shall develop, within 120 days of the date of this order [May 20, 2021], a comprehensive, Government-wide strategy regarding:

(a) the measurement, assessment, mitigation, and disclosure of climate-related financial risk to Federal Government programs, assets, and liabilities in order to increase the long-term stability of Federal operations;

(b) financing needs associated with achieving net-zero greenhouse gas emissions for the U.S. economy by no later than 2050, limiting global average temperature rise to 1.5 degrees Celsius, and adapting to the acute and chronic impacts of climate change; and

(c) areas in which private and public investments can play complementary roles in meeting these financing needs—while advancing economic opportunity, worker empowerment, and environmental mitigation, especially in disadvantaged communities and communities of color.

SEC. 3. *Assessment of Climate-Related Financial Risk by Financial Regulators*. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations:

(a) The Secretary of the Treasury, as the Chair of the Financial Stability Oversight Council (FSOC), shall engage with FSOC members to consider the following actions by the FSOC:

(i) assessing, in a detailed and comprehensive manner, the climate-related financial risk, including both physical and transition risks, to the financial stability of the Federal Government and the stability of the U.S. financial system;

(ii) facilitating the sharing of climate-related financial risk data and information among FSOC member agencies and other executive departments and agencies (agencies) as appropriate;

(iii) issuing a report to the President within 180 days of the date of this order on any efforts by FSOC member agencies to integrate consideration of climate-related financial risk in their policies and programs, including a discussion of:

(A) the necessity of any actions to enhance climate-related disclosures by regulated entities to mitigate

climate-related financial risk to the financial system or assets and a recommended implementation plan for taking those actions;

(B) any current approaches to incorporating the consideration of climate-related financial risk into their respective regulatory and supervisory activities and any impediments they faced in adopting those approaches;

(C) recommended processes to identify climate-related financial risk to the financial stability of the United States; and

(D) any other recommendations on how identified climate-related financial risk can be mitigated, including through new or revised regulatory standards as appropriate; and

(iv) including an assessment of climate-related financial risk in the FSOC's annual report to the Congress.

(b) The Secretary of the Treasury shall:

(i) direct the Federal Insurance Office to assess climate-related issues or gaps in the supervision and regulation of insurers, including as part of the FSOC's analysis of financial stability, and to further assess, in consultation with States, the potential for major disruptions of private insurance coverage in regions of the country particularly vulnerable to climate change impacts; and

(ii) direct the Office of Financial Research to assist the Secretary of the Treasury and the FSOC in assessing and identifying climate-related financial risk to financial stability, including the collection of data, as appropriate, and the development of research on climate-related financial risk to the U.S. financial system.

SEC. 4. *Resilience of Life Savings and Pensions*. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations, the Secretary of Labor shall:

(a) identify agency actions that can be taken under the Employee Retirement Income Security Act of 1974 (Public Law 93–406) [29 U.S.C. 1001 et seq.], the Federal Employees' Retirement System Act of 1986 (Public Law 99–335) [see Tables for classification], and any other relevant laws to protect the life savings and pensions of United States workers and families from the threats of climate-related financial risk;

(b) consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind "Financial Factors in Selecting Plan Investments," 85 Fed. Reg. 72846 (November 13, 2020), and "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights," 85 Fed. Reg. 81658 (December 16, 2020);

(c) assess—consistent with the Secretary of Labor's oversight responsibilities under the Federal Employees' Retirement System Act of 1986 and in consultation with the Director of the National Economic Council and the National Climate Advisor—how the Federal Retirement Thrift Investment Board has taken environmental, social, and governance factors, including climate-related financial risk, into account; and

(d) within 180 days of the date of this order, submit to the President, through the Director of the National Economic Council and the National Climate Advisor, a report on the actions taken pursuant to subsections (a), (b), and (c) of this section.

SEC. 5. *Federal Lending, Underwriting, and Procurement*. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations:

(a) The Director of OMB and the Director of the National Economic Council, in consultation with the Secretary of the Treasury, shall develop recommendations for the National Climate Task Force on approaches related to the integration of climate-related financial risk into Federal financial management and financial reporting, especially as that risk relates to Federal lending programs. The recommendations should evaluate options to enhance accounting standards for Federal financial reporting where appropriate and should identify any opportunities to further encourage market adoption of such standards.

(b) The Federal Acquisition Regulatory Council, in consultation with the Chair of the Council on Environmental Quality and the heads of other agencies as appropriate, shall consider amending the Federal Acquisition Regulation (FAR) to:

(i) require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets; and

(ii) ensure that major Federal agency procurements minimize the risk of climate change, including requiring the social cost of greenhouse gas emissions to be considered in procurement decisions and, where appropriate and feasible, give preference to bids and proposals from suppliers with a lower social cost of greenhouse gas emissions.

(c) The Secretary of Agriculture, the Secretary of Housing and Urban Development, and the Secretary of Veterans Affairs shall consider approaches to better integrate climate-related financial risk into underwriting standards, loan terms and conditions, and asset management and servicing procedures, as related to their Federal lending policies and programs.

(d) As part of the agency Climate Action Plans required by section 211 of Executive Order 14008 of

January 27, 2021 (Tackling the Climate Crisis at Home and Abroad) [42 U.S.C. 4321 note], and consistent with the interim instructions for the Climate Action Plans issued by the Federal Chief Sustainability Officer, heads of agencies must submit to the Director of OMB, the National Climate Task Force, and the Federal Chief Sustainability Officer actions to integrate climate-related financial risk into their respective agency's procurement process (subject to any changes to the FAR arising out of the Federal Acquisition Regulatory Council's review pursuant to subsection (b) of this section). The Director of OMB and the Federal Chief Sustainability Officer shall provide guidance to agencies on existing voluntary standards for use in agencies' plans.

(e) In Executive Order 13690 of January 30, 2015 (Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input) [42 U.S.C. 4321 note], a Federal Flood Risk Management Standard (FFRMS) was established to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended. Subsequently, the order was revoked by Executive Order 13807 of August 15, 2017 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects). Executive Order 13690 is hereby reinstated, thereby reestablishing the FFRMS. The "Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input" of October 8, 2015, were never revoked and thus remain in effect.

SEC. 6. *Long-Term Budget Outlook*. The Federal Government has broad exposure to increased costs and lost revenue as a result of the impacts of unmitigated climate change. In furtherance of the policy set forth in section 1 of this order and consistent with applicable law and subject to the availability of appropriations:

(a) The Director of OMB, in consultation with the Secretary of the Treasury, the Chair of the Council of Economic Advisers, the Director of the National Economic Council, and the National Climate Advisor, shall identify the primary sources of Federal climate-related financial risk exposure and develop methodologies to quantify climate risk within the economic assumptions and the long-term budget projections of the President's Budget;

(b) The Director of OMB and the Chair of the Council of Economic Advisers, in consultation with the Director of the National Economic Council, the National Climate Advisor, and the heads of other agencies as appropriate, shall develop and publish annually, within the President's Budget, an assessment of the Federal Government's climate risk exposure; and

(c) The Director of OMB shall improve the accounting of climate-related Federal expenditures, where appropriate, and reduce the Federal Government's long-term fiscal exposure to climate-related financial risk through formulation of the President's Budget and oversight of budget execution.

SEC. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

§2902. Purpose

It is the purpose of the Congress in this chapter to establish a national climate program that will assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications.

(Pub. L. 95–367, §3, Sept. 17, 1978, 92 Stat. 601.)

§2903. Definitions

As used in this chapter, unless the context otherwise requires:

(1) The term "Board" means the Climate Program Policy Board.

(2) The term "Office" means the National Climate Program Office.
(3) The term "Program" means the National Climate Program.
(4) The term "Secretary" means the Secretary of Commerce.

(Pub. L. 95–367, §4, Sept. 17, 1978, 92 Stat. 601; Pub. L. 99–272, title VI, §6084(a), Apr. 7, 1986, 100 Stat. 136.)

EDITORIAL NOTES

AMENDMENTS

1986—Pub. L. 99–272 added par. (1) and redesignated former pars. (1) to (3) as (2) to (4), respectively.

§2904. National Climate Program

(a) Establishment

The President shall establish a National Climate Program in accordance with the provisions, findings and purposes of this chapter.

(b) Duties

The President shall—

(1) promulgate the 5-year plans described in subsection (d)(9);

(2) define the roles in the Program of Federal officers, departments, and agencies, including the Departments of Agriculture, Commerce, Defense, Energy, Interior, State, and Transportation; the Environmental Protection Agency; the National Aeronautics and Space Administration; the Council on Environmental Quality; the National Science Foundation; and the Office of Science and Technology Policy; and

(3) provide for Program coordination.

(c) National Climate Program Office

(1) The Secretary shall establish within the Department of Commerce a National Climate Program Office not later than 30 days after September 17, 1978.

(2) The Office shall—

(A) serve as the lead entity responsible for administering the program;

(B) be headed by a Director who shall represent the Climate Program Policy Board and shall be spokesperson for the program;

(C) serve as the staff for the Board and its supporting committees and working groups;

(D) review each agency budget request transmitted under subsection (g)(1) and submit an analysis of the requests to the Board for its review;

(E) be responsible for coordinating interagency participation in international climate-related activities; and

(F) work with the National Academy of Sciences and other private, academic, State, and local groups in preparing and implementing the 5-year plan (described in subsection (d)(9)) and the program.

The analysis described in subparagraph (D) shall include an analysis of how each agency's budget request relates to the priorities and goals of the program established pursuant to this chapter.

(3) The Secretary may provide, through the Office, financial assistance, in the form of contracts or grants or cooperative agreements, for climate-related activities which are needed to meet the goals and priorities of the program set forth in the 5-year plan pursuant to subsection (d)(9), if such goals and priorities are not being adequately addressed by any Federal department, agency, or instrumentality.

(4) Each Federal officer, employee, department and agency involved in the Program shall cooperate with the Secretary in carrying out the provisions of this chapter.

(d) Program elements

The Program shall include, but not be limited to, the following elements:

(1) assessments of the effect of climate on the natural environment, agricultural production, energy supply and demand, land and water resources, transportation, human health and national security. Such assessments shall be conducted to the maximum extent possible by those Federal agencies having national programs in food, fiber, raw materials, energy, transportation, land and water management, and other such responsibilities, in accordance with existing laws and regulations. Where appropriate such assessments may include recommendations for action;

(2) basic and applied research to improve the understanding of climate processes, natural and man induced, and the social, economic, and political implications of climate change;

(3) methods for improving climate forecasts on a monthly, seasonal, yearly, and longer basis;

(4) global data collection, and monitoring and analysis activities to provide reliable, useful and readily available information on a continuing basis;

(5) systems for the management and active dissemination of climatological data, information and assessments, including mechanisms for consultation with current and potential users;

(6) measures for increasing international cooperation in climate research, monitoring, analysis and data dissemination;

(7) mechanisms for intergovernmental climate-related studies and services including participation by universities, the private sector and others concerned with applied research and advisory services. Such mechanisms may provide, among others, for the following State and regional services and functions: (A) studies relating to and analyses of climatic effects on agricultural production, water resources, energy needs, and other critical sectors of the economy; (B) atmospheric data collection and monitoring on a statewide and regional basis; (C) advice to regional, State, and local government agencies regarding climate-related issues; (D) information to users within the State regarding climate and climatic effects; and (E) information to the Secretary regarding the needs of persons within the States for climate-related services, information, and data. The Secretary may make annual grants to any State or group of States, which grants shall be made available to public or private educational institutions, to State agencies, and to other persons or institutions qualified to conduct climate-related studies or provide climate-related services;

(8) experimental climate forecast centers, which shall (A) be responsible for making and routinely updating experimental climate forecasts of a monthly, seasonal, annual, and longer nature, based on a variety of experimental techniques; (B) establish procedures to have forecasts reviewed and their accuracy evaluated; and (C) protect against premature reliance on such experimental forecasts; and

(9) a preliminary 5-year plan, to be submitted to the Congress for review and comment, not later than 180 days after September 17, 1978, and a final 5-year plan to be submitted to the Congress not later than 1 year after September 17, 1978, that shall be revised and extended at least once every four years. Each plan shall establish the goals and priorities for the Program, including the intergovernmental program described in paragraph (7), over the subsequent 5-year period, and shall contain details regarding (A) the role of Federal agencies in the programs, (B) Federal funding required to enable the Program to achieve such goals, and (C) Program accomplishments that must be achieved to ensure that Program goals are met within the time frame established by the plan.

(e) Climate Program Policy Board

(1) The Secretary shall establish and maintain an interagency Climate Program Policy Board, consisting of representatives of the Federal agencies specified in subsection (b)(2) and any other agency which the Secretary determines should participate in the Program.

(2) The Board shall—

(A) be responsible for coordinated planning and progress review for the Program;

(B) review all agency and department budget requests related to climate transmitted under subsection (g)(1) and submit a report to the Office of Management and Budget concerning such budget requests;

(C) establish and maintain such interagency groups as the Board determines to be necessary to carry out its activities; and

(D) consult with and seek the advice of users and producers of climate data, information, and services to guide the Board's efforts, keeping the Director and the Congress advised of such contacts.

(3) The Board biennially shall select a Chair from among its members. A Board member who is a representative of an agency may not serve as Chair of the Board for a term if an individual who represented that same agency on the Board served as the Board's Chair for the previous term.

(f) Cooperation

(1) The Program shall be conducted so as to encourage cooperation with, and participation in the Program by, other organizations or agencies involved in related activities. For this purpose the Secretary shall cooperate and participate with other Federal agencies, and foreign, international, and domestic organizations and agencies involved in international or domestic climate-related programs.

(2) The Secretary and the Secretary of State shall cooperate with the Office in (A) providing representation at climate-related international meetings and conferences in which the United States participates, and (B) coordinating the activities of the Program with the climate programs of other nations and international agencies and organizations, including the World Meteorological Organization, the International Council of Scientific Unions, the United Nations Environmental Program, the United Nations Educational, Scientific, and Cultural Organization, the World Health Organization, and Food and Agriculture Organization.

(g) Budgeting

Each Federal agency and department participating in the Program, shall prepare and submit to the Office of Management and Budget, on or before the date of submission of departmental requests for appropriations to the Office of Management and Budget, an annual request for appropriations for the Program for the subsequent fiscal year and shall transmit a copy of such request to the National Climate Program Office. The Office of Management and Budget shall review the request for appropriations as an integrated, coherent, multiagency request.

(Pub. L. 95–367, §5(a)–(g)(1), Sept. 17, 1978, 92 Stat. 601–603; Pub. L. 99–272, title VI, §6084(b)–(f), Apr. 7, 1986, 100 Stat. 136, 137.)

EDITORIAL NOTES

CODIFICATION

Subsec. (g) of this section in the original was par. (1) of section 5(g) of Pub. L. 95–367 and has been set out without such par. (1) designation for purposes of codification. For classification of par. (2) of section 5(g) to the Code, see Tables.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–272, §6084(b), designated first sentence as par. (1), substituted pars. (2) and (3) for second sentence which provided that "The Office shall be the lead entity responsible for administering the Program", and designated third sentence as par. (4).

Subsec. (d)(7). Pub. L. 99–272, §6084(c)(1), inserted provision that such mechanisms may provide, among others, for certain enumerated State and regional services and functions.

Subsec. (d)(9). Pub. L. 99–272, §6084(c)(2), (3), substituted "at least once every four years" for "biennially" and "described in paragraph (7)" for "under section 2905 of this title".

Subsec. (e). Pub. L. 99–272, §6084(d), substituted provisions relating to the establishment and maintenance of the Climate Program Policy Board for provisions relating to the establishment and maintenance of an advisory committee and interagency groups.

Subsec. (f)(2). Pub. L. 99–272, §6084(e), substituted "shall cooperate with the Office in" for "shall cooperate in".

Subsec. (g). Pub. L. 99–272, §6084(f), inserted provision requiring each Federal agency and department participating in the Program to transmit a copy of such request to the National Climate Program Office.

§2905. Repealed. Pub. L. 99–272, title VI, §6084(g), Apr. 7, 1986, 100 Stat. 137

Section, Pub. L. 95–367, §6, Sept. 17, 1978, 92 Stat. 603, related to establishment and requirements of intergovernmental climate programs.

§2906. Annual report

The Secretary shall prepare and submit to the President and the authorizing committees of the Congress, not later than March 31 of each year, a report on the activities conducted pursuant to this chapter during the preceding fiscal year, including—

(a) a summary of the achievements of the Program during the previous fiscal year;

(b) an analysis of the progress made toward achieving the goals and objectives of the Program;

(c) a copy of the 5-year plan and any changes made in such plan;

(d) a summary of the multiagency budget request for the Program of section 2904(g) of this title; and

(e) any recommendations for additional legislation which may be required to assist in achieving the purposes of this chapter.

(Pub. L. 95–367, §7, Sept. 17, 1978, 92 Stat. 604; Pub. L. 97–375, title II, §202(b), Dec. 21, 1982, 96 Stat. 1822.)

EDITORIAL NOTES

AMENDMENTS

1982—Pub. L. 97–375 substituted "March 31" for "January 30".

§2907. Contract and grant authority; records and audits

(a) Functions vested in any Federal officer or agency by this chapter or under the Program may be exercised through the facilities and personnel of the agency involved or, to the extent provided or approved in advance in appropriation Acts, by other persons or entities under contracts or grant arrangements entered into by such officer or agency.

(b)(1) Each person or entity to which Federal funds are made available under a contract or grant arrangement as authorized by this chapter shall keep such records as the Director of the Office shall prescribe, including records which fully disclose the amount and disposition by such person or entity of such funds, the total cost of the activities for which such funds were so made available, the amount of that portion of such cost supplied from other sources, and such other records as will facilitate an effective audit.

(2) The Director of the Office and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of 3 years after the completion of the activities (referred to in paragraph (1)) of any person or entity pursuant to any contract or grant arrangement referred to in subsection (a), have access for the purpose of audit and examination to any books, documents, papers, and records of such person or entity which, in the judgment of the Director or the Comptroller General, may be related or pertinent to such contract or grant arrangement.

(Pub. L. 95–367, §8, Sept. 17, 1978, 92 Stat. 604.)

§2908. Authorization of appropriations

In addition to any other funds otherwise authorized to be appropriated for the purpose of conducting climate-related programs, there are authorized to be appropriated to the Secretary, for the purpose of carrying out the provisions of this chapter, not to exceed $50,000,000 for the fiscal year

ending September 30, 1979, not to exceed $65,000,000 for the fiscal year ending September 30, 1980, and not to exceed $25,500,000 for the fiscal year ending September 30, 1981, of which amount not less than $2,653,000 shall be made directly available to the National Climate Program Office in the form of a budget item separate from the activities of the National Oceanic and Atmospheric Administration.

(Pub. L. 95–367, §9, Sept. 17, 1978, 92 Stat. 605; Pub. L. 96–547, §1, Dec. 18, 1980, 94 Stat. 3217.)

EDITORIAL NOTES

AMENDMENTS

1980—Pub. L. 96–547 revised former subsec. (a) into entire section with additional provisions relating to fiscal year ending Sept. 30, 1981, and struck out subsec. (b) setting forth authorization of appropriations for grants.

CHAPTER 56A—GLOBAL CHANGE RESEARCH

Sec.

§2921. Definitions

As used in this chapter, the term—

(1) "Committee" means the Committee on Earth and Environmental Sciences established under section 2932 of this title;

(2) "Council" means the Federal Coordinating Council on Science, Engineering, and Technology;

(3) "global change" means changes in the global environment (including alterations in climate, land productivity, oceans or other water resources, atmospheric chemistry, and ecological systems) that may alter the capacity of the Earth to sustain life;

(4) "global change research" means study, monitoring, assessment, prediction, and information management activities to describe and understand—

(A) the interactive physical, chemical, and biological processes that regulate the total Earth system;

(B) the unique environment that the Earth provides for life;

(C) changes that are occurring in the Earth system; and

(D) the manner in which such system, environment, and changes are influenced by human

actions;

(5) "Plan" means the National Global Change Research Plan developed under section 2934 of this title, or any revision thereof; and

(6) "Program" means the United States Global Change Research Program established under section 2933 of this title.

(Pub. L. 101–606, §2, Nov. 16, 1990, 104 Stat. 3096.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 101–606, §1, Nov. 16, 1990, 104 Stat. 3096, provided that: "This Act [enacting this chapter] may be cited as the 'Global Change Research Act of 1990'."

Pub. L. 101–606, title II, §201, Nov. 16, 1990, 104 Stat. 3102, provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'International Cooperation in Global Change Research Act of 1990'."

SUBCHAPTER I—UNITED STATES GLOBAL CHANGE RESEARCH PROGRAM

§2931. Findings and purpose

(a) Findings

The Congress makes the following findings:

(1) Industrial, agricultural, and other human activities, coupled with an expanding world population, are contributing to processes of global change that may significantly alter the Earth habitat within a few human generations.

(2) Such human-induced changes, in conjunction with natural fluctuations, may lead to significant global warming and thus alter world climate patterns and increase global sea levels. Over the next century, these consequences could adversely affect world agricultural and marine production, coastal habitability, biological diversity, human health, and global economic and social well-being.

(3) The release of chlorofluorocarbons and other stratospheric ozone-depleting substances is rapidly reducing the ability of the atmosphere to screen out harmful ultraviolet radiation, which could adversely affect human health and ecological systems.

(4) Development of effective policies to abate, mitigate, and cope with global change will rely on greatly improved scientific understanding of global environmental processes and on our ability to distinguish human-induced from natural global change.

(5) New developments in interdisciplinary Earth sciences, global observing systems, and computing technology make possible significant advances in the scientific understanding and prediction of these global changes and their effects.

(6) Although significant Federal global change research efforts are underway, an effective Federal research program will require efficient interagency coordination, and coordination with the research activities of State, private, and international entities.

(b) Purpose

The purpose of this subchapter is to provide for development and coordination of a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.

(Pub. L. 101–606, title I, §101, Nov. 16, 1990, 104 Stat. 3096.)

§2932. Committee on Earth and Environmental Sciences

(a) Establishment

The President, through the Council, shall establish a Committee on Earth and Environmental Sciences. The Committee shall carry out Council functions under section 6651 of title 42 relating to global change research, for the purpose of increasing the overall effectiveness and productivity of Federal global change research efforts.

(b) Membership

The Committee shall consist of at least one representative from—

(1) the National Science Foundation;
(2) the National Aeronautics and Space Administration;
(3) the National Oceanic and Atmospheric Administration of the Department of Commerce;
(4) the Environmental Protection Agency;
(5) the Department of Energy;
(6) the Department of State;
(7) the Department of Defense;
(8) the Department of the Interior;
(9) the Department of Agriculture;
(10) the Department of Transportation;
(11) the Office of Management and Budget;
(12) the Office of Science and Technology Policy;
(13) the Council on Environmental Quality;
(14) the National Institute of Environmental Health Sciences of the National Institutes of Health; and
(15) such other agencies and departments of the United States as the President or the Chairman of the Council considers appropriate.

Such representatives shall be high ranking officials of their agency or department, wherever possible the head of the portion of that agency or department that is most revelant [1] to the purpose of the subchapter described in section 2931(b) of this title.

(c) Chairperson

The Chairman of the Council, in consultation with the Committee, biennially shall select one of the Committee members to serve as Chairperson. The Chairperson shall be knowledgeable and experienced with regard to the administration of scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.

(d) Support personnel

An Executive Secretary shall be appointed by the Chairperson of the Committee, with the approval of the Committee. The Executive Secretary shall be a permanent employee of one of the agencies or departments represented on the Committee, and shall remain in the employ of such agency or department. The Chairman of the Council shall have the authority to make personnel decisions regarding any employees detailed to the Council for purposes of working on business of the Committee pursuant to section 6651 of title 42.

(e) Functions relative to global change

The Council, through the Committee, shall be responsible for planning and coordinating the Program. In carrying out this responsibility, the Committee shall—

(1) serve as the forum for developing the Plan and for overseeing its implementation;
(2) improve cooperation among Federal agencies and departments with respect to global change research activities;

(3) provide budgetary advice as specified in section 2935 of this title;

(4) work with academic, State, industry, and other groups conducting global change research, to provide for periodic public and peer review of the Program;

(5) cooperate with the Secretary of State in—

(A) providing representation at international meetings and conferences on global change research in which the United States participates; and

(B) coordinating the Federal activities of the United States with programs of other nations and with international global change research activities such as the International Geosphere-Biosphere Program;

(6) consult with actual and potential users of the results of the Program to ensure that such results are useful in developing national and international policy responses to global change; and

(7) report at least annually to the President and the Congress, through the Chairman of the Council, on Federal global change research priorities, policies, and programs.

(Pub. L. 101–606, title I, §102, Nov. 16, 1990, 104 Stat. 3097.)

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

§2933. United States Global Change Research Program

The President shall establish an interagency United States Global Change Research Program to improve understanding of global change. The Program shall be implemented by the Plan developed under section 2934 of this title.

(Pub. L. 101–606, title I, §103, Nov. 16, 1990, 104 Stat. 3098.)

§2934. National Global Change Research Plan

(a) In general

The Chairman of the Council, through the Committee, shall develop a National Global Change Research Plan for implementation of the Program. The Plan shall contain recommendations for national global change research. The Chairman of the Council shall submit the Plan to the Congress within one year after November 16, 1990, and a revised Plan shall be submitted at least once every three years thereafter.

(b) Contents of Plan

The Plan shall—

(1) establish, for the 10-year period beginning in the year the Plan is submitted, the goals and priorities for Federal global change research which most effectively advance scientific understanding of global change and provide usable information on which to base policy decisions relating to global change;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, and information management, required to achieve such goals and priorities;

(3) identify and address, as appropriate, relevant programs and activities of the Federal agencies and departments represented on the Committee that contribute to the Program;

(4) set forth the role of each Federal agency and department in implementing the Plan;

(5) consider and utilize, as appropriate, reports and studies conducted by Federal agencies and departments, the National Research Council, or other entities;

(6) make recommendations for the coordination of the global change research activities of the United States with such activities of other nations and international organizations, including—

(A) a description of the extent and nature of necessary international cooperation;

(B) the development by the Committee, in consultation when appropriate with the National Space Council, of proposals for cooperation on major capital projects;

(C) bilateral and multilateral proposals for improving worldwide access to scientific data and information; and

(D) methods for improving participation in international global change research by developing nations; and

(7) estimate, to the extent practicable, Federal funding for global change research activities to be conducted under the Plan.

(c) Research elements

The Plan shall provide for, but not be limited to, the following research elements:

(1) Global measurements, establishing worldwide observations necessary to understand the physical, chemical, and biological processes responsible for changes in the Earth system on all relevant spatial and time scales.

(2) Documentation of global change, including the development of mechanisms for recording changes that will actually occur in the Earth system over the coming decades.

(3) Studies of earlier changes in the Earth system, using evidence from the geological and fossil record.

(4) Predictions, using quantitative models of the Earth system to identify and simulate global environmental processes and trends, and the regional implications of such processes and trends.

(5) Focused research initiatives to understand the nature of and interaction among physical, chemical, biological, and social processes related to global change.

(d) Information management

The Plan shall provide recommendations for collaboration within the Federal Government and among nations to—

(1) establish, develop, and maintain information bases, including necessary management systems which will promote consistent, efficient, and compatible transfer and use of data;

(2) create globally accessible formats for data collected by various international sources; and

(3) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to the effects of global change.

(e) National Research Council evaluation

The Chairman of the Council shall enter into an agreement with the National Research Council under which the National Research Council shall—

(1) evaluate the scientific content of the Plan; and

(2) provide information and advice obtained from United States and international sources, and recommended priorities for future global change research.

(f) Public participation

In developing the Plan, the Committee shall consult with academic, State, industry, and environmental groups and representatives. Not later than 90 days before the Chairman of the Council submits the Plan, or any revision thereof, to the Congress, a summary of the proposed Plan shall be published in the Federal Register for a public comment period of not less than 60 days.

(Pub. L. 101–606, title I, §104, Nov. 16, 1990, 104 Stat. 3099.)

§2935. Budget coordination

(a) Committee guidance

The Committee shall each year provide general guidance to each Federal agency or department participating in the Program with respect to the preparation of requests for appropriations for activities related to the Program.

(b) Submission of reports with agency appropriations requests

(1) Working in conjunction with the Committee, each Federal agency or department involved in global change research shall include with its annual request for appropriations submitted to the President under section 1108 of title 31 a report which—

(A) identifies each element of the proposed global change research activities of the agency or department;

(B) specifies whether each element (i) contributes directly to the Program or (ii) contributes indirectly but in important ways to the Program; and

(C) states the portion of its request for appropriations allocated to each element of the Program.

(2) Each agency or department that submits a report under paragraph (1) shall submit such report simultaneously to the Committee.

(c) Consideration in President's budget

(1) The President shall, in a timely fashion, provide the Committee with an opportunity to review and comment on the budget estimate of each agency and department involved in global change research in the context of the Plan.

(2) The President shall identify in each annual budget submitted to the Congress under section 1105 of title 31 those items in each agency's or department's annual budget which are elements of the Program.

(Pub. L. 101–606, title I, §105, Nov. 16, 1990, 104 Stat. 3100.)

§2936. Scientific assessment

On a periodic basis (not less frequently than every 4 years), the Council, through the Committee, shall prepare and submit to the President and the Congress an assessment which—

(1) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings;

(2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and

(3) analyzes current trends in global change, both human-inducted [1] and natural, and projects major trends for the subsequent 25 to 100 years.

(Pub. L. 101–606, title I, §106, Nov. 16, 1990, 104 Stat. 3101.)

[1] So in original. Probably should be "human-induced".

§2937. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 101–606, title I, §107, Nov. 16, 1990, 104 Stat. 3101, which required the Chairman of the Federal Coordinating Council on Science, Engineering, and Technology to submit an annual report to Congress on the activities conducted by the Committee on Earth and Environmental Sciences pursuant to this subchapter, terminated effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 157 of House Document No. 103–7.

§2938. Relation to other authorities

(a) National Climate Program research activities

The President, the Chairman of the Council, and the Secretary of Commerce shall ensure that relevant research activities of the National Climate Program, established by the National Climate Program Act (15 U.S.C. 2901 et seq.), are considered in developing national global change research efforts.

(b) Availability of research findings

The President, the Chairman of the Council, and the heads of the agencies and departments represented on the Committee, shall ensure that the research findings of the Committee, and of Federal agencies and departments, are available to—

(1) the Environmental Protection Agency for use in the formulation of a coordinated national policy on global climate change pursuant to section 1103 of the Global Climate Protection Act of 1987 (15 U.S.C. 2901 note); and

(2) all Federal agencies and departments for use in the formulation of coordinated national policies for responding to human-induced and natural processes of global change pursuant to other statutory responsibilities and obligations.

(c) Effect on Federal response actions

Nothing in this subchapter shall be construed, interpreted, or applied to preclude or delay the planning or implementation of any Federal action designed, in whole or in part, to address the threats of stratospheric ozone depletion or global climate change.

(Pub. L. 101–606, title I, §108, Nov. 16, 1990, 104 Stat. 3101.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Climate Program Act, referred to in subsec. (a), is Pub. L. 95–367, Sept. 17, 1978, 92 Stat. 601, which is classified principally to chapter 56 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

SUBCHAPTER II—INTERNATIONAL COOPERATION IN GLOBAL CHANGE RESEARCH

§2951. Findings and purposes

(a) Findings

The Congress makes the following findings:

(1) Pooling of international resources and scientific capabilities will be essential to a successful international global change program.

(2) While international scientific planning is already underway, there is currently no comprehensive intergovernmental mechanism for planning, coordinating, or implementing research to understand global change and to mitigate possible adverse effects.

(3) An international global change research program will be important in building future consensus on methods for reducing global environmental degradation.

(4) The United States, as a world leader in environmental and Earth sciences, should help provide leadership in developing and implementing an international global change research program.

(b) Purposes

The purposes of this subchapter are to—

(1) promote international, intergovernmental cooperation on global change research;

(2) involve scientists and policymakers from developing nations in such cooperative global change research programs; and

(3) promote international efforts to provide technical and other assistance to developing nations which will facilitate improvements in their domestic standard of living while minimizing damage to the global or regional environment.

(Pub. L. 101–606, title II, §202, Nov. 16, 1990, 104 Stat. 3102.)

§2952. International discussions

(a) Global change research

The President should direct the Secretary of State, in cooperation with the Committee, to initiate discussions with other nations leading toward international protocols and other agreements to coordinate global change research activities. Such discussions should include the following issues:

(1) Allocation of costs in global change research programs, especially with respect to major capital projects.

(2) Coordination of global change research plans with those developed by international organizations such as the International Council on Scientific Unions, the World Meteorological Organization, and the United Nations Environment Program.

(3) Establishment of global change research centers and training programs for scientists, especially those from developing nations.

(4) Development of innovative methods for management of international global change research, including—

(A) use of new or existing intergovernmental organizations for the coordination or funding of global change research; and

(B) creation of a limited foundation for global change research.

(5) The prompt establishment of international projects to—

(A) create globally accessible formats for data collected by various international sources; and

(B) combine and interpret data from various sources to produce information readily usable by policymakers attempting to formulate effective strategies for preventing, mitigating, and adapting to possible adverse effects of global change.

(6) Establishment of international offices to disseminate information useful in identifying, preventing, mitigating, or adapting to the possible effects of global change.

(b) Energy research

The President should direct the Secretary of State (in cooperation with the Secretary of Energy, the Secretary of Commerce, the United States Trade Representative, and other appropriate members of the Committee) to initiate discussions with other nations leading toward an international research protocol for cooperation on the development of energy technologies which have minimally adverse effects on the environment. Such discussions should include, but not be limited to, the following issues:

(1) Creation of an international cooperative program to fund research related to energy efficiency, solar and other renewable energy sources, and passively safe and diversion-resistant nuclear reactors.

(2) Creation of an international cooperative program to develop low cost energy technologies which are appropriate to the environmental, economic, and social needs of developing nations.

(3) Exchange of information concerning environmentally safe energy technologies and practices, including those described in paragraphs (1) and (2).

(Pub. L. 101–606, title II, §203, Nov. 16, 1990, 104 Stat. 3102.)

§2953. Global Change Research Information Office

Not more than 180 days after November 16, 1990, the President shall, in consultation with the Committee and all relevant Federal agencies, establish an Office of Global Change Research Information. The purpose of the Office shall be to disseminate to foreign governments, businesses, and institutions, as well as the citizens of foreign countries, scientific research information available in the United States which would be useful in preventing, mitigating, or adapting to the effects of global change. Such information shall include, but need not be limited to, results of scientific research and development on technologies useful for—

(1) reducing energy consumption through conservation and energy efficiency;

(2) promoting the use of solar and renewable energy sources which reduce the amount of greenhouse gases released into the atmosphere;

(3) developing replacements for chlorofluorocarbons, halons, and other ozone-depleting substances which exhibit a significantly reduced potential for depleting stratospheric ozone;

(4) promoting the conservation of forest resources which help reduce the amount of carbon dioxide in the atmosphere;

(5) assisting developing countries in ecological pest management practices and in the proper use of agricultural, and industrial chemicals; and

(6) promoting recycling and source reduction of pollutants in order to reduce the volume of waste which must be disposed of, thus decreasing energy use and greenhouse gas emissions.

(Pub. L. 101–606, title II, §204, Nov. 16, 1990, 104 Stat. 3103.)

SUBCHAPTER III—GROWTH DECISION AID

§2961. Study and decision aid

(a) Study of consequences of community growth and development; decision aid to assist State and local authorities in managing development

The Secretary of Commerce shall conduct a study of the implications and potential consequences of growth and development on urban, suburban, and rural communities. Based upon the findings of the study, the Secretary shall produce a decision aid to assist State and local authorities in planning and managing urban, suburban, and rural growth and development while preserving community character.

(b) Consultation with appropriate Federal departments and agencies

The Secretary of Commerce shall consult with other appropriate Federal departments and agencies as necessary in carrying out this section.

(c) Report

The Secretary of Commerce shall submit to the Congress a report containing the decision aid produced under subsection (a) no later than January 30, 1992. The Secretary shall notify appropriate State and local authorities that such decision aid is available on request.

(Pub. L. 101–606, title III, §301, Nov. 16, 1990, 104 Stat. 3104.)

CHAPTER 57—INTERSTATE HORSERACING

Sec.

§3001. Congressional findings and policy

(a) The Congress finds that—

(1) the States should have the primary responsibility for determining what forms of gambling may legally take place within their borders;

(2) the Federal Government should prevent interference by one State with the gambling policies of another, and should act to protect identifiable national interests; and

(3) in the limited area of interstate off-track wagering on horseraces, there is a need for Federal action to ensure States will continue to cooperate with one another in the acceptance of legal interstate wagers.

(b) It is the policy of the Congress in this chapter to regulate interstate commerce with respect to wagering on horseracing, in order to further the horseracing and legal off-track betting industries in the United States.

(Pub. L. 95–515, §2, Oct. 25, 1978, 92 Stat. 1811.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 95–515, §9, Oct. 25, 1978, 92 Stat. 1815, provided that:

"(a) The provisions of this Act [this chapter] shall take effect on the date of enactment of this Act [Oct. 25, 1978], and, except as provided in subsection (b) of this section, shall apply to any interstate off-track wager accepted on or after such date of enactment.

"(b)(1) The provisions of this Act [this chapter] shall not apply to any interstate off-track wager which is accepted pursuant to a contract existing on May 1, 1978.

"(2) The provisions of this Act shall not apply to any form of legal non-parimutuel off-track betting existing in a State on May 1, 1978.

"(3) The provisions of subsection (b) of section 5 of this Act [section 3004(b) of this title] shall not apply to any parimutuel off-track betting system existing on May 1, 1978, in a State which does not conduct parimutuel horseracing on the date of enactment of this Act [Oct. 25, 1978]."

SHORT TITLE

Pub. L. 95–515, §1, Oct. 25, 1978, 92 Stat. 1811, provided that: "This Act [enacting this chapter] may be cited as the 'Interstate Horseracing Act of 1978'."

§3002. Definitions

For the purposes of this chapter the term—

(1) "person" means any individual, association, partnership, joint venture, corporation, State or political subdivision thereof, department, agency, or instrumentality of a State or political subdivision thereof, or any other organization or entity;

(2) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(3) "interstate off-track wager" means a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another State and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools;

(4) "on-track wager" means a wager with respect to the outcome of a horserace which is placed at the racetrack at which such horse- race takes place;

(5) "host State" means the State in which the horserace subject to the interstate wager takes place;

(6) "off-track State" means the State in which an interstate off-track wager is accepted;

(7) "off-track betting system" means any group which is in the business of accepting wagers on horseraces at locations other than the place where the horserace is run, which business is conducted by the State or licensed or otherwise permitted by State law;

(8) "off-track betting office" means any location within an off-track State at which off-track wagers are accepted;

(9) "host racing association" means any person who, pursuant to a license or other permission granted by the host State, conducts the horserace subject to the interstate wager;

(10) "host racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate the conduct of racing within the host State;

(11) "off-track racing commission" means that person designated by State statute or, in the absence of statute, by regulation, with jurisdiction to regulate off-track betting in that State;

(12) "horsemen's group" means, with reference to the applicable host racing association, the group which represents the majority of owners and trainers racing there, for the races subject to the interstate off-track wager on any racing day;

(13) "parimutuel" means any system whereby wagers with respect to the outcome of a horserace are placed with, or in, a wagering pool conducted by a person licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator;

(14) "currently operating tracks" means racing associations conducting parimutuel horseracing at the same time of day (afternoon against afternoon; nighttime against nighttime) as the racing association conducting the horseracing which is the subject of the interstate off-track wager;

(15) "race meeting" means those scheduled days during the year a racing association is granted permission by the appropriate State racing commission to conduct horseracing;

(16) "racing day" means a full program of races at a specified racing association on a specified day;

(17) "special event" means the specific individual horserace which is deemed by the off-track betting system to be of sufficient national significance and interest to warrant interstate off-track wagering on that event or events;

(18) "dark days" means those days when racing of the same type does not occur in an off-track State within 60 miles of an off-track betting office during a race meeting, including, but not limited to, a dark weekday when such racing association or associations run on Sunday, and days when a racing program is scheduled but does not take place, or cannot be completed due to weather, strikes and other factors not within the control of the off-track betting system;

(19) "year" means calendar year;

(20) "takeout" means that portion of a wager which is deducted from or not included in the parimutuel pool, and which is distributed to persons other than those placing wagers;

(21) "regular contractual process" means those negotiations by which the applicable horsemen's group and host racing association reach agreements on issues regarding the conduct of horseracing by the horsemen's group at that racing association;

(22) "terms and conditions" includes, but is not limited to, the percentage which is paid by the off-track betting system to the host racing association, the percentage which is paid by the host racing association to the horsemen's group, as well as any arrangements as to the exclusivity between the host racing association and the off-track betting system.

(Pub. L. 95–515, §3, Oct. 25, 1978, 92 Stat. 1811; Pub. L. 106–553, §1(a)(2) [title VI, §629], Dec. 21, 2000, 114 Stat. 2762, 2762A–108.)

EDITORIAL NOTES

AMENDMENTS

2000—Par. (3). Pub. L. 106–553 inserted "and includes pari-mutuel wagers, where lawful in each State involved, placed or transmitted by an individual in one State via telephone or other electronic media and accepted by an off-track betting system in the same or another State, as well as the combination of any pari-mutuel wagering pools" after "another State".

§3003. Acceptance of interstate off-track wager

No person may accept an interstate off-track wager except as provided in this chapter.

(Pub. L. 95–515, §4, Oct. 25, 1978, 92 Stat. 1813.)

§3004. Regulation of interstate off-track wagering

(a) Consent of host racing association, host racing commission, and off-track racing commission as prerequisite to acceptance of wager

An interstate off-track wager may be accepted by an off-track betting system only if consent is obtained from—

(1) the host racing association, except that—

(A) as a condition precedent to such consent, said racing association (except a not-for-profit racing association in a State where the distribution of off-track betting revenues in that State is set forth by law) must have a written agreement with the horsemen's group, under which said racing association may give such consent, setting forth the terms and conditions relating thereto; provided,

(B) that where the host racing association has a contract with a horsemen's group at the time of enactment of this chapter which contains no provisions referring to interstate off-track betting, the terms and conditions of said then-existing contract shall be deemed to apply to the interstate off-track wagers and no additional written agreement need be entered into unless the parties to such then-existing contract agree otherwise. Where such provisions exist in such existing contract, such contract shall govern. Where written consents exist at the time of enactment of this chapter between an off-track betting system and the host racing association providing for interstate off-track wagers, or such written consents are executed by these parties prior to the expiration of such then-existing contract, upon the expiration of such then-existing contract the written agreement of such horsemen's group shall thereafter be required as such condition precedent and as a part of the regular contractual process, and may not be withdrawn or varied except in the regular contractual process. Where no such written consent exists, and where such written agreement occurs at a racing association which has a regular contractual process with such horsemen's group, said agreement by the horsemen's group may not be withdrawn or varied except in the regular contractual process;

(2) the host racing commission;

(3) the off-track racing commission.

(b) Approval of tracks as prerequisite to acceptance of wager; exceptions

(1) In addition to the requirement of subsection (a), any off-track betting office shall obtain the approval of—

(A) all currently operating tracks within 60 miles of such off-track betting office; and

(B) if there are no currently operating tracks within 60 miles then the closest currently operating track in an adjoining State.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any off-track betting office in a State with at least 250 days of on-track parimutuel horseracing a year, may accept interstate off-track wagers for a total of 60 racing days and 25 special events a year without the approval

required by paragraph (1), if with respect to such 60 racing days, there is no racing of the same type at the same time of day being conducted within the off-track betting State within 60 miles of the off-track betting office accepting the wager, or such racing program cannot be completed. Excluded from such 60 days and from the consent required by subsection (b)(1) may be dark days which occur during a regularly scheduled race meeting in said off-track betting State. In order to accept any interstate off-track wager under the terms of the preceding sentence the off-track betting office shall make identical offers to any racing association described in subparagraph (A) of subsection (b)(1). Nothing in this subparagraph shall be construed to reduce or eliminate the necessity of obtaining all the approvals required by subsection (a).

(c) Takeout amount

No parimutuel off-track betting system may employ a takeout for an interstate wager which is greater than the takeout for corresponding wagering pools of off-track wagers on races run within the off-track State except where such greater takeout is authorized by State law in the off-track State.

(Pub. L. 95–515, §5, Oct. 25, 1978, 92 Stat. 1813.)

§3005. Liability and damages

Any person accepting any interstate off-track wager in violation of this chapter shall be civilly liable for damages to the host State, the host racing association and the horsemen's group. Damages for each violation shall be based on the total of off-track wagers as follows:

(1) If the interstate off-track wager was of a type accepted at the host racing association, damages shall be in an amount equal to that portion of the takeout which would have been distributed to the host State, host racing association and the horsemen's group, as if each such interstate off-track wager had been placed at the host racing association.

(2) If such interstate off-track wager was of a type not accepted at the host racing association, the amount of damages shall be determined at the rate of takeout prevailing at the off-track betting system for that type of wager and shall be distributed according to the same formulas as in paragraph (1) above.

(Pub. L. 95–515, §6, Oct. 25, 1978, 92 Stat. 1814.)

§3006. Civil action

(a) Parties; remedies

The host State, the host racing association, or the horsemen's group may commence a civil action against any person alleged to be in violation of this chapter, for injunctive relief to restrain violations and for damages in accordance with section 3005 of this title.

(b) Intervention

In any civil action under this section, the host State, the host racing association and horsemen's group, if not a party, shall be permitted to intervene as a matter of right.

(c) Limitations

A civil action may not be commenced pursuant to this section more than 3 years after the discovery of the alleged violation upon which such civil action is based.

(d) State as defendant

Nothing in this chapter shall be construed to permit a State to be sued under this section other than in accordance with its applicable laws.

(Pub. L. 95–515, §7, Oct. 25, 1978, 92 Stat. 1814.)

§3007. Jurisdiction and venue

(a) District court jurisdiction

Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any civil action under this chapter, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue; service of process

A civil action under this chapter may be brought in any district court of the United States for a district located in the host State or the off-track State, and all process in any such civil action may be served in any judicial district of the United States.

(c) Concurrent State court jurisdiction

The jurisdiction of the district courts of the United States pursuant to this section shall be concurrent with that of any State court of competent jurisdiction located in the host State or the off-track State.

(Pub. L. 95–515, §8, Oct. 25, 1978, 92 Stat. 1814.)

CHAPTER 57A—HORSERACING INTEGRITY AND SAFETY

Sec.

§3051. Definitions

In this chapter the following definitions apply:

(1) Authority

The term "Authority" means the Horseracing Integrity and Safety Authority designated by section 3052(a) of this title.

(2) Breeder

The term "breeder" means a person who is in the business of breeding covered horses.

(3) Commission

The term "Commission" means the Federal Trade Commission.

(4) Covered horse

The term "covered horse" means any Thoroughbred horse, or any other horse made subject to this chapter by election of the applicable State racing commission or the breed governing organization for such horse under section 3054(k) [1] of this title, during the period—

(A) beginning on the date of the horse's first timed and reported workout at a racetrack that participates in covered horseraces or at a training facility; and

(B) ending on the date on which the Authority receives written notice that the horse has been retired.

(5) Covered horserace

The term "covered horserace" means any horserace involving covered horses that has a substantial relation to interstate commerce, including any Thoroughbred horserace that is the subject of interstate off-track or advance deposit wagers.

(6) Covered persons

The term "covered persons" means all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a State racing commission and the agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of covered horses.

(7) Equine constituencies

The term "equine constituencies" means, collectively, owners, breeders, trainers, racetracks, veterinarians, State racing commissions, and jockeys who are engaged in the care, training, or racing of covered horses.

(8) Equine industry representative

The term "equine industry representative" means an organization regularly and significantly engaged in the equine industry, including organizations that represent the interests of, and whose membership consists of, owners, breeders, trainers, racetracks, veterinarians, State racing commissions, and jockeys.

(9) Horseracing anti-doping and medication control program

The term "horseracing anti-doping and medication control program" means the anti-doping and medication program established under section 3055(a) of this title.

(10) Immediate family member

The term "immediate family member" shall include a spouse, domestic partner, mother, father, aunt, uncle, sibling, or child.

(11) Interstate off-track wager

The term "interstate off-track wager" has the meaning given such term in section 3002 of this title.

(12) Jockey

The term "jockey" means a rider or driver of a covered horse in covered horseraces.

(13) Owner

The term "owner" means a person who holds an ownership interest in one or more covered horses.

(14) Program effective date

The term "program effective date" means July 1, 2022.

(15) Racetrack

The term "racetrack" means an organization licensed by a State racing commission to conduct covered horseraces.

(16) Racetrack safety program

The term "racetrack safety program" means the program established under section 3056(a) of this title.

(17) Stakes race

The term "stakes race" means any race so designated by the racetrack at which such race is run, including, without limitation, the races comprising the Breeders' Cup World Championships and the races designated as graded stakes by the American Graded Stakes Committee of the Thoroughbred Owners and Breeders Association.

(18) State racing commission

The term "State racing commission" means an entity designated by State law or regulation that has jurisdiction over the conduct of horseracing within the applicable State.

(19) Trainer

The term "trainer" means an individual engaged in the training of covered horses.

(20) Training facility

The term "training facility" means a location that is not a racetrack licensed by a State racing commission that operates primarily to house covered horses and conduct official timed workouts.

(21) Veterinarian

The term "veterinarian" means a licensed veterinarian who provides veterinary services to covered horses.

(22) Workout

The term "workout" means a timed running of a horse over a predetermined distance not associated with a race or its first qualifying race, if such race is made subject to this chapter by election under section 3054(k) [1] of this title of the horse's breed governing organization or the applicable State racing commission.

(Pub. L. 116–260, div. FF, title XII, §1202, Dec. 27, 2020, 134 Stat. 3252.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this title", meaning title XII of div. FF of Pub. L. 116–260, to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 116–260, div. FF, title XII, §1201, Dec. 27, 2020, 134 Stat. 3252, provided that: "This title [enacting this chapter] may be cited as the 'Horseracing Integrity and Safety Act of 2020'."

[1] So in original. Probably should be "section 3054(l)".

§3052. Recognition of the Horseracing Integrity and Safety Authority

(a) In general

The private, independent, self-regulatory, nonprofit corporation, to be known as the "Horseracing Integrity and Safety Authority", is recognized for purposes of developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.

(b) Board of directors

(1) Membership

The Authority shall be governed by a board of directors (in this section referred to as the "Board") comprised of nine members as follows:

(A) Independent members

Five members of the Board shall be independent members selected from outside the equine industry.

(B) Industry members

(i) In general

Four members of the Board shall be industry members selected from among the various equine constituencies.

(ii) Representation of equine constituencies

The industry members shall be representative of the various equine constituencies, and shall include not more than one industry member from any one equine constituency.

(2) Chair

The chair of the Board shall be an independent member described in paragraph (1)(A).

(3) Bylaws

The Board of the Authority shall be governed by bylaws for the operation of the Authority with respect to—

(A) the administrative structure and employees of the Authority;
(B) the establishment of standing committees;
(C) the procedures for filling vacancies on the Board and the standing committees;
(D) term limits for members and termination of membership; and
(E) any other matter the Board considers necessary.

(c) Standing committees

(1) Anti-doping and medication control standing committee

(A) In general

The Authority shall establish an anti-doping and medication control standing committee, which shall provide advice and guidance to the Board on the development and maintenance of the horseracing anti-doping and medication control program.

(B) Membership

The anti-doping and medication control standing committee shall be comprised of seven members as follows:

(i) Independent members

A majority of the members shall be independent members selected from outside the equine industry.

(ii) Industry members

A minority of the members shall be industry members selected to represent the various equine constituencies, and shall include not more than one industry member from any one equine constituency.

(iii) Qualification

A majority of individuals selected to serve on the anti-doping and medication control standing committee shall have significant, recent experience in anti-doping and medication control rules.

(C) Chair

The chair of the anti-doping and medication control standing committee shall be an independent member of the Board described in subsection (b)(1)(A).

(2) Racetrack safety standing committee

(A) In general

The Authority shall establish a racetrack safety standing committee, which shall provide advice and guidance to the Board on the development and maintenance of the racetrack safety program.

(B) Membership

The racetrack safety standing committee shall be comprised of seven members as follows:

(i) Independent members

A majority of the members shall be independent members selected from outside the equine industry.

(ii) Industry members

A minority of the members shall be industry members selected to represent the various equine constituencies.

(C) Chair

The chair of the racetrack safety standing committee shall be an industry member of the Board described in subsection (b)(1)(B).

(d) Nominating committee

(1) Membership

(A) In general

The nominating committee of the Authority shall be comprised of seven independent members selected from business, sports, and academia.

(B) Initial membership

The initial nominating committee members shall be set forth in the governing corporate documents of the Authority.

(C) Vacancies

After the initial committee members are appointed in accordance with subparagraph (B), vacancies shall be filled by the Board pursuant to rules established by the Authority.

(2) Chair

The chair of the nominating committee shall be selected by the nominating committee from among the members of the nominating committee.

(3) Selection of members of the Board and standing committees

(A) Initial members

The nominating committee shall select the initial members of the Board and the standing committees described in subsection (c).

(B) Subsequent members

The nominating committee shall recommend individuals to fill any vacancy on the Board or on such standing committees.

(e) Conflicts of interest

To avoid conflicts of interest, the following individuals may not be selected as a member of the Board or as an independent member of a nominating or standing committee under this section:

(1) An individual who has a financial interest in, or provides goods or services to, covered horses.

(2) An official or officer—

(A) of an equine industry representative; or

(B) who serves in a governance or policymaking capacity for an equine industry representative.

(3) An employee of, or an individual who has a business or commercial relationship with, an individual described in paragraph (1) or (2).

(4) An immediate family member of an individual described in paragraph (1) or (2).

(f) Funding

(1) Initial funding

(A) In general

Initial funding to establish the Authority and underwrite its operations before the program effective date shall be provided by loans obtained by the Authority.

(B) Borrowing

The Authority may borrow funds toward the funding of its operations.

(C) Annual calculation of amounts required

(i) In general

Not later than the date that is 90 days before the program effective date, and not later than November 1 each year thereafter, the Authority shall determine and provide to each State racing commission the estimated amount required from the State—

(I) to fund the State's proportionate share of the horseracing anti-doping and medication control program and the racetrack safety program for the next calendar year; and

(II) to liquidate the State's proportionate share of any loan or funding shortfall in the current calendar year and any previous calendar year.

(ii) Basis of calculation

The amounts calculated under clause (i) shall—

(I) be based on—

(aa) the annual budget of the Authority for the following calendar year, as approved by the Board; and

(bb) the projected amount of covered racing starts for the year in each State; and

(II) take into account other sources of Authority revenue.

(iii) Requirements regarding budgets of Authority

(I) Initial budget

The initial budget of the Authority shall require the approval of 2/3 of the Board.

(II) Subsequent budgets

Any subsequent budget that exceeds the budget of the preceding calendar year by more than 5 percent shall require the approval of 2/3 of the Board.

(iv) Rate increases

(I) In general

A proposed increase in the amount required under this subparagraph shall be reported to the Commission.

(II) Notice and comment

The Commission shall publish in the Federal Register such a proposed increase and provide an opportunity for public comment.

(2) Assessment and collection of fees by States

(A) Notice of election

Any State racing commission that elects to remit fees pursuant to this subsection shall notify the Authority of such election not later than 60 days before the program effective date.

(B) Requirement to remit fees

After a State racing commission makes a notification under subparagraph (A), the election shall remain in effect and the State racing commission shall be required to remit fees pursuant to this subsection according to a schedule established in rule developed by the Authority and approved by the Commission.

(C) Withdrawal of election

A State racing commission may cease remitting fees under this subsection not earlier than one year after notifying the Authority of the intent of the State racing commission to do so.

(D) Determination of methods

Each State racing commission shall determine, subject to the applicable laws, regulations, and contracts of the State, the method by which the requisite amount of fees, such as foal registration fees, sales contributions, starter fees, and track fees, and other fees on covered persons, shall be allocated, assessed, and collected.

(3) Assessment and collection of fees by the Authority

(A) Calculation

If a State racing commission does not elect to remit fees pursuant to paragraph (2) or withdraws its election under such paragraph, the Authority shall, not less frequently than monthly, calculate the applicable fee per racing start multiplied by the number of racing starts in the State during the preceding month.

(B) Allocation

The Authority shall allocate equitably the amount calculated under subparagraph (A) collected among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate.

(C) Assessment and collection

(i) In general

The Authority shall assess a fee equal to the allocation made under subparagraph (B) and shall collect such fee according to such rules as the Authority may promulgate.

(ii) Remittance of fees

Covered persons described in subparagraph (B) shall be required to remit such fees to the Authority.

(D) Limitation

A State racing commission that does not elect to remit fees pursuant to paragraph (2) or that withdraws its election under such paragraph shall not impose or collect from any person a fee or tax relating to anti-doping and medication control or racetrack safety matters for covered horseraces.

(4) Fees and fines

Fees and fines imposed by the Authority shall be allocated toward funding of the Authority and its activities.

(5) Rule of construction

Nothing in this chapter shall be construed to require—

(A) the appropriation of any amount to the Authority; or

(B) the Federal Government to guarantee the debts of the Authority.

(g) Quorum

For all items where Board approval is required, the Authority shall have present a majority of independent members.

(Pub. L. 116–260, div. FF, title XII, §1203, Dec. 27, 2020, 134 Stat. 3253.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (f)(5), was in the original "this Act" and was translated as reading "this title", meaning title XII of div. FF of Pub. L. 116–260, to reflect the probable intent of Congress.

§3053. Federal Trade Commission oversight

(a) In general

The Authority shall submit to the Commission, in accordance with such rules as the Commission may prescribe under section 553 of title 5, any proposed rule, or proposed modification to a rule, of the Authority relating to—

(1) the bylaws of the Authority;

(2) a list of permitted and prohibited medications, substances, and methods, including allowable limits of permitted medications, substances, and methods;

(3) laboratory standards for accreditation and protocols;

(4) standards for racing surface quality maintenance;

(5) racetrack safety standards and protocols;

(6) a program for injury and fatality data analysis;

(7) a program of research and education on safety, performance, and anti-doping and medication control;

(8) a description of safety, performance, and anti-doping and medication control rule violations applicable to covered horses and covered persons;

(9) a schedule of civil sanctions for violations;

(10) a process or procedures for disciplinary hearings; and

(11) a formula or methodology for determining assessments described in section 3052(f) of this title.

(b) Publication and comment

(1) In general

The Commission shall—

(A) publish in the Federal Register each proposed rule or modification submitted under subsection (a); and

(B) provide an opportunity for public comment.

(2) Approval required

A proposed rule, or a proposed modification to a rule, of the Authority shall not take effect unless the proposed rule or modification has been approved by the Commission.

(c) Decision on proposed rule or modification to a rule

(1) In general

Not later than 60 days after the date on which a proposed rule or modification is published in the Federal Register, the Commission shall approve or disapprove the proposed rule or modification.

(2) Conditions

The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—

(A) this chapter; and

(B) applicable rules approved by the Commission.

(3) Revision of proposed rule or modification

(A) In general

In the case of disapproval of a proposed rule or modification under this subsection, not later than 30 days after the issuance of the disapproval, the Commission shall make recommendations to the Authority to modify the proposed rule or modification.

(B) Resubmission

The Authority may resubmit for approval by the Commission a proposed rule or modification

that incorporates the modifications recommended under subparagraph (A).

(d) Proposed standards and procedures

(1) In general

The Authority shall submit to the Commission any proposed rule, standard, or procedure developed by the Authority to carry out the horseracing anti-doping and medication control program or the racetrack safety program.

(2) Notice and comment

The Commission shall publish in the Federal Register any such proposed rule, standard, or procedure and provide an opportunity for public comment.

(e) Amendment by Commission of rules of authority

The Commission, by rule in accordance with section 553 of title 5, may abrogate, add to, and modify the rules of the Authority promulgated in accordance with this chapter as the Commission finds necessary or appropriate to ensure the fair administration of the Authority, to conform the rules of the Authority to requirements of this chapter and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of this chapter.

(Pub. L. 116–260, div. FF, title XII, §1204, Dec. 27, 2020, 134 Stat. 3257; Pub. L. 117–328, div. O, title VII, §701, Dec. 29, 2022, 136 Stat. 5231.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(2)(A) and (e), was in the original "this Act" and was translated as reading "this title", meaning title XII of div. FF of Pub. L. 116–260, to reflect the probable intent of Congress.

AMENDMENTS

2022—Subsec. (e). Pub. L. 117–328 amended subsec. (e) generally. Prior to amendment, text read as follows: "The Commission may adopt an interim final rule, to take effect immediately, under conditions specified in section 553(b)(B) of title 5, if the Commission finds that such a rule is necessary to protect—

"(1) the health and safety of covered horses; or

"(2) the integrity of covered horseraces and wagering on those horseraces."

§3054. Jurisdiction of the Commission and the Horseracing Integrity and Safety Authority

(a) In general

Beginning on the program effective date, the Commission, the Authority, and the anti-doping and medication control enforcement agency, each within the scope of their powers and responsibilities under this chapter, as limited by subsection (j),[1] shall—

(1) implement and enforce the horseracing anti-doping and medication control program and the racetrack safety program;

(2) exercise independent and exclusive national authority over—

(A) the safety, welfare, and integrity of covered horses, covered persons, and covered horseraces; and

(B) all horseracing safety, performance, and anti-doping and medication control matters for covered horses, covered persons, and covered horseraces; and

(3) have safety, performance, and anti-doping and medication control authority over covered persons similar to such authority of the State racing commissions before the program effective date.

(b) Preemption

The rules of the Authority promulgated in accordance with this chapter shall preempt any provision of State law or regulation with respect to matters within the jurisdiction of the Authority under this chapter, as limited by subsection (j).[1] Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.

(c) Duties

(1) In general

The Authority—

(A) shall develop uniform procedures and rules authorizing—

(i) access to offices, racetrack facilities, other places of business, books, records, and personal property of covered persons that are used in the care, treatment, training, and racing of covered horses;

(ii) issuance and enforcement of subpoenas and subpoenas duces tecum; and

(iii) other investigatory powers of the nature and scope exercised by State racing commissions before the program effective date; and

(B) with respect to an unfair or deceptive act or practice described in section 3059 of this title, may recommend that the Commission commence an enforcement action.

(2) Approval of Commission

The procedures and rules developed under paragraph (1)(A) shall be subject to approval by the Commission in accordance with section 3053 of this title.

(d) Registration of covered persons with Authority

(1) In general

As a condition of participating in covered races and in the care, ownership, treatment, and training of covered horses, a covered person shall register with the Authority in accordance with rules promulgated by the Authority and approved by the Commission in accordance with section 3053 of this title.

(2) Agreement with respect to Authority rules, standards, and procedures

Registration under this subsection shall include an agreement by the covered person to be subject to and comply with the rules, standards, and procedures developed and approved under subsection (c).

(3) Cooperation

A covered person registered under this subsection shall, at all times—

(A) cooperate with the Commission, the Authority, the anti-doping and medication control enforcement agency, and any respective designee, during any civil investigation; and

(B) respond truthfully and completely to the best of the knowledge of the covered person if questioned by the Commission, the Authority, the anti-doping and medication control enforcement agency, or any respective designee.

(4) Failure to comply

Any failure of a covered person to comply with this subsection shall be a violation of section 3057(a)(2)(G) of this title.

(e) Enforcement of programs

(1) Anti-doping and medication control enforcement agency

(A) Agreement with USADA

The Authority shall seek to enter into an agreement with the United States Anti-Doping Agency under which the Agency acts as the anti-doping and medication control enforcement agency under this chapter for services consistent with the horseracing anti-doping and medication control program.

(B) Agreement with other entity

If the Authority and the United States Anti-Doping Agency are unable to enter into the agreement described in subparagraph (A), the Authority shall enter into an agreement with an entity that is nationally recognized as being a medication regulation agency equal in qualification to the United States Anti-Doping Agency to act as the anti-doping and medication control enforcement agency under this chapter for services consistent with the horseracing anti-doping and medication control program.

(C) Negotiations

Any negotiations under this paragraph shall be conducted in good faith and designed to achieve efficient, effective best practices for anti-doping and medication control and enforcement on commercially reasonable terms.

(D) Elements of agreement

Any agreement under this paragraph shall include a description of the scope of work, performance metrics, reporting obligations, and budgets of the United States Anti-Doping Agency while acting as the anti-doping and medication control enforcement agency under this chapter, as well as a provision for the revision of the agreement to increase in the scope of work as provided for in subsection (k),[2] and any other matter the Authority considers appropriate.

(E) Duties and powers of enforcement agency

The anti-doping and medication control enforcement agency under an agreement under this paragraph shall—

(i) serve as the independent anti-doping and medication control enforcement organization for covered horses, covered persons, and covered horseraces, implementing the anti-doping and medication control program on behalf of the Authority;

(ii) ensure that covered horses and covered persons are deterred from using or administering medications, substances, and methods in violation of the rules established in accordance with this chapter;

(iii) implement anti-doping education, research, testing, compliance and adjudication programs designed to prevent covered persons and covered horses from using or administering medications, substances, and methods in violation of the rules established in accordance with this chapter;

(iv) exercise the powers specified in section 3055(c)(4) of this title in accordance with that section; and

(v) implement and undertake any other responsibilities specified in the agreement.

(F) Term and extension

(i) Term of initial agreement

The initial agreement entered into by the Authority under this paragraph shall be in effect for the 5-year period beginning on the program effective date.

(ii) Extension

At the end of the 5-year period described in clause (i), the Authority may—

(I) extend the term of the initial agreement under this paragraph for such additional term as is provided by the rules of the Authority and consistent with this chapter; or

(II) enter into an agreement meeting the requirements of this paragraph with an entity described by subparagraph (B) for such term as is provided by such rules and consistent with this chapter.

(2) Agreements for enforcement by State racing commissions

(A) State racing commissions

(i) Racetrack safety program

The Authority may enter into agreements with State racing commissions for services

consistent with the enforcement of the racetrack safety program.

(ii) Anti-doping and medication control program

The anti-doping and medication control enforcement agency may enter into agreements with State racing commissions for services consistent with the enforcement of the anti-doping and medication control program.

(B) Elements of agreements

Any agreement under this paragraph shall include a description of the scope of work, performance metrics, reporting obligations, budgets, and any other matter the Authority considers appropriate.

(3) Enforcement of standards

The Authority may coordinate with State racing commissions and other State regulatory agencies to monitor and enforce racetrack compliance with the standards developed under paragraphs (1) and (2) of section 3056(c) of this title.

(f) Procedures with respect to rules of Authority

(1) Anti-doping and medication control

(A) In general

Recommendations for rules regarding anti-doping and medication control shall be developed in accordance with section 3055 of this title.

(B) Consultation

The anti-doping and medication control enforcement agency shall consult with the anti-doping and medication control standing committee and the Board of the Authority on all anti-doping and medication control rules of the Authority.

(2) Racetrack safety

Recommendations for rules regarding racetrack safety shall be developed by the racetrack safety standing committee of the Authority.

(g) Issuance of guidance

(1) The Authority may issue guidance that—

(A) sets forth—

(i) an interpretation of an existing rule, standard, or procedure of the Authority; or

(ii) a policy or practice with respect to the administration or enforcement of such an existing rule, standard, or procedure; and

(B) relates solely to—

(i) the administration of the Authority; or

(ii) any other matter, as specified by the Commission, by rule, consistent with the public interest and the purposes of this subsection.

(2) Submittal to Commission

The Authority shall submit to the Commission any guidance issued under paragraph (1).

(3) Immediate effect

Guidance issued under paragraph (1) shall take effect on the date on which the guidance is submitted to the Commission under paragraph (2).

(h) Subpoena and investigatory authority

The Authority shall have subpoena and investigatory authority with respect to civil violations committed under its jurisdiction.

(i) Civil penalties

The Authority shall develop a list of civil penalties with respect to the enforcement of rules for

covered persons and covered horseraces under its jurisdiction.

(j) Civil actions

(1) In general

In addition to civil sanctions imposed under section 3057 of this title, the Authority may commence a civil action against a covered person or racetrack that has engaged, is engaged, or is about to engage, in acts or practices constituting a violation of this chapter or any rule established under this chapter in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce any civil sanctions imposed under that section, and for all other relief to which the Authority may be entitled.

(2) Injunctions and restraining orders

With respect to a civil action commenced under paragraph (1), upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(k) Limitations on authority

(1) Prospective application

The jurisdiction and authority of the Authority and the Commission with respect to the horseracing anti-doping and medication control program and the racetrack safety program shall be prospective only.

(2) Previous matters

(A) In general

The Authority and the Commission may not investigate, prosecute, adjudicate, or penalize conduct in violation of the horseracing anti-doping and medication control program and the racetrack safety program that occurs before the program effective date.

(B) State racing commission

With respect to conduct described in subparagraph (A), the applicable State racing commission shall retain authority until the final resolution of the matter.

(3) Other laws unaffected

This chapter shall not be construed to modify, impair or restrict the operation of the general laws or regulations, as may be amended from time to time, of the United States, the States and their political subdivisions relating to criminal conduct, cruelty to animals, matters unrelated to antidoping, medication control and racetrack and racing safety of covered horses and covered races, and the use of medication in human participants in covered races.

(l) Election for other breed coverage under chapter

(1) In general

A State racing commission or a breed governing organization for a breed of horses other than Thoroughbred horses may elect to have such breed be covered by this chapter by the filing of a designated election form and subsequent approval by the Authority. A State racing commission may elect to have a breed covered by this chapter for the applicable State only.

(2) Election conditional on funding mechanism

A commission or organization may not make an election under paragraph (1) unless the commission or organization has in place a mechanism to provide sufficient funds to cover the costs of the administration of this chapter with respect to the horses that will be covered by this chapter as a result of the election.

(3) Apportionment

The Authority shall apportion costs described in paragraph (2) in connection with an election under paragraph (1) fairly among all impacted segments of the horseracing industry, subject to

approval by the Commission in accordance with section 3053 of this title. Such apportionment may not provide for the allocation of costs or funds among breeds of horses.

(Pub. L. 116–260, div. FF, title XII, §1205, Dec. 27, 2020, 134 Stat. 3259.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (e)(1), (j)(1), (k)(3), and (l)(1), (2), was in the original "this Act" and was translated as reading "this title", meaning title XII of div. FF of Pub. L. 116–260, to reflect the probable intent of Congress.

[1] So in original. Probably should be "subsection (k)".

[2] So in original.

§3055. Horseracing anti-doping and medication control program

(a) Program required

(1) In general

Not later than the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Authority shall establish a horseracing anti-doping and medication control program applicable to all covered horses, covered persons, and covered horseraces in accordance with the registration of covered persons under section 3054(d) of this title.

(2) Consideration of other breeds

In developing the horseracing anti-doping and medication control program with respect to a breed of horse that is made subject to this chapter by election of a State racing commission or the breed governing organization for such horse under section 3054(k) [1] of this title, the Authority shall consider the unique characteristics of such breed.

(b) Considerations in development of program

In developing the horseracing anti-doping and medication control program, the Authority shall take into consideration the following:

(1) Covered horses should compete only when they are free from the influence of medications, other foreign substances, and methods that affect their performance.

(2) Covered horses that are injured or unsound should not train or participate in covered races, and the use of medications, other foreign substances, and treatment methods that mask or deaden pain in order to allow injured or unsound horses to train or race should be prohibited.

(3) Rules, standards, procedures, and protocols regulating medication and treatment methods for covered horses and covered races should be uniform and uniformly administered nationally.

(4) To the extent consistent with this chapter, consideration should be given to international anti-doping and medication control standards of the International Federation of Horseracing Authorities and the Principles of Veterinary Medical Ethics of the American Veterinary Medical Association.

(5) The administration of medications and treatment methods to covered horses should be based upon an examination and diagnosis that identifies an issue requiring treatment for which the medication or method represents an appropriate component of treatment.

(6) The amount of therapeutic medication that a covered horse receives should be the minimum necessary to address the diagnosed health concerns identified during the examination and diagnostic process.

(7) The welfare of covered horses, the integrity of the sport, and the confidence of the betting

public require full disclosure to regulatory authorities regarding the administration of medications and treatments to covered horses.

(c) Activities

The following activities shall be carried out under the horseracing anti-doping and medication control program:

(1) Standards for anti-doping and medication control

Not later than 120 days before the program effective date, the Authority shall issue, by rule—

(A) uniform standards for—

(i) the administration of medication to covered horses by covered persons; and

(ii) laboratory testing accreditation and protocols; and

(B) a list of permitted and prohibited medications, substances, and methods, including allowable limits of permitted medications, substances, and methods.

(2) Review process for administration of medication

The development of a review process for the administration of any medication to a covered horse during the 48-hour period preceding the next racing start of the covered horse.

(3) Agreement requirements

The development of requirements with respect to agreements under section 3054(e) of this title.

(4) Anti-doping and medication control enforcement agency

(A) Control rules, protocols, etc

Except as provided in paragraph (5), the anti-doping and medication control program enforcement agency under section 3054(e) of this title shall, in consultation with the anti-doping and medication control standing committee of the Authority and consistent with international best practices, develop and recommend anti-doping and medication control rules, protocols, policies, and guidelines for approval by the Authority.

(B) Results management

The anti-doping and medication control enforcement agency shall conduct and oversee anti-doping and medication control results management, including independent investigations, charging and adjudication of potential medication control rule violations, and the enforcement of any civil sanctions for such violations. Any final decision or civil sanction of the anti-doping and medication control enforcement agency under this subparagraph shall be the final decision or civil sanction of the Authority, subject to review in accordance with section 3058 of this title.

(C) Testing

The anti-doping enforcement agency shall perform and manage test distribution planning (including intelligence-based testing), the sample collection process, and in-competition and out-of-competition testing (including no-advance-notice testing).

(D) Testing laboratories

The anti-doping and medication control enforcement agency shall accredit testing laboratories based upon the standards established under this chapter, and shall monitor, test, and audit accredited laboratories to ensure continuing compliance with accreditation standards.

(5) Anti-doping and medication control standing committee

The anti-doping and medication control standing committee shall, in consultation with the anti-doping and medication control enforcement agency, develop lists of permitted and prohibited medications, methods, and substances for recommendation to, and approval by, the Authority. Any such list may prohibit the administration of any substance or method to a horse at any time after such horse becomes a covered horse if the Authority determines such substance or method has a long-term degrading effect on the soundness of a horse.

(d) Prohibition

Except as provided in subsections (e) and (f), the horseracing anti-doping and medication control program shall prohibit the administration of any prohibited or otherwise permitted substance to a covered horse within 48 hours of its next racing start, effective as of the program effective date.

(e) Advisory committee study and report

(1) In general

Not later than the program effective date, the Authority shall convene an advisory committee comprised of horseracing anti-doping and medication control industry experts, including a member designated by the anti-doping and medication control enforcement agency, to conduct a study on the use of furosemide on horses during the 48-hour period before the start of a race, including the effect of furosemide on equine health and the integrity of competition and any other matter the Authority considers appropriate.

(2) Report

Not later than three years after the program effective date, the Authority shall direct the advisory committee convened under paragraph (1) to submit to the Authority a written report on the study conducted under that paragraph that includes recommended changes, if any, to the prohibition in subsection (d).

(3) Modification of prohibition

(A) In general

After receipt of the report required by paragraph (2), the Authority may, by unanimous vote of the Board of the Authority, modify the prohibition in subsection (d) and, notwithstanding subsection (f), any such modification shall apply to all States beginning on the date that is three years after the program effective date.

(B) Condition

In order for a unanimous vote described in subparagraph (A) to effect a modification of the prohibition in subsection (d), the vote must include unanimous adoption of each of the following findings:

(i) That the modification is warranted.

(ii) That the modification is in the best interests of horse racing.

(iii) That furosemide has no performance enhancing effect on individual horses.

(iv) That public confidence in the integrity and safety of racing would not be adversely affected by the modification.

(f) Exemption

(1) In general

Except as provided in paragraph (2), only during the three-year period beginning on the program effective date, a State racing commission may submit to the Authority, at such time and in such manner as the Authority may require, a request for an exemption from the prohibition in subsection (d) with respect to the use of furosemide on covered horses during such period.

(2) Exceptions

An exemption under paragraph (1) may not be requested for—

(A) two-year-old covered horses; or

(B) covered horses competing in stakes races.

(3) Contents of request

A request under paragraph (1) shall specify the applicable State racing commission's requested limitations on the use of furosemide that would apply to the State under the horseracing anti-doping and medication control program during such period. Such limitations shall be no less restrictive on the use and administration of furosemide than the restrictions set forth in State's laws and regulations in effect as of September 1, 2020.

(4) Grant of exemption

Subject to subsection (e)(3), the Authority shall grant an exemption requested under paragraph (1) for the remainder of such period and shall allow the use of furosemide on covered horses in the applicable State, in accordance with the requested limitations.

(g) Baseline anti-doping and medication control rules

(1) In general

Subject to paragraph (3), the baseline anti-doping and medication control rules described in paragraph (2) shall—

(A) constitute the initial rules of the horseracing anti-doping and medication control program; and

(B) except as exempted pursuant to subsections (e) and (f), remain in effect at all times after the program effective date.

(2) Baseline anti-doping medication control rules described

(A) In general

The baseline anti-doping and medication control rules described in this paragraph are the following:

(i) The lists of permitted and prohibited substances (including drugs, medications, and naturally occurring substances and synthetically occurring substances) in effect for the International Federation of Horseracing Authorities, including the International Federation of Horseracing Authorities International Screening Limits for urine, dated May 2019, and the International Federation of Horseracing Authorities International Screening Limits for plasma, dated May 2019.

(ii) The World Anti-Doping Agency International Standard for Laboratories (version 10.0), dated November 12, 2019.

(iii) The Association of Racing Commissioners International out-of-competition testing standards, Model Rules of Racing (version 9.2).

(iv) The Association of Racing Commissioners International penalty and multiple medication violation rules, Model Rules of Racing (version 6.2).

(B) Conflict of rules

In the case of a conflict among the rules described in subparagraph (A), the most stringent rule shall apply.

(3) Modifications to baseline rules

(A) Development by anti-doping and medication control standing committee

The anti-doping and medication control standing committee, in consultation with the anti-doping and medication control enforcement agency, may develop and submit to the Authority for approval by the Authority proposed modifications to the baseline anti-doping and medication control rules.

(B) Authority approval

If the Authority approves a proposed modification under this paragraph, the proposed modification shall be submitted to and considered by the Commission in accordance with section 3053 of this title.

(C) Anti-doping and medication control enforcement agency veto authority

The Authority shall not approve any proposed modification that renders an anti-doping and medication control rule less stringent than the baseline anti-doping and medication control rules described in paragraph (2) (including by increasing permitted medication thresholds, adding permitted medications, removing prohibited medications, or weakening enforcement mechanisms) without the approval of the anti-doping and medication control enforcement agency.

(Pub. L. 116–260, div. FF, title XII, §1206, Dec. 27, 2020, 134 Stat. 3263.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (b)(4), and (c)(4)(D), was in the original "this Act" and was translated as reading "this title", meaning title XII of div. FF of Pub. L. 116–260, to reflect the probable intent of Congress.

[1] *So in original. Probably should be "section 3054(l)".*

§3056. Racetrack safety program

(a) Establishment and considerations

(1) In general

Not later than the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Authority shall establish a racetrack safety program applicable to all covered horses, covered persons, and covered horseraces in accordance with the registration of covered persons under section 3054(d) of this title.

(2) Considerations in development of safety program

In the development of the horseracing safety program for covered horses, covered persons, and covered horseraces, the Authority and the Commission shall take into consideration existing safety standards including the National Thoroughbred Racing Association Safety and Integrity Alliance Code of Standards, the International Federation of Horseracing Authority's International Agreement on Breeding, Racing, and Wagering, and the British Horseracing Authority's Equine Health and Welfare program.

(b) Elements of horseracing safety program

The horseracing safety program shall include the following:

(1) A set of training and racing safety standards and protocols taking into account regional differences and the character of differing racing facilities.

(2) A uniform set of training and racing safety standards and protocols consistent with the humane treatment of covered horses, which may include lists of permitted and prohibited practices or methods (such as crop use).

(3) A racing surface quality maintenance system that—

(A) takes into account regional differences and the character of differing racing facilities; and

(B) may include requirements for track surface design and consistency and established standard operating procedures related to track surface, monitoring, and maintenance (such as standardized seasonal assessment, daily tracking, and measurement).

(4) A uniform set of track safety standards and protocols, that may include rules governing oversight and movement of covered horses and human and equine injury reporting and prevention.

(5) Programs for injury and fatality data analysis, that may include pre- and post-training and race inspections, use of a veterinarian's list, and concussion protocols.

(6) The undertaking of investigations at racetrack and non-racetrack facilities related to safety violations.

(7) Procedures for investigating, charging, and adjudicating violations and for the enforcement of civil sanctions for violations.

(8) A schedule of civil sanctions for violations.

(9) Disciplinary hearings, which may include binding arbitration, civil sanctions, and research.

(10) Management of violation results.

(11) Programs relating to safety and performance research and education.

(12) An evaluation and accreditation program that ensures that racetracks in the United States meet the standards described in the elements of the Horseracing Safety Program.

(c) Activities

The following activities shall be carried out under the racetrack safety program:

(1) Standards for racetrack safety

The development, by the racetrack safety standing committee of the Authority in section 3052(c)(2) of this title of uniform standards for racetrack and horseracing safety.

(2) Standards for safety and performance accreditation

(A) In general

Not later than 120 days before the program effective date, the Authority, in consultation with the racetrack safety standing committee, shall issue, by rule in accordance with section 3053 of this title—

(i) safety and performance standards of accreditation for racetracks; and

(ii) the process by which a racetrack may achieve and maintain accreditation by the Authority.

(B) Modifications

(i) In general

The Authority may modify rules establishing the standards issued under subparagraph (A), as the Authority considers appropriate.

(ii) Notice and comment

The Commission shall publish in the Federal Register any proposed rule of the Authority, and provide an opportunity for public comment with respect to, any modification under clause (i) in accordance with section 3053 of this title.

(C) Extension of provisional or interim accreditation

The Authority may, by rule in accordance with section 3053 of this title, extend provisional or interim accreditation to a racetrack accredited by the National Thoroughbred Racing Association Safety and Integrity Alliance on a date before the program effective date.

(3) Nationwide safety and performance database

(A) In general

Not later than one year after the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Authority, in consultation with the Commission, shall develop and maintain a nationwide database of racehorse safety, performance, health, and injury information for the purpose of conducting an epidemiological study.

(B) Collection of information

In accordance with the registration of covered persons under section 3054(d) of this title, the Authority may require covered persons to collect and submit to the database described in subparagraph (A) such information as the Authority may require to further the goal of increased racehorse welfare.

(Pub. L. 116–260, div. FF, title XII, §1207, Dec. 27, 2020, 134 Stat. 3267.)

§3057. Rule violations and civil sanctions

(a) Description of rule violations

(1) In general

The Authority shall issue, by rule in accordance with section 3053 of this title, a description of safety, performance, and anti-doping and medication control rule violations applicable to covered horses and covered persons.

(2) Elements

The description of rule violations established under paragraph (1) may include the following:

(A) With respect to a covered horse, strict liability for covered trainers for—

(i) the presence of a prohibited substance or method in a sample or the use of a prohibited substance or method;

(ii) the presence of a permitted substance in a sample in excess of the amount allowed by the horseracing anti-doping and medication control program; and

(iii) the use of a permitted method in violation of the applicable limitations established under the horseracing anti-doping and medication control program.

(B) Attempted use of a prohibited substance or method on a covered horse.

(C) Possession of any prohibited substance or method.

(D) Attempted possession of any prohibited substance or method.

(E) Administration or attempted administration of any prohibited substance or method on a covered horse.

(F) Refusal or failure, without compelling justification, to submit a covered horse for sample collection.

(G) Failure to cooperate with the Authority or an agent of the Authority during any investigation.

(H) Failure to respond truthfully, to the best of a covered person's knowledge, to a question of the Authority or an agent of the Authority with respect to any matter under the jurisdiction of the Authority.

(I) Tampering or attempted tampering with the application of the safety, performance, or anti-doping and medication control rules or process adopted by the Authority, including—

(i) the intentional interference, or an attempt to interfere, with an official or agent of the Authority;

(ii) the procurement or the provision of fraudulent information to the Authority or agent; and

(iii) the intimidation of, or an attempt to intimidate, a potential witness.

(J) Trafficking or attempted trafficking in any prohibited substance or method.

(K) Assisting, encouraging, aiding, abetting, conspiring, covering up, or any other type of intentional complicity involving a safety, performance, or anti-doping and medication control rule violation or the violation of a period of suspension or eligibility.

(L) Threatening or seeking to intimidate a person with the intent of discouraging the person from the good faith reporting to the Authority, an agent of the Authority or the Commission, or the anti-doping and medication control enforcement agency under section 3054(e) of this title, of information that relates to—

(i) an alleged safety, performance, or anti-doping and medication control rule violation; or

(ii) alleged noncompliance with a safety, performance, or anti-doping and medication control rule.

(b) Testing laboratories

(1) Accreditation and standards

Not later than 120 days before the program effective date, the Authority shall, in consultation with the anti-doping and medication control enforcement agency, establish, by rule in accordance with section 3053 of this title—

(A) standards of accreditation for laboratories involved in testing samples from covered horses;

(B) the process for achieving and maintaining accreditation; and

(C) the standards and protocols for testing such samples.

(2) Administration

The accreditation of laboratories and the conduct of audits of accredited laboratories to ensure compliance with Authority rules shall be administered by the anti-doping and medication control enforcement agency. The anti-doping and medication control enforcement agency shall have the authority to require specific test samples to be directed to and tested by laboratories having special expertise in the required tests.

(3) Extension of provisional or interim accreditation

The Authority may, by rule in accordance with section 3053 of this title, extend provisional or interim accreditation to a laboratory accredited by the Racing Medication and Testing Consortium, Inc., on a date before the program effective date.

(4) Selection of laboratories

(A) In general

Except as provided in paragraph (2), a State racing commission may select a laboratory accredited in accordance with the standards established under paragraph (1) to test samples taken in the applicable State.

(B) Selection by the authority

If a State racing commission does not select an accredited laboratory under subparagraph (A), the Authority shall select such a laboratory to test samples taken in the State concerned.

(c) Results management and disciplinary process

(1) In general

Not later than 120 days before the program effective date, the Authority shall establish in accordance with section 3053 of this title—

(A) rules for safety, performance, and anti-doping and medication control results management; and

(B) the disciplinary process for safety, performance, and anti-doping and medication control rule violations.

(2) Elements

The rules and process established under paragraph (1) shall include the following:

(A) Provisions for notification of safety, performance, and anti-doping and medication control rule violations.

(B) Hearing procedures.

(C) Standards for burden of proof.

(D) Presumptions.

(E) Evidentiary rules.

(F) Appeals.

(G) Guidelines for confidentiality and public reporting of decisions.

(3) Due process

The rules established under paragraph (1) shall provide for adequate due process, including impartial hearing officers or tribunals commensurate with the seriousness of the alleged safety, performance, or anti-doping and medication control rule violation and the possible civil sanctions for such violation.

(d) Civil sanctions

(1) In general

The Authority shall establish uniform rules, in accordance with section 3053 of this title, imposing civil sanctions against covered persons or covered horses for safety, performance, and anti-doping and medication control rule violations.

(2) Requirements

The rules established under paragraph (1) shall—

(A) take into account the unique aspects of horseracing;

(B) be designed to ensure fair and transparent horseraces; and

(C) deter safety, performance, and anti-doping and medication control rule violations.

(3) Severity

The civil sanctions under paragraph (1) may include—

(A) lifetime bans from horseracing, disgorgement of purses, monetary fines and penalties, and changes to the order of finish in covered races; and

(B) with respect to anti-doping and medication control rule violators, an opportunity to reduce the applicable civil sanctions that is comparable to the opportunity provided by the Protocol for Olympic Movement Testing of the United States Anti-Doping Agency.

(e) Modifications

The Authority may propose a modification to any rule established under this section as the Authority considers appropriate, and the proposed modification shall be submitted to and considered by the Commission in accordance with section 3053 of this title.

(Pub. L. 116–260, div. FF, title XII, §1208, Dec. 27, 2020, 134 Stat. 3269.)

§3058. Review of final decisions of the Authority

(a) Notice of civil sanctions

If the Authority imposes a final civil sanction for a violation committed by a covered person pursuant to the rules or standards of the Authority, the Authority shall promptly submit to the Commission notice of the civil sanction in such form as the Commission may require.

(b) Review by administrative law judge

(1) In general

With respect to a final civil sanction imposed by the Authority, on application by the Commission or a person aggrieved by the civil sanction filed not later than 30 days after the date on which notice under subsection (a) is submitted, the civil sanction shall be subject to de novo review by an administrative law judge.

(2) Nature of review

(A) In general

In matters reviewed under this subsection, the administrative law judge shall determine whether—

(i) a person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted;

(ii) such acts, practices, or omissions are in violation of this chapter or the anti-doping and medication control or racetrack safety rules approved by the Commission; or

(iii) the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(B) Conduct of hearing

An administrative law judge shall conduct a hearing under this subsection in such a manner as the Commission may specify by rule, which shall conform to section 556 of title 5.

(3) Decision by administrative law judge

(A) In general

With respect to a matter reviewed under this subsection, an administrative law judge—

(i) shall render a decision not later than 60 days after the conclusion of the hearing;

(ii) may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority; and

(iii) may make any finding or conclusion that, in the judgment of the administrative law judge, is proper and based on the record.

(B) Final decision

A decision under this paragraph shall constitute the decision of the Commission without further proceedings unless a notice or an application for review is timely filed under subsection (c).

(c) Review by Commission

(1) Notice of review by Commission

The Commission may, on its own motion, review any decision of an administrative law judge issued under subsection (b)(3) by providing written notice to the Authority and any interested party not later than 30 days after the date on which the administrative law judge issues the decision.

(2) Application for review

(A) In general

The Authority or a person aggrieved by a decision issued under subsection (b)(3) may petition the Commission for review of such decision by filing an application for review not later than 30 days after the date on which the administrative law judge issues the decision.

(B) Effect of denial of application for review

If an application for review under subparagraph (A) is denied, the decision of the administrative law judge shall constitute the decision of the Commission without further proceedings.

(C) Discretion of Commission

(i) In general

A decision with respect to whether to grant an application for review under subparagraph (A) is subject to the discretion of the Commission.

(ii) Matters to be considered

In determining whether to grant such an application for review, the Commission shall consider whether the application makes a reasonable showing that—

(I) a prejudicial error was committed in the conduct of the proceeding; or

(II) the decision involved—

(aa) an erroneous application of the anti-doping and medication control or racetrack safety rules approved by the Commission; or

(bb) an exercise of discretion or a decision of law or policy that warrants review by the Commission.

(3) Nature of review

(A) In general

In matters reviewed under this subsection, the Commission may—

(i) affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the administrative law judge; and

(ii) make any finding or conclusion that, in the judgement of the Commission, is proper and based on the record.

(B) De novo review

The Commission shall review de novo the factual findings and conclusions of law made by the administrative law judge.

(C) Consideration of additional evidence

(i) Motion by Commission

The Commission may, on its own motion, allow the consideration of additional evidence.

(ii) Motion by a party

(I) In general

A party may file a motion to consider additional evidence at any time before the issuance of a decision by the Commission, which shall show, with particularity, that—

(aa) such additional evidence is material; and

(bb) there were reasonable grounds for failure to submit the evidence previously.

(II) Procedure

The Commission may—

(aa) accept or hear additional evidence; or

(bb) remand the proceeding to the administrative law judge for the consideration of additional evidence.

(d) Stay of proceedings

Review by an administrative law judge or the Commission under this section shall not operate as a stay of a final civil sanction of the Authority unless the administrative law judge or Commission orders such a stay.

(Pub. L. 116–260, div. FF, title XII, §1209, Dec. 27, 2020, 134 Stat. 3272.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2)(A)(ii), was in the original "this Act" and was translated as reading "this title", meaning title XII of div. FF of Pub. L. 116–260, to reflect the probable intent of Congress.

§3059. Unfair or deceptive acts or practices

The sale of a covered horse, or of any other horse in anticipation of its future participation in a covered race, shall be considered an unfair or deceptive act or practice in or affecting commerce under section 45(a) of this title if the seller—

(1) knows or has reason to know the horse has been administered—

(A) a bisphosphonate prior to the horse's fourth birthday; or

(B) any other substance or method the Authority determines has a long-term degrading effect on the soundness of the covered horse; and

(2) fails to disclose to the buyer the administration of the bisphosphonate or other substance or method described in paragraph (1)(B).

(Pub. L. 116–260, div. FF, title XII, §1210, Dec. 27, 2020, 134 Stat. 3274.)

§3060. State delegation; cooperation

(a) State delegation

(1) In general

The Authority may enter into an agreement with a State racing commission to implement, within the jurisdiction of the State racing commission, a component of the racetrack safety program or, with the concurrence of the anti-doping and medication control enforcement agency under section 3054(e) of this title, a component of the horseracing anti-doping and medication

control program, if the Authority determines that the State racing commission has the ability to implement such component in accordance with the rules, standards, and requirements established by the Authority.

(2) Implementation by State racing commission

A State racing commission or other appropriate regulatory body of a State may not implement such a component in a manner less restrictive than the rule, standard, or requirement established by the Authority.

(b) Cooperation

To avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State law, where conduct by any person subject to the horseracing medication control program or the racetrack safety program may involve both a medication control or racetrack safety rule violation and violation of Federal or State law, the Authority and Federal or State law enforcement authorities shall cooperate and share information.

(Pub. L. 116–260, div. FF, title XII, §1211, Dec. 27, 2020, 134 Stat. 3274.)

CHAPTER 58—FULL EMPLOYMENT AND BALANCED GROWTH

Sec.

§3101. Congressional findings

(a) The Congress finds that the Nation has suffered substantial unemployment and underemployment, idleness of other productive resources, high rates of inflation, and inadequate productivity growth, over prolonged periods of time, imposing numerous economic and social costs on the Nation. Such costs include the following:

(1) The Nation is deprived of the full supply of goods and services, the full utilization of labor and capital resources, and the related increases in economic well-being that would occur under conditions of genuine full employment, production, and real income, balanced growth, a balanced Federal budget, and the effective control of inflation.

(2) The output of goods and services is insufficient to meet pressing national priorities.

(3) Workers are deprived of the job security, income, skill development, and productivity necessary to maintain and advance their standards of living.

(4) Business and industry are deprived of the production, sales, capital flow, and productivity necessary to maintain adequate profits, undertake new investment, create jobs, compete internationally, and contribute to meeting society's economic needs. These problems are especially acute for smaller businesses. Variations in the business cycle and low-level operations of the economy are far more damaging to smaller businesses than to larger business concerns because smaller businesses have fewer available resources, and less access to resources, to withstand nationwide economic adversity. A decline in small business enterprises contributes to unemployment by reducing employment opportunities and contributes to inflation by reducing competition.

(5) Unemployment exposes many families to social, psychological, and physiological costs, including disruption of family life, loss of individual dignity and self-respect, and the aggravation of physical and psychological illnesses, alcoholism and drug abuse, crime, and social conflicts.

(6) Federal, State, and local government budgets are undermined by deficits due to shortfalls in tax revenues and in increases in expenditures for unemployment compensation, public assistance, and other recession-related services in the areas of criminal justice, alcoholism and drug abuse, and physical and mental health.

(b) The Congress further finds that:

(1) High unemployment may contribute to inflation by diminishing labor training and skills, underutilizing capital resources, reducing the rate of productivity advance, increasing unit labor costs, and reducing the general supply of goods and services.

(2) Aggregate monetary and fiscal policies alone have been unable to achieve full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability, and therefore must be supplemented by other measures designed to serve these ends.

(3) Attainment of these objectives should be facilitated by setting explicit short-term and medium-term economic goals, and by improved coordination among the President, the Congress, and the Board of Governors of the Federal Reserve System.

(4) Increasing job opportunities and full employment would greatly contribute to the elimination of discrimination based upon sex, age, race, color, religion, national origin, handicap, or other improper factors.

(c) The Congress further finds that an effective policy to promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance, and reasonable price stability should (1) be based on the development of explicit economic goals and policies involving the President, the Congress, and the Board of Governors of the Federal Reserve System, with maximum reliance on the resources and ingenuity of the private sector of the economy, (2) include programs specifically designed to reduce high unemployment due to recessions, and to reduce structural unemployment within regional areas and among particular labor force groups, and (3) give proper attention to the role of increased exports and improvement in the international competitiveness of agriculture, business, and industry in providing productive employment opportunities and achieving an improved trade balance.

(d) The Congress further finds that full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability are important national requirements and will promote the economic security and well-being of all citizens of the Nation.

(e) The Congress further finds that the United States is part of an interdependent world trading and

monetary system and that attainment of the requirements specified in subsection (d) is dependent upon policies promoting a free and fair international trading system and a sound and stable international monetary system.

(Pub. L. 95–523, §2, Oct. 27, 1978, 92 Stat. 1888.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 95–523, §1, Oct. 27, 1978, 92 Stat. 1887, provided in part that this Act [enacting this chapter and sections 1022a to 1022f of this title, amending sections 1021, 1022, 1023, and 1024 of this title, sections 632 and 636 of Title 2, The Congress, and section 225a of Title 12, Banks and Banking, and enacting provisions set out as notes under section 1021 of title and section 225a of Title 12] may be cited as the "Full Employment and Balanced Growth Act of 1978".

§3102. Report to Congressional committees

Not later than one year after October 27, 1978, the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives each shall conduct a study and submit a report, including findings and recommendations, to the Committee on Rules and Administration of the Senate and the Committee on Rules of the House, respectively, on the subject of establishing a full employment goal in connection with the provisions of this chapter.

(Pub. L. 95–523, §3, Oct. 27, 1978, 92 Stat. 1889; S. Res. 30, Mar. 7, 1979.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, known as the Full Employment and Balanced Growth Act of 1978, which enacted this chapter and sections 1022a to 1022f of this title, amended sections 1021, 1022, and 1023 of this title, sections 632 and 636 of Title 2, The Congress, and section 225a of Title 12, Banks and Banking, and enacted provisions set out as notes under sections 1021 and 3101 of this title and section 225a of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999. Previously, Committee on Human Resources of the Senate changed to Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See, also, Rule XXV of Standing Rules of the Senate adopted Nov. 14, 1979.

§3103. National Employment Conference

(a) Organization and implementation

A National Employment Conference may be convened in the District of Columbia within a reasonable period of time after October 27, 1978. Responsibility for the organization and

implementation of this conference shall rest with the President or the appropriate department or agency of the Federal Government, and the conference shall bring together leaders of small and larger business, labor, government, and all other interested parties.

(b) Subject matter

The subject of the conference shall be employment, with particular attention to structural unemployment and the plight of disadvantaged youth. The conference shall also focus on issues such as implementation of adequate and effective incentives for private sector employers to hire the hard-core unemployed. Special attention shall be given to the creation of jobs through the use of targeted employment tax credits, wage vouchers, and other incentives to private sector businesses.

(Pub. L. 95–523, §4, Oct. 27, 1978, 92 Stat. 1889.)

SUBCHAPTER I—STRUCTURAL ECONOMIC POLICIES AND PROGRAMS INCLUDING TREATMENT OF RESOURCE RESTRAINTS

§3111. Congressional statement of purpose

The Congress recognizes that general economic policies alone have been unable to achieve the goals set forth in this chapter related to full employment, production, and real income, balanced growth, adequate growth in productivity, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and achievement of reasonable price stability as provided for in section 1022b(b) of this title. It is, therefore, the purpose of this subchapter to require the President to initiate, as the President deems appropriate, with recommendations to the Congress where necessary, supplementary programs and policies to the extent that the President finds such action necessary to help achieve these goals, including the goals and timetable for the reduction of unemployment. Insofar as feasible without undue delay, any policies and programs so recommended shall be included in the Economic Report.

(Pub. L. 95–523, title II, §201, Oct. 27, 1978, 92 Stat. 1899.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

§3112. Countercyclical employment policies

(a) Programmatic entities

Any countercyclical efforts undertaken to aid in achieving the purposes of section 3111 of this title shall consider for inclusion the following programmatic entities:

(1) accelerated public works, including the development of standby public works projects;

(2) public service employment;

(3) State and local grant programs;

(4) the levels and duration of unemployment insurance;

(5) skill training in both the private and public sectors, both as a general remedy and as a supplement to unemployment insurance;

(6) youth employment programs as specified in section 3115 of this title;

(7) community development programs to provide employment in activities of value to the

States, local communities (including rural areas), and the Nation;

(8) Federal procurement programs which are targeted on labor surplus areas; and

(9) augmentation of other employment and training programs which would help to reduce high levels of unemployment arising from cyclical causes.

(b) Triggering mechanism

In any countercyclical efforts undertaken, the President shall consider a triggering mechanism which will implement the program during a period of rising unemployment and phase out the program when unemployment is appropriately reduced, and incorporate effective means to facilitate individuals assisted under programs developed pursuant to this section to return promptly to regular private and public employment as the economy recovers.

(Pub. L. 95–523, title II, §202, Oct. 27, 1978, 92 Stat. 1900.)

§3113. Economic activity coordination

(a) Federal, regional, State, local, and private sector

As an integral part of any countercyclical employment policies undertaken in accord with section 3112 of this title, the President shall, to the extent the President deems necessary, set forth programs and policies, including recommended legislation where needed, to coordinate economic action among the Federal Government, regions, States and localities, and the private sector to promote achievement of the purposes of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.] and an economic environment in which State and local governments and private sector economic activity and employment will prosper. In considering programs and policies related to the private sector, full consideration shall be given to promoting the growth and well-being of small businesses and employment training programs through private sector incentives.

(b) Fiscal needs and budget conditions

In any efforts under this section, the President shall endeavor to meet criteria that establish programs which are funded to take account of the fiscal needs and budget conditions of the respective States and localities and their own efforts, with special attention to the rates of unemployment in such States and localities.

(Pub. L. 95–523, title II, §203, Oct. 27, 1978, 92 Stat. 1900.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsec. (a), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12329

Ex. Ord. No. 12329, Oct. 14, 1981, 46 F.R. 50919, which established the President's Task Force on Private Sector Initiatives and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12399, §4(i), Dec. 31, 1982, 48 F.R. 380, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

§3114. Regional and structural employment policies and programs

(a) Recommendation of legislation

To the extent deemed appropriate by the President in fulfillment of the purposes of section 3111 of this title, the President shall recommend legislation to the Congress if necessary, regional and structural employment policies and programs.

(b) Private sector production and employment; effect of Federal policies

In formulating the regional components of any such programs, the President shall encourage to the extent the President deems necessary, new private sector production and employment to locate within depressed localities and regions with substantial unemployment and to aid in stabilizing their economic base. To the extent feasible, such policies and programs shall foster the establishment and growth of smaller businesses in such localities and regions. Any regional employment proposal of the President shall also include an analysis of the extent to which Federal tax, expenditure (including procurement of goods and services), defense, transportation, energy, natural resources and employment policies have influenced the movement of people, jobs, and small and larger business and industries from chronic high unemployment regions and areas, and proposals designed to correct Federal policies that have an adverse economic impact upon such regions and areas.

(Pub. L. 95–523, title II, §204, Oct. 27, 1978, 92 Stat. 1901.)

§3115. Youth employment policies and programs

(a) Congressional findings

The Congress finds and declares—

(1) That [1] serious unemployment and economic disadvantage of a unique nature exist among youths even under generally favorable economic conditions;

(2) that this group constitutes a substantial portion of the Nation's unemployment, and that this significantly contributes to crime, alcoholism and drug abuse, and other social and economic problems; and

(3) that many youths have special employment needs and problems which, if not promptly addressed, will substantially contribute to more severe unemployment problems in the long run.

(b) Improvement and expansion

To the extent deemed necessary in fulfillment of the purposes of this chapter, the President shall improve and expand existing youth employment programs, recommending legislation where required. In formulating any such program, the President shall—

(1) include provisions designed to fully coordinate youth employment activities with other employment and training programs;

(2) develop a smoother transition from school to work;

(3) prepare disadvantaged and other youths with employability handicaps for regular self-sustaining employment;

(4) develop realistic methods for combining training with work; and

(5) develop provisions designed to attract structurally unemployed youth into productive full-time employment through incentives to private and independent sector businesses; [2]

(Pub. L. 95–523, title II, §205, Oct. 27, 1978, 92 Stat. 1901.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3102 of this title.

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

[2] *So in original. The semicolon probably should be a period.*

§3116. Job training, counseling and reservoirs of employment projects

(a) Policies, procedures and recommendations

Further to promote achievement of full employment under this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the President, through the Secretary of Labor, shall develop policies and procedures and, as necessary, recommend programs for providing employment opportunities to individuals aged 16 and over in the civilian labor force who are able, willing, and seeking to work but who, despite serious efforts to obtain employment, remain unemployed.

(b) Utilization of authority under other laws

In meeting the responsibilities under subsection (a), the Secretary of Labor shall, as appropriate, fully utilize the authority provided under title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.] and other relevant provisions of law to—

(1) assure the availability of counseling, training, and other support activities necessary to prepare persons willing and seeking work for employment;

(2) refer persons able, willing, and seeking to work to job opportunities in the private and public sectors through the existing public employment placement facilities and through the United States Employment Service of the Department of Labor, including job opportunities in any positions created under programs established pursuant to sections 3112, 3114, and 3115 of this title; and

(3) encourage flexi-time and part-time jobs for persons who are able, willing, and seeking employment but who are unable to work a standard workweek.

(c) Establishment of project reservoirs; restrictions and requirements of new programs

(1) To the extent that individuals aged sixteen and over and able, willing, and seeking to work are not and in the judgment of the President cannot be provided with private job opportunities or job opportunities under other programs and actions in existence, in accord with the goals and timetables set forth in the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of activities under title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.] and other existing employment and training projects or through such new programs as are determined necessary by the President or through both such projects and such programs.

(2) New programs as may be authorized by law after October 27, 1978, referred to in paragraph (c)(1)—

(A) shall not be put into operation earlier than two years after October 27, 1978, nor without a finding by the President, transmitted to the Congress, that other means of employment are not yielding enough jobs to be consistent with attainment of the goals and timetables for the reduction of unemployment set forth in the Employment Act of 1946 [15 U.S.C. 1021 et seq.];

(B) shall be designed so that no workers from private employment are drawn into the reservoir projects thereunder;

(C) shall be useful and productive jobs;

(D) shall be mainly in the lower ranges of skills and pay, and toward this end the number of reservoir jobs under such new programs shall, to the extent practicable, be maximized in relationship to the appropriations provided for such jobs;

(E) shall be targeted on areas of high unemployment and on individuals who are structurally unemployed;

(F) shall be phased in by the President as necessary, in conjunction with the employment goals under sections 3(a)(2) and 4(b) of the Employment Act of 1946 [15 U.S.C. 1022(a)(2), 1022a(b)].

(d) Regulations

The Secretary, in carrying out the provisions of this section, shall establish regulations providing

for—

(1) an initial determination of the job seeker's ability to be employed at certain types and duration of work, so that such individual may be appropriately referred to jobs, training, counseling, and other supportive services;

(2) compliance with the nondiscrimination provisions of this chapter in accordance with section 3151 of this title;

(3) appropriate eligibility criteria to determine the order of priority of access of any person to any new programs under subsection (c) as may be authorized by law including but not necessarily limited to (A) household income, duration of unemployment (not less than five weeks), and the number of people economically dependent upon such person; and (B) denial of access to any person refusing to accept or hold a job except for good cause, as determined by the Secretary of Labor, including refusal to accept or hold a job subject to reference under subsection (b) paragraph (2), in order to seek a reservoir project job under subsection (c); and

(4) such administrative appeal procedures as may be appropriate to review the initial determination of the abilities of persons willing, able, and seeking to work under paragraph (1) of this subsection and the employment need and eligibility under paragraph (3) of this subsection.

(Pub. L. 95–523, title II, §206, Oct. 27, 1978, 92 Stat. 1902; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(12)(A), (f)(10)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–431; Pub. L. 113–128, title V, §512(m), July 22, 2014, 128 Stat. 1710.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (d)(2), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsecs. (a) and (c), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

The Workforce Innovation and Opportunity Act, referred to in subsecs. (b) and (c)(1), is Pub. L. 113–128, July 22, 2014, 128 Stat. 1425. Title I of the Act is classified generally to subchapter I (§3111 et seq.) of chapter 32 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113–128, §512(m)(1), substituted "the Secretary of Labor shall, as appropriate, fully utilize the authority provided under title I of the Workforce Innovation and Opportunity Act" for "the Secretary of Labor shall, as appropriate, fully utilize the authority provided under the Job Training Partnership Act and title I of the Workforce Investment Act of 1998" in introductory provisions.

Subsec. (c)(1). Pub. L. 113–128, §512(m)(2), substituted "the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of activities under title I of the Workforce Innovation and Opportunity Act" for "the President shall, as may be authorized by law, establish reservoirs of public employment and private nonprofit employment projects, to be approved by the Secretary of Labor, through expansion of title I of the Workforce Investment Act of 1998".

1998—Subsec. (b). Pub. L. 105–277, §101(f) [title VIII, §405(f)(10)(A)], which directed the amendment of subsec. (b) by substituting "the Job Training Partnership Act and" for "CETA" in introductory provisions, could not be executed because "CETA" did not appear in introductory provisions subsequent to amendment by Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(i)(I)]. See below.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(i)(I)], substituted "the Job Training Partnership Act and title I of the Workforce Investment Act of 1998" for "CETA" in introductory provisions.

Subsec. (b)(1). Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(i)(II)], struck out "(including use of section 110 of CETA when necessary)" before semicolon at end.

Subsec. (c)(1). Pub. L. 105–277, §101(f) [title VIII, §405(f)(10)(B)], struck out "activities carried out under the Job Training Partnership Act or" before "title I of the Workforce Investment Act of 1998".

Pub. L. 105–277, §101(f) [title VIII, §405(d)(12)(A)(ii)], substituted "activities carried out under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998" for "CETA".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–128 effective on the first day of the first full program year after July 22, 2014 (July 1, 2015), see section 506 of Pub. L. 113–128, set out as an Effective Date note under section 3101 of Title 29, Labor.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, §405(d)(12)(A)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, §405(f)(10)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, §405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

§3117. Capital formation

(a) Congressional findings

The Congress finds that—

(1) promotion of full employment and balanced growth is in itself a principal avenue to high and sustained rates of capital formation;

(2) high rates of capital formation are necessary to ensure adequate rates of capacity expansion and productivity growth, compliance with governmental health, safety and environmental standards, and the replacement of obsolete production equipment;

(3) the ability of our economy to compete successfully in international markets, the development of new technology, improved working conditions, expanding job opportunities, and an increasing standard of living depend on the availability of adequate capital at reasonable cost to commerce and industry;

(4) an important goal of national policy shall be to remove obstacles to the free flow of resources into new investment, particularly those obstacles that hinder the creation and growth of smaller businesses because general national programs and policies to aid and stimulate private enterprise are not sufficient to deal with the special problems and needs of smaller businesses; and

(5) while private business firms are, and should continue to be, the major source of investment, the investment activities of the Federal, State, and local governments play an important role in affecting the level of output, employment, and productivity and in achieving other national purposes.

(b) Investment Policy Report; recommendations in President's Budget; referral to Joint Economic Committee

The Economic Report shall include an Investment Policy Report which shall, as appropriate, (1) review and assess existing Federal Government programs and policies which affect business investment decisions, including, but not limited to, the relevant aspects of the tax code, Federal expenditure policy, Federal regulatory policy, international trade policy, and Federal support for research, development, and diffusion of new technologies; (2) provide an assessment of the levels of investment capital available, required by, and applied to small, medium and large business entities; (3) provide an analysis of current foreseeable trends in the level of investment capital available to such entities; and (4) provide a description of programs and proposals for carrying out the policy set forth in section 1021(i) of this title. In addition, the Economic Report shall include an assessment of the effect of the overall economic policy environment and the rate of inflation on business investment. The President shall recommend in the President's Budget, as appropriate, new programs or modifications to improve existing programs concerned with private capital formation. The President shall also transmit to the Congress as part of the President's Budget such other

recommendations as the President may deem necessary or desirable to achieve the policy as set forth in section 1021(i) of this title. The Investment Policy Report, when transmitted to the Congress, shall be referred to the Joint Economic Committee.

(c) Review in Economic Report of Federal policies and programs which affect public investments; recommendations respecting new policies or programs

The Economic Report referred to in subsection (b) shall review and assess Federal policies and programs which directly, or through grants-in-aid to State and local governments, or indirectly through other means, affect the adequacy, composition and effectiveness of public investments, as a means of achieving the goals of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.]. The President shall recommend, as appropriate, new programs and policies or modifications to improve existing Federal programs affecting public investment.

(Pub. L. 95–523, title II, §207, Oct. 27, 1978, 92 Stat. 1903.)

EDITORIAL NOTES

REFERENCES IN TEXT

The tax code, referred to in subsec. (b)(1), means Title 26, Internal Revenue Code.

Section 1021(i) of this title, referred to in subsec. (b), was in the original "section 102(i)" probably meaning section 102 of Pub. L. 95–523 which amended section 2 of the Employment Act of 1946, classified to section 1021 of this title. Subsec. (i) of section 1021 of this title sets out the congressional declaration of policy for private enterprise investments.

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsec. (c), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

SUBCHAPTER II—POLICIES AND PROCEDURES FOR CONGRESSIONAL REVIEW

§3131. Congressional statement of purpose

(a) Establishment of procedures for review and action

The purposes of this subchapter are to establish procedures for congressional review and action with respect to the Economic Report of the President (hereafter in this subchapter referred to as the "Economic Report"), the report of the Board of Governors of the Federal Reserve System, and the other policies and provisions of this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.].

(b) Legislative action

The Congress shall initiate or develop such legislation as it deems necessary to implement proposals and objectives pursuant to this chapter and the Employment Act of 1946 [15 U.S.C. 1021 et seq.] after such modification in such proposals as it deems desirable. Nothing in this subchapter shall be construed to prevent the Congress or any of its committees from considering or initiating at any time legislative action in furtherance of the goals and purposes of this chapter.

(Pub. L. 95–523, title III, §301, Oct. 27, 1978, 92 Stat. 1904.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1904, which enacted this subchapter and amended sections 632 and 636 of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of this title.

The Employment Act of 1946, referred to in subsecs. (a) and (b), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

§3132. Committee review

(a) Short-term and medium-term goals

In conjunction with its review of the Economic Report, and the holding of hearings on the Economic Report under the Employment Act of 1946 [15 U.S.C. 1021 et seq.], the Joint Economic Committee shall review and analyze the short-term and medium-term goals set forth in the Economic Report pursuant to section 3(a)(2) and 4(b) of the Employment Act of 1946 [15 U.S.C. 1022(a)(2), 1022a(b)].

(b) Hearings

The Joint Economic Committee shall hold hearings on the Economic Report for the purpose of receiving testimony from Members of the Congress, and such appropriate representatives of Federal departments and agencies, the general public, and interested groups as the joint committee deems advisable. The joint committee shall also consider the comments and views on the Economic Report which are received from State and local officials.

(c) Report of standing and joint committees and committees with legislative jurisdiction

Within thirty days after receipt by the Congress of the Economic Report, each standing committee of the Senate and the House of Representatives, each other committee of the Senate and the House of Representatives which has legislative jurisdiction, and each joint committee of the Congress may submit to the Joint Economic Committee, for use by the Joint Economic Committee in conducting its review and analysis under subsection (a), a report containing the views and recommendations of the submitting committee with respect to aspects of the Economic Report which relate to its jurisdiction.

(d) Report of Joint Economic Committee

On or before March 15 of each year, a majority of the members of the Joint Economic Committee shall submit a report to the Committees on the Budget of the Senate and the House of Representatives. Such report shall include findings, recommendations, and any appropriate analyses with respect and in direct comparison to each of the short-term and medium-term goals set forth in the Economic Report.

(Pub. L. 95–523, title III, §302, Oct. 27, 1978, 92 Stat. 1904.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Employment Act of 1946, referred to in subsec. (a), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, which is classified generally to chapter 21 (§1021 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of this title and Tables.

§3133. Exercise of rulemaking powers

(a) [1] The Provisions of this subchapter and the amendments made by such provisions are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House), at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(Pub. L. 95–523, title III, §305, Oct. 27, 1978, 92 Stat. 1907.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1904, which enacted this subchapter and amended sections 632 and 636 of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

[1] *So in original. No subsec. (b) has been enacted.*

SUBCHAPTER III—GENERAL PROVISIONS

§3151. Nondiscrimination

(a) Exclusion from participation or denial of benefits

No person in the United States shall on the ground of sex, age, race, color, religion, national origin or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded pursuant to the implementation of this chapter, including membership in any structure created by this chapter.

(b) Noncompliance notification; remedies of Secretary of Labor

Whenever the Secretary of Labor determines that a recipient of funds made available pursuant to this chapter has failed to comply with subsection (a), or an applicable regulation, the Secretary shall notify the recipient of the noncompliance and shall request such recipient to secure compliance. If within a reasonable period of time, not to exceed sixty days, the recipient fails or refuses to secure compliance, the Secretary of Labor may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) [1] or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b), or whenever the Attorney General has reason to believe that a recipient is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in the appropriate United States district court for any and all appropriate relief.

(d) Enforcement analysis in Report of President

To assist and evaluate the enforcement of this section, and the broader equal employment opportunity policies of this chapter the Secretary of Labor shall include, in the annual report referred to in section 1022a(f)(2)(B) of this title, a detailed analysis of the extent to which the enforcement of

this section achieves positive results in both the quantity and quality of jobs, and for employment opportunities generally.

(Pub. L. 95–523, title IV, §401, Oct. 27, 1978, 92 Stat. 1907; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(12)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–421.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a), (b), and (d), see References in Text note set out under section 3102 of this title.

The Civil Rights Act of 1964, referred to in subsec. (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–277 substituted "include, in the annual report referred to in section 1022a(f)(2)(B) of this title," for "include, in the annual Employment and Training Report of the President provided under section 705(a) of CETA,".

[1] So in original. Probably should be followed by a semicolon.

§3152. Labor standards

(a) Equal wages; increase in employment

Any new program enacted and funded pursuant to the implementation of this chapter shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, provide that persons employed are paid equal wages for equal work, and that such policies and programs create a net increase in employment through work that would not otherwise be done or are essential to fulfill national priority purposes.

(b) Wage rates; work limitations of reservoir projects employees

Any person employed in any reservoir project enacted and funded pursuant to the implementation of section 3116(c)(1) of this title, or in any other job created pursuant to implementation of this chapter, shall, subject to any limitations on maximum annual compensation as may be provided in the law authorizing such programs, be paid not less than the pay received by others performing the same type of work for the same employer, and in no case less than the minimum wage under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.]. No person employed in any reservoir project enacted and funded pursuant to implementation of section 3116(c)(1) of this title shall perform work of the type to which sections 3141–3144, 3146, and 3147 of title 40 apply, except as otherwise may be specifically authorized by law.

(c) Recommendations of President

Any recommendation by the President for legislation to implement any program enacted pursuant to the provisions of this chapter, requiring the use of funds under this chapter, and submitted pursuant to the requirements of this chapter, shall contain appropriate wage provisions based upon existing wage standard legislation.

(Pub. L. 95–523, title IV, §402, Oct. 27, 1978, 92 Stat. 1908.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3102 of

this title.

The Fair Labor Standards Act, referred to in subsec. (b), is act June 25, 1938, ch. 676. 52 Stat. 1060, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29, and Tables.

CODIFICATION

"Sections 3141–3144, 3146, and 3147 of title 40 apply" substituted in subsec. (b) for "the Davis-Bacon Act (40 U.S.C. 276a—276a–5) applies" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

CHAPTER 59—RETAIL POLICIES FOR NATURAL GAS UTILITIES

Sec.

§3201. Purposes; coverage

(a) Purposes

The purposes of this chapter are to encourage—

(1) conservation of energy supplied by gas utilities;

(2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and

(3) equitable rates to gas consumers of natural gas.

(b) Volume of total retail sales

This chapter applies to each gas utility in any calendar year, and to each proceeding relating to each gas utility in such year, if the total sales of natural gas by such utility for purposes other than resale exceeded 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year.

(c) Exclusion of wholesale sales

The requirements of this chapter do not apply to the operations of a gas utility, or to proceedings respecting such operations, to the extent that such operations or proceedings relate to sales of natural gas for purposes of resale.

(d) List of covered utilities

Before the beginning of each calendar year, the Secretary shall publish a list identifying each gas utility to which this chapter applies during such calendar year. Promptly after publication of such list, each State regulatory authority shall notify the Secretary of each gas utility on the list for which such State regulatory authority has ratemaking authority.

(Pub. L. 95–617, title III, §301, Nov. 9, 1978, 92 Stat. 3149.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

The definition of Secretary in section 2602 of Title 16, Conservation, applies to this section.

§3202. Definitions

For purposes of this chapter—

(1) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(2) The term "gas utility" means any person, State agency, or Federal agency, engaged in the local distribution of natural gas, and the sale of natural gas to any ultimate consumer of natural gas.

(3) The term "State regulated gas utility" means any gas utility with respect to which a State regulatory authority has ratemaking authority.

(4) The term "nonregulated gas utility" means any gas utility other than a State regulated gas utility.

(5) The term "rate" means any (A) price, rate, charge, or classification made, demanded, observed, or received with respect to sale of natural gas to a gas consumer, (B) any rule, regulation, or practice respecting any such rate, charge, or classification, and (C) any contract pertaining to the sale of natural gas to a gas consumer.

(6) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(7) The term "sale" when used with respect to natural gas, includes an exchange of natural gas.

(8) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of natural gas by any gas utility (other than by such State agency).

(9) The term "integrated resource planning" means, in the case of a gas utility, planning by the use of any standard, regulation, practice, or policy to undertake a systematic comparison between demand-side management measures and the supply of gas by a gas utility to minimize life-cycle costs of adequate and reliable utility services to gas consumers. Integrated resource planning shall take into account necessary features for system operation such as diversity, reliability, dispatchability, and other factors of risk and shall treat demand and supply to gas consumers on a consistent and integrated basis.

(10) The term "demand-side management" includes energy conservation, energy efficiency, and load management techniques.

(Pub. L. 95–617, title III, §302, Nov. 9, 1978, 92 Stat. 3150; Pub. L. 102–486, title I, §115(a), Oct. 24, 1992, 106 Stat. 2803.)

EDITORIAL NOTES

AMENDMENTS

1992—Pars. (9), (10). Pub. L. 102–486 added pars. (9) and (10).

STATUTORY NOTES AND RELATED SUBSIDIARIES

ADDITIONAL DEFINITIONS

Except as otherwise specifically provided, the definitions in section 2602 of Title 16, Conservation, apply to this chapter.

§3203. Adoption of certain standards

(a) Adoption of standards

Not later than 2 years after November 9, 1978 (or after October 24, 1992, in the case of standards under paragraphs (3),[1] and (4) of subsection (b)), each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility shall provide public notice and conduct a hearing respecting the standards established by subsection (b), and, on the basis of such hearing, shall—

(1) adopt the standard established by subsection (b)(1), if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate and is consistent with otherwise applicable State law, and

(2) adopt the standards established by paragraphs (2), (3) [2] (4), (5), and (6) of subsection (b), if, and to the extent, such authority or nonregulated utility determines that such adoption is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law.

For purposes of any determination under paragraphs (1) and (2) and any review of such determination in any court under section 3207 of this title, the purposes of this chapter supplement State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) Establishment

The following Federal standards are hereby established:

(1) Procedures for termination of natural gas service

No gas utility may terminate natural gas service to any gas consumer except pursuant to procedures described in section 3204(a) of this title.

(2) Advertising

No gas utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 3204(b) of this title.

(3) Integrated resource planning

Each gas utility shall employ, in order to provide adequate and reliable service to its gas customers at the lowest system cost. All plans or filings of a State regulated gas utility before a State regulatory authority to meet the requirements of this paragraph shall (A) be updated on a regular basis, (B) provide the opportunity for public participation and comment, (C) provide for methods of validating predicted performance, and (D) contain a requirement that the plan be implemented after approval of the State regulatory authority. Subsection (c) shall not apply to this paragraph to the extent that it could be construed to require the State regulatory authority to extend the record of a State proceeding in submitting reports to the Federal Government.

(4) Investments in conservation and demand management

The rates charged by any State regulated gas utility shall be such that the utility's prudent investments in, and expenditures for, energy conservation and load shifting programs and for other demand-side management measures which are consistent with the findings and purposes of the Energy Policy Act of 1992 are at least as profitable (taking into account the income lost due to reduced sales resulting from such programs) as prudent investments in, and expenditures for, the acquisition or construction of supplies and facilities. This objective requires that (A) regulators link the utility's net revenues, at least in part, to the utility's performance in implementing cost-effective programs promoted by this section; and (B) regulators ensure that, for purposes of recovering fixed costs, including its authorized return, the utility's performance is not affected by reductions in its retail sales volumes.

(5) Energy efficiency

Each natural gas utility shall—

(A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and

(B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.

(6) Rate design modifications to promote energy efficiency investments

(A) In general

The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.

(B) Policy options

In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—

(i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;

(ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;

(iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and

(iv) adopting rate designs that encourage energy efficiency for each customer class.

For purposes of applying the provisions of this chapter [3] to this paragraph, any reference in this chapter [3] to November 9, 1978, shall be treated as a reference to December 19, 2007.

(c) Procedural requirements

Each State regulatory authority (with respect to each gas utility for which it has ratemaking authority) and each nonregulated gas utility, within the 2-year period specified in subsection (a), shall adopt, pursuant to subsection (a), each of the standards established by subsection (b), or, with respect to any such standard which is not adopted, such authority or nonregulated gas utility shall state in writing that it has determined not to adopt such standard, together with the reasons for such determination. Such statement of reasons shall be available to the public.

(d) Small business impacts

If a State regulatory authority implements a standard established by subsection (b)(3) or (4), such authority shall—

(1) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation, or servicing of energy conservation, energy efficiency, or other demand-side management measures, and

(2) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

(Pub. L. 95–617, title III, §303, Nov. 9, 1978, 92 Stat. 3150; Pub. L. 102–486, title I, §115(b)–(d), Oct. 24, 1992, 106 Stat. 2803, 2804; Pub. L. 110–140, title V, §532(b), (c), Dec. 19, 2007, 121 Stat. 1666, 1667.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Policy Act of 1992, referred to in subsec. (b)(4), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of Title 42, The Public Health and Welfare and Tables.

CODIFICATION

This chapter, referred to in subsec. (b)(6), was in the original "this subtitle", which was translated as

meaning title III of Pub. L. 95–617 to reflect the probable intent of Congress.

AMENDMENTS

2007—Subsec. (a)(2). Pub. L. 110–140, §532(c), which directed substitution of "(4), (5), and (6)" for "and (4)" in subsec. (a), was executed by making the substitution in subsec. (a)(2) to reflect the probable intent of Congress.

Subsec. (b)(5), (6). Pub. L. 110–140, §532(b), added pars. (5) and (6).

1992—Subsec. (a). Pub. L. 102–486, §115(d), in introductory provisions inserted "(or after October 24, 1992, in the case of standards under paragraphs (3), and (4) of subsection (b))" and in par. (2) substituted "standards established by paragraphs (2), (3) and (4) of subsection (b)" for "standard established by subsection (b)(2)".

Subsec. (b)(3), (4). Pub. L. 102–486, §115(b), added pars. (3) and (4).

Subsec. (d). Pub. L. 102–486, §115(c), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

REPORT TO PRESIDENT AND CONGRESS ON ENCOURAGEMENT OF INTEGRATED RESOURCE PLANNING AND INVESTMENTS IN CONSERVATION AND ENERGY EFFICIENCY BY ELECTRIC UTILITIES

Pub. L. 102–486, title I, §115(e), Oct. 24, 1992, 106 Stat. 2804, provided that: "The report under section 111(e) of this Act [16 U.S.C. 2621 note] transmitted by the Secretary of Energy to the President and to the Congress shall contain a survey of all State laws, regulations, practices, and policies under which State regulatory authorities implement the provisions of paragraphs (3) and (4) of section 303(b) of the Public Utility Regulatory Policies Act of 1978 [15 U.S.C. 3203(b)(3) and (4)]. The report shall include an analysis, prepared in conjunction with the Federal Trade Commission, of the competitive impact of implementation of energy conservation, energy efficiency, and other demand side management programs by gas utilities on small businesses engaged in the design, sale, supply, installation, or servicing of similar energy conservation, energy efficiency, or other demand-side management measures and whether any unfair, deceptive, or predatory acts or practices exist, or are likely to exist, from implementation of such programs."

DEFINITIONS

The definitions of State and system cost in section 2602 of Title 16, Conservation, apply to this section.

[1] So in original. The comma probably should not appear.

[2] So in original. A comma probably should appear.

[3] See Codification note below.

§3204. Special rules for standards

(a) Procedures for termination of gas service

The procedures for termination of service referred to in section 3203(b)(1) of this title are procedures prescribed by the State regulatory authority (with respect to gas utilities for which it has ratemaking authority) or the nonregulated gas utility which provide that—

(1) no gas service to a gas consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and

(2) during any period when termination of service to a gas consumer would be especially dangerous to health, as determined by the State regulatory authority (with respect to each gas utility for which it has ratemaking authority) or nonregulated gas utility, and such consumer

establishes that—

(A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or

(B) he is able to pay for such service but only in installments,

such service may not be terminated.

Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

(b) Advertising

(1) For purposes of this section and section 3203 of this title—

(A) The term "advertising" means the commercial use, by a gas utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's gas consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of a gas utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this section and section 3203 of this title, the terms "political advertising" and "promotional advertising" do not include—

(A) advertising which informs natural gas consumers how they can conserve natural gas or can reduce peak demand for natural gas,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq.],

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notification of hearings thereon.

(Pub. L. 95–617, title III, §304, Nov. 9, 1978, 92 Stat. 3151.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (b)(2)(B), is Pub. L. 95–619, Nov. 9, 1978, 92 Stat. 3208. Part 1 of title II of the National Energy Conservation Policy Act was classified generally to part A (§8211 et seq.) of subchapter II of chapter 91 of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 8229 of Title 42 which terminated authority under that part June 30, 1989. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

§3205. Federal participation

(a) Intervention

In addition to the authorities vested in the Secretary pursuant to any other provision of law, the Secretary, on his own motion, may intervene as a matter of right in any proceeding before a State regulatory authority which relates to gas utility rates or rate design. Such intervention shall be solely for the purpose of advocating policies or methods which carry out the purposes set forth in section 3201 of this title.

(b) Rights

The Secretary shall have the same rights as any other party to a proceeding before a State regulatory authority which relates to gas utility rates or rate design.

(c) Nonregulated gas utilities

The Secretary, on his own motion, may, to the same extent as provided in subsections (a) through (b), intervene as a matter of right in any proceeding which relates to rates or rate design of nonregulated gas utilities.

(Pub. L. 95–617, title III, §305, Nov. 9, 1978, 92 Stat. 3152.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

The definition of Secretary in section 2602 of Title 16, Conservation, applies to this section.

§3206. Gas utility rate design proposals

(a) Study

(1) The Secretary, in consultation with the Commission and, after affording an opportunity for consultation and comment by representatives of the State regulatory commissions, gas utilities, and gas consumers, shall study and report to Congress on gas utility rate design within 18 months after November 9, 1978. Such study shall address the effect (both separately and in combination) of the following factors upon the items listed in paragraph (2): incremental pricing; marginal cost pricing; end user gas consumption taxes; wellhead natural gas pricing policies; demand-commodity rate design; declining block rates; interruptible service; seasonal rate differentials; and end user rate schedules.

(2) The items referred to in paragraph (1) are as follows:

(A) natural gas pipeline and local distribution company load factors;

(B) rates to each class of user, including residential, commercial, and industrial users;

(C) the change in total costs resulting from gas utility designs (including capital and operating costs) to gas consumers or classes thereof;

(D) demand for, and consumption of, natural gas;

(E) end use profiles of natural gas pipelines and local distribution companies; and

(F) competition with alternative fuels.

(b) Proposals

Based upon the study prepared pursuant to subsection (a), the Secretary shall develop proposals to improve gas utility rate design and to encourage conservation of natural gas. Such proposals shall include any comments and recommendations of the Commission.

(c) Transmission to Congress

The proposals prepared under subsection (b), shall be transmitted, together with any legislative recommendations, to each House of Congress not later than 6 months after the date of submission of the study under subsection (a). Such proposals shall be accompanied by an analyses [1] of—

(1) the projected savings (if any) in consumption of natural gas, and other energy resources,

(2) changes (if any) in the cost of natural gas to consumers, which are likely to result from the implementation nationally of each of such proposals, and

(3) the effects of the proposals on other provisions of this Act on gas utility rate structures.

(d) Public participation

The Secretary shall provide for public participation in the conduct of the study under subsection (a), and the preparation of proposals under subsection (b).

(Pub. L. 95–617, title III, §306, Nov. 9, 1978, 92 Stat. 3152.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(3), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, known as the Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

The definitions of Secretary and Commission in section 2602 of Title 16, Conservation, apply to this section.

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

§3207. Judicial review and enforcement

(a) Limitation of Federal jurisdiction

(1) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of this chapter except for—

(A) an action over which a court of the United States has jurisdiction under paragraph (2), or

(B) review in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28.

(2) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under section 3205 of this title, and such court shall have jurisdiction to grant appropriate relief.

(b) Enforcement

(1) Any person may bring an action to enforce the requirements of this chapter in the appropriate State court. Such action in a State court shall be pursuant to applicable State procedures.

(2) Nothing in this chapter shall authorize the Secretary to appeal or otherwise seek judicial review of the decisions of a State regulatory authority or nonregulated gas utility or to become a party to any action to obtain such review or appeal. The Secretary may participate as an amicus curiae in any judicial review of an action arising under the provisions of this chapter.

(Pub. L. 95–617, title III, §307, Nov. 9, 1978, 92 Stat. 3153.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

The definitions of Secretary and State in section 2602 of Title 16, Conservation, apply to this section.

§3208. Relationship to other applicable law

Nothing in this chapter prohibits any State regulatory authority or nonregulated gas utility from adopting, pursuant to State law, any standard or rule affecting gas utilities which is different from any standard established by this chapter.

(Pub. L. 95–617, title III, §308, Nov. 9, 1978, 92 Stat. 3153.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

The definition of State in section 2602 of Title 16, Conservation, applies to this section.

§3209. Reports respecting standards

(a) State authorities and nonregulated utilities

Not later than 1 year after November 9, 1978, and annually thereafter for 10 years, each State regulatory authority (with respect to each gas utility for which it has ratemaking authority), and each nonregulated gas utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by this chapter. Such report shall include a summary of the determinations made and actions taken with respect to each of such standards on a utility-by-utility basis.

(b) Secretary

Not later than 18 months after November 9, 1978, and annually thereafter for 10 years, the Secretary shall submit a report to the President and the Congress containing—

(1) a summary of the reports submitted under subsection (a),

(2) his analysis of such reports, and

(3) his actions under this chapter, and his recommendations for such further Federal actions, including any legislation, regarding retail gas utility rates (and other practices) as may be necessary to carry out the purposes of this chapter.

(Pub. L. 95–617, title III, §309, Nov. 9, 1978, 92 Stat. 3153.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

The definition of Secretary in section 2602 of Title 16, Conservation, applies to this section.

§3210. Prior and pending proceedings

For purposes of this chapter, proceedings commenced by any State regulatory authority (with respect to gas utilities for which it has ratemaking authority) and any nonregulated gas utility before November 9, 1978, and actions taken before such date in such proceedings shall be treated as complying with the requirements of this chapter if such proceedings and actions substantially conform to such requirements. For purposes of this chapter, any such proceeding or action commenced before November 9, 1978, but not completed before such date shall comply with the requirements of this chapter, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date.

(Pub. L. 95–617, title III, §310, Nov. 9, 1978, 92 Stat. 3154.)

§3211. Relationship to other authority

Nothing in this chapter shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law.

(Pub. L. 95–617, title III, §311, Nov. 9, 1978, 92 Stat. 3154.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

The definitions of Secretary and Commission in section 2602 of Title 16, Conservation, apply to this

section.

CHAPTER 60—NATURAL GAS POLICY

§3301. Definitions

For purposes of this chapter—

(1) Natural gas

The term "natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(2) Well

The term "well" means any well for the discovery or production of natural gas, crude oil, or both.

(3) New well

The term "new well" means any well—

(A) the surface drilling of which began on or after February 19, 1977; or

(B) the depth of which was increased, by means of drilling on or after February 19, 1977, to a completion location which is located at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977.

(4) Old well

The term "old well" means any well other than a new well.

(5) Marker well

(A) General rule

The term "marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.

(B) New wells

The term "marker well" does not include any new well under paragraph (3)(A) but includes any new well under paragraph (3)(B) if such well qualifies as a marker well under subparagraph (A) of this paragraph.

(6) Reservoir

The term "reservoir" means any producible natural accumulation of natural gas, crude oil, or both, confined—

(A) by impermeable rock or water barriers and characterized by a single natural pressure system; or

(B) by lithologic or structural barriers which prevent pressure communication.

(7) Completion location

(A) General rule

The term "completion location" means any subsurface location from which natural gas is being or has been produced in commercial quantities.

(B) Marker well

The term "completion location", when used with reference to any marker well, means any subsurface location from which natural gas was produced from such well in commercial quantities after January 1, 1970, and before April 20, 1977.

(8) Proration unit

The term "proration unit" means—

(A) any portion of a reservoir, as designated by the State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, which will be effectively and efficiently drained by a single well;

(B) any drilling unit, production unit, or comparable arrangement, designated or recognized by the State or Federal agency having jurisdiction with respect to production from the reservoir, to describe that portion of such reservoir which will be effectively and efficiently drained by a single well; or

(C) if such portion of a reservoir, unit, or comparable arrangement is not specifically provided for by State law or by any action of any State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, any voluntary unit agreement or

other comparable arrangement applied, under local custom or practice within the locale in which such reservoir is situated, for the purpose of describing the portion of a reservoir which may be effectively and efficiently drained by a single well.

(9) New lease

The term "new lease", when used with respect to the Outer Continental Shelf, means a lease, entered into on or after April 20, 1977, of submerged acreage.

(10) Old lease

The term "old lease", when used with respect to the Outer Continental Shelf, means any lease other than a new lease.

(11) New contract

The term "new contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas which was not previously subject to an existing contract.

(12) Rollover contract

The term "rollover contract" means any contract, entered into on or after November 9, 1978, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after November 9, 1978) specified by the provisions of such existing contract, as such contract was in effect on November 9, 1978, whether or not there is an identity of parties or terms with those of such existing contract.

(13) Existing contract

The term "existing contract" means any contract for the first sale of natural gas in effect on November 8, 1978.

(14) Successor to an existing contract

The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after November 9, 1978, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

(15) Interstate pipeline

The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(16) Intrastate pipeline

The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act [15 U.S.C. 717(c)]).

(17) Local distribution company

The term "local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(18) Committed or dedicated to interstate commerce

(A) General rule

The term "committed or dedicated to interstate commerce", when used with respect to natural gas, means—

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]) under the terms of any contract,

any certificate under the Natural Gas Act, or any provision of such Act.

(B) Exclusion

Such term does not apply with respect to—

(i) natural gas sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.])—

(I) under section 6 of the Emergency Natural Gas Act of 1977;

(II) under any limited term certificate, granted pursuant to section 7 of the Natural Gas Act [15 U.S.C. 717f], which contains a pregrant of abandonment of service for such natural gas;

(III) under any emergency regulation under the second proviso of section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)]; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)], if such certificate was specifically granted for the transportation of that natural gas for such user;

(ii) natural gas for which abandonment of service was granted before November 9, 1978, under section 7 of the Natural Gas Act [15 U.S.C. 717f]; and

(iii) natural gas which, but for this clause, would be committed or dedicated to interstate commerce under subparagraph (A)(ii) by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leasehold interest), if on May 31, 1978—

(I) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(II) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]) for resale (other than any sale described in clause (i)(I), (II), or (III)).

(19) Certificated natural gas

The term "certificated natural gas" means natural gas transported by any interstate pipeline in a facility for which there is in effect a certificate issued under section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)]. Such term does not include natural gas sold to the user by the producer and transported pursuant to a certificate which is specifically issued under section 7(c) of the Natural Gas Act for the transportation of that natural gas, for such user unless such natural gas is used for the generation of electricity.

(20) Sale

The term "sale" means any sale, exchange, or other transfer for value.

(21) First sale

(A) General rule

The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this chapter.

(B) Certain sales not included

Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

(22) Deliver

The term "deliver", when used with respect to any first sale of natural gas, means the physical delivery from the seller; except that in the case of the sale of proven reserves in place to any interstate pipeline, any intrastate pipeline, any local distribution company, or any user of such natural gas, such term means the transfer of title to such reserves.

(23) Certificate

The term "certificate", when used with respect to the Natural Gas Act [15 U.S.C. 717 et seq.], means a certificate of public convenience and necessity issued under such Act.

(24) Commission

The term "Commission" means the Federal Energy Regulatory Commission.

(25) Federal agency

The term "Federal agency" has the same meaning as given such term in section 105 of title 5.

(26) Person

The term "person" includes the United States, any State, and any political subdivision, agency, or instrumentality of the foregoing.

(27) Affiliate

The term "affiliate", when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

(28) Electric utility

The term "electric utility" means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public.

(29) Mcf

The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(30) Btu

The term "Btu" means British thermal unit.

(31) Month

The term "month" means a calendar month.

(32) Mile

The term "mile" means a statute mile of 5,280 feet.

(33) United States

The term "United States" means the several States and includes the Outer Continental Shelf.

(34) State

The term "State" means each of the several States and the District of Columbia.

(35) Outer Continental Shelf

The term "Outer Continental Shelf" has the same meaning as such term has under section 1331(a) of title 43.

(36) Prudhoe Bay Unit of Alaska

The term "Prudhoe Bay Unit of Alaska" means the geographic area subject to the voluntary unit agreement approved by the Commissioner of the Department of Natural Resources of the State of Alaska on June 2, 1977, and referred to as the "affected area" in Conservation Order No. 145 of the Alaska Oil and Gas Conservation Committee, Division of Oil and Gas Conservation,

Department of Natural Resources of the State of Alaska, as such order was in effect on June 1, 1977, and determined without regard to any adjustments in the description of the affected area permitted to be made under such order.

(37) Antitrust laws

The term "Federal antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8–9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Pub. L. 95–621, §2, Nov. 9, 1978, 92 Stat. 3352.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, and such Act, referred to in pars. (15), (16), (18)(A)(ii), (B)(i), (iii)(II), (23), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

Section 6 of the Emergency Natural Gas Act of 1977, referred to in par. (18)(B)(i)(I), is Pub. L. 95–2, §6, Feb. 2, 1977, 91 Stat. 7, which was formerly set out in a note under section 717 of this title.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in par. (37), is act July 2, 1890, ch. 647, 26 Stat. 209, which is classified to sections 1 to 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), referred to in par. (37), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in par. (37), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Act of June 19, 1936, chapter 592, referred to in par. (37), means act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–60, §1, July 26, 1989, 103 Stat. 157, provided that: "This Act [amending sections 3331, 3372, 3373, 3375, 3411, 3412, 3414, 3416, 3431, and 3432 of this title, repealing sections 3311 to 3320, 3331 to 3333, 3413, and 3417 of this title, and enacting provisions set out as notes under sections 3311 and 3372 of this title] may be cited as the 'Natural Gas Wellhead Decontrol Act of 1989'."

SHORT TITLE

Pub. L. 95–621, §1, Nov. 9, 1978, 92 Stat. 3351, provided that: "This Act [enacting this chapter and amending section 7255 of Title 42, The Public Health and Welfare] may be cited as the 'Natural Gas Policy Act of 1978'."

SUBCHAPTER I—WELLHEAD PRICING

§§3311 to 3333. Repealed. Pub. L. 101–60, §2(b), July 26, 1989, 103 Stat. 158

Sections 3311 to 3320 comprised part A of this subchapter.

Section 3311, Pub. L. 95–621, title I, §101, Nov. 9, 1978, 92 Stat. 3356, related to inflation adjustments and other general price ceiling rules to be applied in establishing wellhead price controls.

Section 3312, Pub. L. 95–621, title I, §102, Nov. 9, 1978, 92 Stat. 3358; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000, related to ceiling price for new natural gas and certain gas produced from Outer Continental Shelf.

Section 3313, Pub. L. 95–621, title I, §103, Nov. 9, 1978, 92 Stat. 3361, related to ceiling price for new, onshore production wells.

Section 3314, Pub. L. 95–621, title I, §104, Nov. 9, 1978, 92 Stat. 3362, related to a ceiling price for sales of natural gas dedicated to interstate commerce.

Section 3315, Pub. L. 95–621, title I, §105, Nov. 9, 1978, 92 Stat. 3363, related to ceiling price for sales under intrastate contracts existing on Nov. 8, 1978.

Section 3316, Pub. L. 95–621, title I, §106, Nov. 9, 1978, 92 Stat. 3365, related to ceiling price for sales under rollover contracts.

Section 3317, Pub. L. 95–621, title I, §107, Nov. 9, 1978, 92 Stat. 3366, related to ceiling price for high-cost natural gas.

Section 3318, Pub. L. 95–621, title I, §108, Nov. 9, 1978, 92 Stat. 3367, related to ceiling price for stripper well natural gas.

Section 3319, Pub. L. 95–621, title I, §109, Nov. 9, 1978, 92 Stat. 3368, related to ceiling price for other categories of natural gas.

Section 3320, Pub. L. 95–621, title I, §110, Nov. 9, 1978, 92 Stat. 3368, related to treatment of State severance taxes and certain production-related costs.

Sections 3331 to 3333 comprised part B of this subchapter.

Section 3331, Pub. L. 95–621, title I, §121, Nov. 9, 1978, 92 Stat. 3369; Pub. L. 101–60, §2(a), July 26, 1989, 103 Stat. 157, provided for elimination of price controls for certain natural gas sales.

Section 3332, Pub. L. 95–621, title I, §122, Nov. 9, 1978, 92 Stat. 3370, related to standby price control authority.

Section 3333, Pub. L. 95–621, title I, §123, Nov. 9, 1978, 92 Stat. 3371, related to reports to Congress by Department of Energy.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Section 2(b) of Pub. L. 101–60 provided that the repeal of sections 3311 to 3320 and 3331 to 3333 is effective Jan. 1, 1993.

SUBCHAPTER II—INCREMENTAL PRICING

§§3341 to 3348. Repealed. Pub. L. 100–42, §2(a), May 21, 1987, 101 Stat. 314

Section 3341, Pub. L. 95–621, title II, §201, Nov. 9, 1978, 92 Stat. 3371, required Commission to prescribe and make effective a rule designed to provide for passthrough of costs of natural gas, with respect to boiler fuel use of natural gas by industrial boiler fuel facilities, not later than 12 months after Nov. 9, 1978.

Section 3342, Pub. L. 95–621, title II, §202, Nov. 9, 1978, 92 Stat. 3372, required Commission to prescribe an amendment to rule required under section 3341 of this title, which would expand its application to other industrial uses, not later than 18 months after Nov. 9, 1978.

Section 3343, Pub. L. 95–621, title II, §203, Nov. 9, 1978, 92 Stat. 3373, enumerated acquisition costs subject to passthrough requirements of rule prescribed under section 3341 of this title.

Section 3344, Pub. L. 95–621, title II, §204, Nov. 9, 1978, 92 Stat. 3375, related to method of passthrough.

Section 3345, Pub. L. 95–621, title II, §205, Nov. 9, 1978, 92 Stat. 3378, related to direct passthrough of surcharges paid by local distributors on natural gas delivered by interstate pipelines to industrial facilities served by such local distributors.

Section 3346, Pub. L. 95–621, title II, §206, Nov. 9, 1978, 92 Stat. 3379, enumerated exemptions from application of rule required under section 3341 of this title.

Section 3347, Pub. L. 95–621, title II, §207, Nov. 9, 1978, 92 Stat. 3380, related to application of section

3343 to certain natural gas and liquefied natural gas imports.

Section 3348, Pub. L. 95–621, title II, §208, Nov. 9, 1978, 92 Stat. 3381, directed that Alaska natural gas be allocated to rates and charges of interstate pipelines in accordance with certain general principles applicable on Nov. 9, 1978, for establishing rates.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEAL OF INCREMENTAL PRICING REQUIREMENTS

Pub. L. 100–42, §2, May 21, 1987, 101 Stat. 314, provided that:

"(a) REPEAL.—Subject to subsections (b) and (c) of this section, title II of the Natural Gas Policy Act of 1978 (15 U.S.C. 3341–3348) is repealed, and the items relating to title II are stricken from the table of contents of that Act.

"(b) LIMITED CONTINUING EFFECT OF RULES.—A rule promulgated by the Federal Energy Regulatory Commission, under title II of the Natural Gas Policy Act of 1978 shall continue in effect only with respect to the flowthrough of costs incurred before the enactment of this section [May 21, 1987], including any surcharges based on such costs.

"(c) IMPLEMENTATION.—The Federal Energy Regulatory Commission may take appropriate action to implement this section."

SUBCHAPTER III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

PART A—EMERGENCY AUTHORITY

§3361. Declaration of emergency

(a) Presidential declaration

The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under section 3362 or section 3363 of this title is reasonably necessary, having exhausted other alternatives to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) Limitation

(1) Expiration

Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a), shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Extensions

Nothing in this subsection shall prohibit the President from extending, under subsection (a), any emergency (or extension thereof), previously declared under subsection (a), upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(Pub. L. 95–621, title III, §301, Nov. 9, 1978, 92 Stat. 3381.)

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under this subchapter, except for authority to declare, extend, and terminate a national gas supply emergency pursuant to this section, delegated to Secretary of Energy, see section 1–101 of Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, set out as a note under section 3364 of this title.

§3362. Emergency purchase authority

(a) Presidential authorization

During any natural gas supply emergency declared under section 3361 of this title, the President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser, as determined by the President) if—

(A) such natural gas is not produced from the Outer Continental Shelf; and

(B) the sale or transportation of such natural gas was not pursuant to a certificate issued under the Natural Gas Act [15 U.S.C. 717 et seq.] immediately before the date on which such contract was entered into; or

(2) from any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline or a producer of natural gas).

(b) Contract duration

The duration of any contract authorized under subsection (a) may not exceed 4 months. The preceding sentence shall not prohibit the President from authorizing under subsection (a) a renewal of any contract, previously authorized under such subsection, following the expiration of such contract.

(c) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any contract authorized under subsection (a). The costs of any construction or transportation ordered under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall require any pipeline to transport natural gas in excess of such pipeline's available capacity.

(d) Maintenance of adequate records

The Commission shall require any interstate pipeline or local distribution company contracting under the authority of this section for natural gas to maintain and make available full and adequate records concerning transactions under this section, including records of the volumes of natural gas purchased under the authority of this section and the rates and charges for purchase and receipt of such natural gas.

(e) Special limitation

No sale under any emergency purchase contract under this section for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, may take effect unless the court approves.

(Pub. L. 95–621, title III, §302, Nov. 9, 1978, 92 Stat. 3382.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, which is

classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3363. Emergency allocation authority

(a) In general

In order to assist in meeting natural gas requirements for high-priority uses of natural gas during any natural gas supply emergency declared under section 3361 of this title, the President may, by order, allocate supplies of natural gas under subsections (b), (c), and (d) to—

(1) any interstate pipeline;

(2) any local distribution company—

(A) which is served by any interstate pipeline;

(B) which is providing natural gas only for high-priority uses; and

(C) which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and

(3) any person for meeting requirements of high-priority uses of natural gas.

(b) Allocation of certain boiler fuel gas

(1) Required finding

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, emergency purchase authority under section 3362 of this title has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) emergency purchases of natural gas supplies under section 3362 of this title are not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses; and

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to to [1] the maximum extent practicable to terminate such deliveries.

(2) Allocation authority

Subject to paragraph (1), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas the use of which has been prohibited by the President pursuant to authority under section 717z of this title (relating to the use of natural gas as a boiler fuel during any natural gas supply emergency).

(c) Allocation of general pipeline supply

(1) Required findings

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (b) has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries;

(E) such allocation will not create, for the interstate pipeline delivering certificated natural gas, a supply shortage which will cause such pipeline to be unable to meet the natural gas requirements for high-priority uses of natural gas served, directly or indirectly, by such pipeline; and

(F) such allocation will not result in a disproportionate share of deliveries and resulting curtailments of natural gas being experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders issued under this subsection applicable to other interstate pipelines (as determined by the President).

(2) Required notification from State

(A) [2] Notification

The President shall not allocate supplies of natural gas under this subsection unless he is notified by the Governor of any State that—

(i) a shortage of natural gas supplies available to such State exists or is imminent;

(ii) such shortage or imminent shortage endangers the supply of natural gas for high-priority uses in such State; and

(iii) the exercise of authority under State law is inadequate to protect high-priority uses of natural gas in such State from an interruption in natural gas supplies.

(3) Basis of finding

To the maximum extent practicable, the Governor shall submit, together with any notification under subparagraph (A), information upon which he has based his finding under such subparagraph, including—

(i) volumes of natural gas required to meet the natural gas requirements for high-priority uses of natural gas in such State;

(ii) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas supplies available to such State;

(iii) information on the authority under State law which will be exercised to protect high-priority uses; and

(iv) such other information which the President requests or which the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed by such State.

(4) Allocation authority

Subject to paragraphs (1), (2), and (5), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of certificated natural gas from any interstate pipeline.

(5) Consideration of alternative fuel availability

In issuing any order under this subsection the President shall consider the relative availability of alternative fuel to natural gas users supplied by the interstate pipeline ordered to make deliveries pursuant to this subsection.

(d) Allocation of user-owned gas

(1) Required finding

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (c) has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting

natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries; and

(E) such allocation will not create, for the person who owns and would otherwise use such natural gas, a supply shortage which will cause such person to be unable to satisfy such person's natural gas requirements for high-priority uses.

(2) Allocation authority

Subject to paragraphs (1) and (3), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas which would be certificated natural gas but for the second sentence of section 3301(19) of this title.

(3) Consideration of economic feasibility of alternative fuels

In issuing any order under this subsection, the President shall consider the economic feasibility of alternative fuels available to the user which owned the natural gas subject to an order under this subsection.

(e) Limitation

No order may be issued under this section unless the President determines that such order will not require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(f) Industry assistance

The President may request that representatives of pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

(g) Compensation

(1) In general

If the parties to any order issued under subsection (b), (c), (d), or (h) fail to agree upon the terms of compensation for natural gas deliveries or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting natural gas.

(2) Calculation of compensation for certain boiler fuel natural gas

For purposes of any supplemental order under paragraph (1) with respect to emergency deliveries pursuant to subsection (b), the President shall calculate the amount of compensation—

(A) for supplies of natural gas based upon the amount required to make whole the user subject to the prohibition order, but in no event may such compensation exceed just compensation prescribed in section 717z of this title; and

(B) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President.

(3) Compensation for other natural gas allocated

For the purpose of any supplemental order under paragraph (1), if the party making emergency deliveries pursuant to subsection (c) or (d)—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided as expeditiously as practicable;

(B) indicates a preference for compensation, or the President determines that, notwithstanding paragraph (A) of this subsection, any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation—

(i) for supplies of natural gas, based upon the amount required to make the pipeline and its local distribution companies whole, in the case of any order under subsection (c), or to make the user from whom natural gas is allocated whole, in the case of any order under subsection

(d) including any amount actually paid by such pipeline and its local distribution companies or such user for volumes of natural gas or higher cost synthetic gas acquired to replace natural gas subject to an order under subsection (c) or (d); and

(ii) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President. Compensation received by an interstate pipeline under this subsection shall be credited to the account of any local distribution company served by that pipeline to the extent ordered by the President to make such local distribution company whole.

(h) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any order under subsection (b), (c), or (d). Compensation for the costs of any construction or transportation ordered under this subsection shall be determined under subsection (g) and shall be paid by the person to whom supplies of natural gas are ordered allocated under this section.

(i) Monitoring

In order to effect the purposes of this part, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

(j) Commission study

Not later than June 1, 1979, the Commission shall prepare and submit to the Congress a report regarding whether authority to allocate natural gas, which is not otherwise subject to allocation under this part, is likely to be necessary to meet high-priority uses.

(k) "High-priority use" defined

For purposes of this section, the term "high-priority use" means any—

(1) use of natural gas in a residence;

(2) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(3) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(Pub. L. 95–621, title III, §303, Nov. 9, 1978, 92 Stat. 3383.)

[1] So in original.

[2] So in original. Par. (2) enacted without a subpar. (B).

§3364. Miscellaneous provisions

(a) Information

(1) Obtaining of information

In order to obtain information to carry out his authority under this part, the President may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise as the President may determine; and

(c) [1] secure, upon request, any information from any Federal agency.

(2) Enforcement of subpenas and orders

The appropriate United States district court may, upon petition of the Attorney General at the

request of the President, in the case of refusal to obey a subpena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(b) Reporting of prices and volumes

In issuing any order under section 3362 or 3363 of this title, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order shall be reported to him on a weekly basis. Such reports shall be made available to the Congress.

(c) Presidential reports to Congress

The President shall report to the Congress, not later than 90 days following the termination under section 3361(b) of this title of any declaration of a natural gas supply emergency (or extension thereof) under section 3361(a) of this title, respecting the exercise of authority under section 3361, 3362, 3363 of this title, or this section.

(d) Delegation of authorities

The President may delegate all or any portion of the authority granted to him under section 3361, 3362, 3363 of this title, or this section to such Federal officers or agencies as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5, any Federal officer or agency to which authority is delegated or redelegated under this subsection shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

(e) Antitrust protections

(1) Defenses

There shall be available as a defense for any person to civil or criminal action brought for violation of the Federal antitrust laws (or any similar law of any State) with respect to any action taken, or meeting held, pursuant to any order of the President under section 3363(b), (c), (d), or (i) of this title, or any meeting held pursuant to a request of the President under section 3363(g) of this title, if—

(A) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(B) such action was not taken for the purpose of injuring competition; and

(C) any such meeting complied with the requirements of paragraph (2).

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(2) Requirements of meetings

With respect to any meeting held pursuant to a request by the President under section 3363(g) of this title or pursuant to an order under section 3363 of this title—

(A) there shall be present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(B) a full and complete record of such meeting shall be taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(C) the Attorney General and the Federal Trade Commission shall have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under section 3363 of this title, in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of section 3363 of this title and any order thereunder; and

(D) such other procedures as may be specified by the President in such request or order shall be complied with.

(f) Effect on certain contractual obligations

There shall be available as a defense to any action brought for breach of contract under Federal or State Law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 3363 of this title.

(g) Preemption

Any order issued pursuant to this subchapter shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

(Pub. L. 95–621, title III, §304, Nov. 9, 1978, 92 Stat. 3387.)

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12235. ASSIGNMENT OF MANAGEMENT RESPONSIBILITY IN CASES OF NATURAL GAS EMERGENCIES

Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 304(d) of the Natural Gas Policy Act of 1978 (92 Stat. 3387; 15 U.S.C. 3364(d)) and Section 301 of Title 3 of the United States Code, and in order to assign management responsibility in case of a natural gas supply emergency, it is hereby ordered as follows:

1–101. The functions vested in the President by Sections 301 through 304(c) of the Natural Gas Policy Act of 1978 (92 Stat. 3381–3387; 15 U.S.C. 3361–3364(c)) are delegated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 301 thereof (15 U.S.C. 3361).

1–102. The functions vested in the President by Section 607 of the Public Utility Regulatory Policies Act of 1978 (92 Stat. 3171; 15 U.S.C. 717z) are delegated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 607(a) and (b) thereof (15 U.S.C. 717z(a) and (b)).

1–103. The Secretary shall consult with the Administrator of the Environmental Protection Agency, the Director [now Administrator] of the Federal Emergency Management Agency, and the heads of other executive agencies in exercising the functions delegated to him by this Order.

1–104. All functions delegated to the Secretary by this Order may be redelegated, in whole or in part, to the head of any other agency.

1–105. All Executive agencies shall, to the extent permitted by law, cooperate with and assist the Secretary in carrying out the functions delegated to him by this Order.

JIMMY CARTER.

[1] So in original. Probably should be "(C)".

PART B—OTHER AUTHORITIES AND REQUIREMENTS

§3371. Authorization of certain sales and transportation

(a) Commission approval of transportation

(1) Interstate pipelines

(A) In general

The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

(i) any intrastate pipeline; and

(ii) any local distribution company.

(B) Just and reasonable rates

The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]).

(2) Intrastate pipelines

(A) In general

The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline.

(B) Rates and charges

(i) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(ii) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(I) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, delivery, or similar service provided by such pipeline in connection with any transportation of natural gas authorized under subparagraph (A); and

(II) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(b) Commission approval of sales

(1) In general

The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

(A) any interstate pipeline; and

(B) any local distribution company served by any interstate pipeline.

(2) Rates and charges

(A) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(i) such intrastate pipeline's weighted average acquisition cost of natural gas;

(ii) an amount, computed in accordance with the rule prescribed under subparagraph (B); and

(iii) any adjustment permitted under subparagraph (C).

(B) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(i) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, or delivery service provided by such pipeline in connection with any sale of natural gas authorized under paragraph (1); and

(ii) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(C) Adjustment

(i) Application

This subparagraph shall apply in any case in which, in order to deliver any volume of natural gas pursuant to any sale authorized under paragraph (1), any intrastate pipeline acquires quantities of natural gas under any existing contract, if—

(I) such intrastate pipeline acquires any volume of natural gas under such contract in excess of that which such pipeline would otherwise have acquired; and

(II) the price paid for such additional volume of natural gas acquired under such contract is greater than such pipeline's weighted average acquisition cost of natural gas, computed without regard to the acquisition of such additional volume of natural gas.

(ii) Commission adjustment

In any case to which this subparagraph applies, the Commission shall permit an adjustment to the maximum fair and equitable price provided under subparagraph (A) to increase the revenue to the intrastate pipeline under such sale by an amount determined by the Commission to be adequate to offset the additional cost incurred by such pipeline due to any increase in such pipeline's weighted average acquisition cost of natural gas.

(3) Limitation

(A) Two-year duration

No authorization of any sale (or any extension thereof) under paragraph (1) may be for a period exceeding two years.

(B) Extension

Any authorization of any sale under paragraph (1), and any extension of any such authorization under this subparagraph, may be extended by the Commission if such extension satisfies the requirements of this subsection.

(4) Adequacy of service to intrastate customers

Any sale authorized under paragraph (1) shall be subject to interruption to the extent that natural gas subject to such sale is required to enable the intrastate pipeline involved to provide adequate service to such pipeline's customers at the time of such sale.

(5) Procedural requirements

(A) Affidavit

Any application for authorization of any sale under paragraph (1) shall be accompanied by an affidavit filed by the intrastate pipeline involved and setting forth—

(i) the identity of the interstate pipeline or local distribution company involved;

(ii) each point of delivery of the natural gas from the intrastate pipeline;

(iii) the estimated total and daily volumes of natural gas subject to such sale;

(iv) the price or prices of such volumes; and

(v) such other information as the Commission may, by rule, require.

(B) Verification of compliance

Any application for authorization of any sale under paragraph (1) shall be accompanied by a statement by the intrastate pipeline involved verifying by oath or affirmation that such sale, if authorized, would comply with all requirements applicable to such sale under this subsection and all terms and conditions established, by rule or order, by the Commission and applicable to such sale.

(6) Termination of sales

(A) Hearing

Upon complaint of any interested person, or upon the Commission's own motion, the Commission shall, after affording an opportunity for oral presentation of views and arguments, terminate any sale authorized under paragraph (1) if the Commission determines—

(i) such termination is required to enable the intrastate pipeline involved to provide

adequate service to the customers of such pipeline at the time of such sale;

(ii) such sale involves the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(iii) such sale violates any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(iv) such sale circumvents or violates any provision of this chapter.

(B) Suspension pending hearing

Prior to any hearing or determination required under subparagraph (A), upon complaint of any interested person or upon the Commission's own motion, the Commission may suspend any sale authorized under paragraph (1) if the Commission finds that it is likely that the determinations described in subparagraph (A) will be made following the hearing required under subparagraph (A).

(C) Determination

The determination of whether any interruption of any sale authorized under paragraph (1) is required under subparagraph (A)(i) shall be made by the Commission without regard to the character of the use of natural gas by any customer of the intrastate pipeline involved.

(D) State intervention

Any interested State may intervene as a matter of right in any proceeding before the Commission relating to any determination under this section.

(7) Disapproval of application

The Commission shall disapprove any application for authorization of any sale under paragraph (1) if the Commission determines—

(A) such sale would impair the ability of the intrastate pipeline involved to provide adequate service to its customers at the time of such sale (without regard to the character of the use of natural gas by such customer);

(B) such sale would involve the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(C) such sale would violate any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(D) such sale would circumvent or violate any provision of this chapter.

(c) Terms and conditions

Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

(Pub. L. 95–621, title III, §311, Nov. 9, 1978, 92 Stat. 3388.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3372. Assignment of contractual rights to receive surplus natural gas

(a) Authorization of assignments

The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such

intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) Effect of authorization under subsection (a)

For the effect of an authorization under subsection (a), see section 3431 of this title (relating to the coordination of this chapter with the Natural Gas Act [15 U.S.C. 717 et seq.]).

(c) Surplus natural gas

For purposes of this section, the term "surplus natural gas" means any natural gas which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

(Pub. L. 95–621, title III, §312, Nov. 9, 1978, 92 Stat. 3392; Pub. L. 101–60, §3(b)(2), July 26, 1989, 103 Stat. 158.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–60 substituted "any natural gas" for "any natural gas—

"(1) which is not committed or dedicated to interstate commerce on November 8, 1978;

"(2) the first sale of which is subject to a maximum lawful price established under subchapter I of this chapter; and

"(3)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(b) of Pub. L. 101–60 provided in part that the amendment by section 3(b)(2) of Pub. L. 101–60 is effective Jan. 1, 1993.

§3373. Effect of certain natural gas prices on indefinite price escalator clauses

(a) High-cost natural gas

No price paid in any first sale of high-cost natural gas (as defined in section 3317(c) [1] of this title, as such section was in effect on January 1, 1989) may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) [1] of this title, as such section was in effect on January 1, 1989) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 3317(c) [1] of this title, as such section was in effect on January 1, 1989).

(b) Other transactions

No price paid—

(1) in any sale authorized under section 3362(a) of this title, or

(2) pursuant to any order issued under section 3363(b), (c), (d), or (g) of this title,

may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) [1] of this title, as such section was in effect on January 1, 1989).

(Pub. L. 95–621, title III, §313, Nov. 9, 1978, 92 Stat. 3392; Pub. L. 101–60, §3(b)(3), July 26, 1989,

103 Stat. 159.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 3315 and 3317 of this title, referred to in text, were repealed effective Jan. 1, 1993, by Pub. L. 101–60, §2(b), July 26, 1989, 103 Stat. 158.

AMENDMENTS

1989—Pub. L. 101–60 inserted ", as such section was in effect on January 1, 1989" in four places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

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

§3374. Clauses prohibiting certain sales, transportation, and commingling

(a) General rule

Any provision of any contract for the first sale of natural gas is hereby declared against public policy and unenforceable with respect to any natural gas covered by this chapter if such provision—

(1) prohibits the commingling of natural gas subject to such contract with natural gas subject to the jurisdiction of the Commission under the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.];

(2) prohibits the sale of any natural gas subject to such contract to, or transportation of any such natural gas by, any person subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.], or otherwise prohibits the sale or transportation in interstate commerce (within the meaning of the Natural Gas Act) of natural gas subject to such contract; or

(3) terminates, or grants any party the option to terminate, any obligation under any such contract as a result of such commingling, sale, or transportation.

(b) Natural gas covered by this chapter

For purposes of subsection (a), the term "natural gas covered by this chapter" means—

(1) natural gas which is not committed or dedicated to interstate commerce as of November 8, 1978;

(2) natural gas, the sale in interstate commerce of which—

(A) is authorized under section 3362(a) or 3371(b) of this title; or

(B) is pursuant to an assignment under section 3372(a) of this title; and,

(3) natural gas, the transportation in interstate commerce of which is—

(A) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(B) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95–621, title III, §314, Nov. 9, 1978, 92 Stat. 3392.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1), (2), is act June 21, 1938, ch. 556, 52 Stat. 821, which is

classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3375. Filing of contracts and agreements

The Commission may, by rule or order, require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, together with all ancillary agreements and any existing contract applicable to such natural gas.

(Pub. L. 95–621, title III, §315, Nov. 9, 1978, 92 Stat. 3393; Pub. L. 100–439, §§1, 2(a), (b)(1), Sept. 22, 1988, 102 Stat. 1720; Pub. L. 101–60, §3(a)(2), July 26, 1989, 103 Stat. 158.)

EDITORIAL NOTES

AMENDMENTS

1989—Pub. L. 101–60, in section catchline, substituted "Filing of contracts and agreements" for "Contract duration; filing of contracts and agreements", and in text, struck out subsec. (a) designation, heading "Contract duration", and text relating to power of Commissioner to specify minimum duration of contracts for purchase of natural gas and requiring nondiscriminatory exercise of such authority, and struck out subsec. (b) designation and heading "Filing of contracts and ancillary agreements".

1988—Pub. L. 100–439, §2(b)(1), struck out "right of first refusal;" after "Contract duration;" in section catchline.

Subsec. (a)(1). Pub. L. 100–439, §1, struck out last sentence which directed that provisions of par. (1) did not apply to contracts of natural gas subject to requirements of par. (3).

Subsec. (a)(3). Pub. L. 100–439, §1, struck out par. (3) which related to contracts for purchase of natural gas produced from reservoirs on Outer Continental Shelf.

Subsecs. (b), (c). Pub. L. 100–439, §2(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to certain rights of first refusal with respect to certain natural gas committed or dedicated to interstate commerce on November 8, 1978.

SUBCHAPTER IV—NATURAL GAS CURTAILMENT POLICIES

§3391. Natural gas for essential agricultural uses

(a) General rule

Not later than 120 days after November 9, 1978, the Secretary of Energy shall prescribe and make effective a rule, which may be amended from time to time, which provides that, notwithstanding any other provision of law (other than subsection (b)) and to the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c); or

(2) is necessary in order to meet the requirements of high-priority users.

(b) Curtailment priority not applicable if alternative fuel available

If the Commission, in consultation with the Secretary of Agriculture, determines, by rule or order, that use of a fuel (other than natural gas) is economically practicable and that the fuel is reasonably available as an alternative for any agricultural use of natural gas, the provisions of subsection (a) shall not apply with respect to any curtailment of deliveries for such use.

(c) Determination of essential agricultural use requirements

The Secretary of Agriculture shall certify to the Secretary of Energy and the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production.

(d) Authority of Secretary of Agriculture to intervene

The Secretary of Agriculture may intervene as a matter of right in any proceeding before the Commission which is conducted in connection with implementing the requirements of the rule prescribed under subsection (a).

(e) Limitation

The Secretary of Agriculture may not exercise any authority under this section for the purpose of restricting the production of any crop.

(f) Definitions

For purposes of this section—

(1) Essential agricultural use

The term "essential agricultural use", when used with respect to natural gas, means any use of natural gas—

(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or

(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food,

which the Secretary of Agriculture determines is necessary for full food and fiber production.

(2) High-priority user

The term "high-priority user" means any person who—

(A) uses natural gas in a residence;

(B) uses natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day;

(C) uses natural gas in any school, hospital, or similar institution; or

(D) uses natural gas in any other use the curtailment of which the Secretary of Energy determines would endanger life, health, or maintenance of physical property.

(Pub. L. 95–621, title IV, §401, Nov. 9, 1978, 92 Stat. 3394.)

§3391a. "Essential agricultural use" defined

For the purposes of section 3391 of this title, the term "essential agricultural use" shall—

(1) include use of natural gas in sugar refining for production of alcohol;

(2) include use of natural gas for agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949 [7 U.S.C. 1421 et seq.]) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels; and

(3) for the 5-year period beginning on June 30, 1980, include use of natural gas in the distillation of fuel-grade alcohol from food grains or other biomass by facilities in existence on June 30, 1980, which do not have the installed capability to burn coal lawfully.

(Pub. L. 96–294, title II, §273, June 30, 1980, 94 Stat. 711.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in par. (2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, which is

classified principally to chapter 35A (§1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Biomass Energy and Alcohol Fuels Act of 1980 which is title II of the Energy Security Act, and not as part of the Natural Gas Policy Act of 1978 which comprises this chapter.

§3392. Natural gas for essential industrial process and feedstock uses

(a) General rule

The Secretary of Energy shall prescribe and make effective a rule which provides that, notwithstanding any other provision of law (other than subsection (b)) and to the maximum extent practicable, no interstate pipeline may curtail deliveries of natural gas for any essential industrial process or feedstock use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c);

(2) is necessary in order to meet the requirements of high-priority users; or

(3) is necessary in order to meet the requirements for essential agricultural uses of natural gas for which curtailment priority is established under section 3391 of this title.

(b) Curtailment priority applicable only if alternative fuel not available

The provisions of subsection (a) shall apply with respect to any curtailment of deliveries for any essential industrial process or feedstock use only if the Commission determines that use of a fuel (other than natural gas) is not economically practicable and that no fuel is reasonably available as an alternative for such use.

(c) Determination of essential industrial use requirements

The Secretary of Energy shall determine and certify to the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential industrial process and feedstock uses (other than those referred to in section 3391(f)(1)(B) of this title).

(d) Definitions

For purposes of this section—

(1) Essential industrial process or feedstock use

The term "essential industrial process or feedstock use" means any use of natural gas in an industrial process or as a feedstock which the Secretary determines is essential.

(2) High-priority user

The term "high-priority user" has the same meaning as given such term in section 3391(f)(2) of this title.

(Pub. L. 95–621, title IV, §402, Nov. 9, 1978, 92 Stat. 3395.)

§3393. Establishment and implementation of priorities

(a) Establishment of priorities

The Secretary of Energy shall prescribe the rules under sections 3391 and 3392 of this title pursuant to his authority under the Department of Energy Organization Act [42 U.S.C 7101 et seq.] to establish and review priorities for curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

(b) Implementation of priorities

The Commission shall implement the rules prescribed under sections 3391 and 3392 of this title pursuant to its authority under the Department of Energy Organization Act [42 U.S.C. 7101 et seq.]

to establish, review, and enforce curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95–621, title IV, §403, Nov. 9, 1978, 92 Stat. 3396.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in subsecs. (a) and (b), is Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, which is classified principally to chapter 84 (§7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

The Natural Gas Act, referred to in subsecs. (a) and (b), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§3394. Limitation on revoking or amending certain pre-1969 certificates of public convenience and necessity

(a) General rule

The Commission may not, during the 10-year period beginning on November 9, 1978, revoke or amend any certificate of public convenience and necessity issued before January 1, 1969, under section 7 of the Natural Gas Act [15 U.S.C. 717f] for the transportation of natural gas owned by any electric utility except upon the application of the person to whom such certificate was issued.

(b) Commission curtailment authority

The limitation under subsection (a) shall not affect the authority of the Commission to enforce any curtailment of deliveries of natural gas under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95–621, title IV, §404, Nov. 9, 1978, 92 Stat. 3396.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SUBCHAPTER V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

§3411. General rulemaking authority

(a) In general

Except where expressly provided otherwise, the Commission shall administer this chapter. The Commission, or any other Federal officer or agency in which any function under this chapter is vested or delegated, is authorized to perform any and all acts (including any appropriate enforcement activity), and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this chapter.

(b) Authority to define terms

Except where otherwise expressly provided, the Commission is authorized to define, by rule, accounting, technical, and trade terms used in this chapter. Any such definition shall be consistent with the definitions set forth in this chapter.

(Pub. L. 95–621, title V, §501, Nov. 9, 1978, 92 Stat. 3396; Pub. L. 101–60, §3(b)(4), July 26, 1989, 103 Stat. 159.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–60 struck out subsec. (c) which authorized Commission to delegate to any State agency (with consent of such agency) any of its functions with respect to sections 3315, 3316(b), and 3319(a)(1) and (3) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

§3412. Administrative procedure

(a) Administrative Procedure Act

Subject to subsection (b), the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule or order issued under this chapter having the applicability and effect of a rule as defined in section 551(4) of title 5; except that sections 554, 556, and 557 of such title 5 shall not apply to any order under such section 3361, 3362, or 3363 of this title.

(b) Opportunity for oral presentations

To the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded with respect to any proposed rule or order described in subsection (a) (other than an order under section 3361, 3362, or 3363 of this title). To the maximum extent practicable, such opportunity shall be afforded before the effective date of such rule or order. Such opportunity shall be afforded no later than 30 days after such date in the case of a waiver of the entire comment period under section 553(d)(3) of title 5, and no later than 45 days after such date in all other cases. A transcript shall be made of any such oral presentation.

(c) Adjustments

The Commission or any other Federal officer or agency authorized to issue rules or orders described in subsection (a) (other than an order under section 3361, 3362, or 3363 of this title) shall, by rule, provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. Such rule shall 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 applicable rules or orders. If any person is aggrieved or adversely affected by the denial of a request for adjustment under the preceding sentence, such person may request a review of such denial by the officer or agency and may obtain judicial review in accordance with section 3416 of this title when such denial becomes final. The officer or agency shall, by rule, establish procedures, including an opportunity for oral presentation of data, views, and arguments, for considering requests for adjustment under this subsection.

(Pub. L. 95–621, title V, §502, Nov. 9, 1978, 92 Stat. 3397; Pub. L. 101–60, §3(a)(3), July 26, 1989, 103 Stat. 158.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–60 struck out subsec. (d) which directed that any determination made under

section 3347(c) of this title be made in accordance with procedures applicable to the granting of any authority under the Natural Gas Act to import natural gas or liquefied natural gas (as the case might be).

§3413. Repealed. Pub. L. 101–60, §3(b)(5), July 26, 1989, 103 Stat. 159

Section, Pub. L. 95–621, title V, §503, Nov. 9, 1978, 92 Stat. 3397, related to various determinations to be made by State or Federal agencies for qualifying under certain categories of natural gas.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as an Effective Date of 1989 Amendment note under section 3372 of this title.

§3414. Enforcement

(a) General rule

It shall be unlawful for any person to violate any provision of this chapter or any rule or order under this chapter.

(b) Civil enforcement

(1) In general

Except as provided in paragraph (2), whenever it appears to the Commission that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this chapter, or of any rule or order thereunder, the Commission may bring an action in the District Court of the United States for the District of Columbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this chapter, or any rule or order thereunder.

(2) Enforcement of emergency orders

Whenever it appears to the President that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order under section 3362 of this title or any order or supplemental order issued under section 3363 of this title, the President may bring a civil action in any appropriate district court of the United States to enjoin such acts or practices.

(3) Repealed. Pub. L. 101–60, §3(a)(4)(B), July 26, 1989, 103 Stat. 158

(4) Relief available

In any action under paragraph (1) or (2), the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction without bond. In any such action, the court may also issue a mandatory injunction commanding any person to comply with any applicable provision of law, rule, or order, or ordering such other legal or equitable relief as the court determines appropriate, including refund or restitution.

(5) Criminal referral

The Commission may transmit such evidence as may be available concerning any acts or practices constituting any possible violations of the Federal antitrust laws to the Attorney General who may institute appropriate criminal proceedings.

(6) Civil penalties

(A) In general

Any person who knowingly violates any provision of this chapter, or any provision of any rule or order under this chapter, shall be subject to—

(i) except as provided in clause (ii) a civil penalty, which the Commission may assess, of

not more than $1,000,000 for any one violation; and

(ii) a civil penalty, which the President may assess, of not more than $1,000,000, in the case of any violation of an order under section 3362 of this title or an order or supplemental order under section 3363 of this title.

(B) "Knowing" defined

For purposes of subparagraph (A) the term "knowing" means the having of—

(i) actual knowledge; or

(ii) the constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(C) Each day separate violation

For purposes of this paragraph, in the case of a continuing violation, each day of violation shall constitute a separate violation.

(D) Statute of limitations

No person shall be subject to any civil penalty under this paragraph with respect to any violation occurring more than 3 years before the date on which such person is provided notice of the proposed penalty under subparagraph (E). The preceding sentence shall not apply in any case in which an untrue statement of material fact was made to the Commission or a State or Federal agency by, or acquiesced to by, the violator with respect to the acts or omissions constituting such violation, or if there was omitted a material fact necessary in order to make any statement made by, or acquiesced to by, the violator with respect to such acts or omissions not misleading in light of circumstances under such statement was made.

(E) Assessed by Commission

Before assessing any civil penalty under this paragraph, the Commission shall provide to such person notice of the proposed penalty. Following receipt of notice of the proposed penalty by such person, the Commission shall, by order, asssess [1] such penalty.

(F) Judicial review

If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (E), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(c) Criminal penalties

(1) Violations of chapter

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this chapter shall be subject to—

(A) a fine of not more than $1,000,000; or

(B) imprisonment for not more than 5 years; or

(C) both such fine and such imprisonment.

(2) Violation of rules or orders generally

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any rule or order under this chapter (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E)), shall be subject to a fine of not more than $50,000 for each day on which the offense occurs.

(3) Violations of emergency orders

Any person who knowingly and willfully violates an order under section 3362 of this title or an order or supplemental order under section 3363 of this title shall be fined not more than $50,000 for each violation.

(4) Each day separate violation

For purposes of this subsection, each day of violation shall constitute a separate violation.

(5) "Knowingly" defined

For purposes of this subsection, the term "knowingly", when used with respect to any act or omission by any person, means such person—

(A) had actual knowledge; or

(B) had constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(Pub. L. 95–621, title V, §504, Nov. 9, 1978, 92 Stat. 3401; Pub. L. 101–60, §3(a)(4), (b)(6), July 26, 1989, 103 Stat. 158, 159; Pub. L. 109–58, title III, §314(a)(2), (b)(2), Aug. 8, 2005, 119 Stat. 690, 691.)

EDITORIAL NOTES

AMENDMENTS

2005—Subsec. (b)(6)(A). Pub. L. 109–58, §314(b)(2), substituted "$1,000,000" for "$5,000" in cl. (i) and "$1,000,000" for "$25,000" in cl. (ii).

Subsec. (c)(1). Pub. L. 109–58, §314(a)(2)(A), substituted "$1,000,000" for "$5,000" in subpar. (A) and "5 years" for "two years" in subpar. (B).

Subsec. (c)(2). Pub. L. 109–58, §314(a)(2)(B), substituted "$50,000 for each day on which the offense occurs" for "$500 for each violation".

1989—Subsec. (a). Pub. L. 101–60, §3(b)(6), struck out par. (2) designation and par. (1) making it unlawful to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this chapter.

Subsec. (b). Pub. L. 101–60, §3(a)(4), substituted "paragraph (2)" for "paragraphs (2) and (3)" in par. (1), struck out par. (3) which related to enforcement of incremental pricing, and substituted "paragraph (1) or (2)" for "paragraph (1), (2), or (3)" in par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 3(b)(6) of Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

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

§3415. Intervention

(a) Authority to intervene

(1) Intervention as matter of right

The Secretary of Energy may intervene as a matter of right in any proceeding relating to the prorationing of, or other limitations upon, natural gas production which is conducted by any State agency having regulatory jurisdiction over the production of natural gas.

(2) Enforcement of right to intervene

The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under paragraph (1).

(3) Access to information

As an intervenor in a proceeding described in subsection (a), the Secretary shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State agency.

(b) Access to State courts

(1) Review in State courts

The Secretary may obtain review of any determination made in any proceeding described in subsection (a)(1) in the appropriate State court if the Secretary intervened or otherwise participated in the original proceeding or if State law otherwise permits such review.

(2) Participation as amicus curiae

In addition to his authority to obtain review under paragraph (1), the Secretary may also participate an [1] amicus curiae in any judicial review of any proceeding described in subsection (a)(1).

(Pub. L. 95–621, title V, §505, Nov. 9, 1978, 92 Stat. 3403.)

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

§3416. Judicial review

(a) Orders

(1) In general

The provisions of this subsection shall apply to judicial review of any order, within the meaning of section 551(6) of title 5 (other than an order assessing a civil penalty under section 3414(b)(4) of this title or any order under section 3362 of this title or any order under section 3363 of this title), issued under this chapter and to any final agency action under this chapter required to be made on the record after an opportunity for an agency hearing.

(2) Rehearing

Any person aggrieved by any order issued by the Commission in a proceeding under this chapter to which such person is a party may apply for a rehearing within 30 days after the issuance of such order. Any application for rehearing shall set forth the specific ground upon which such application is based. Upon the filing of such application, the Commission may grant or deny the requested rehearing or modify the original order without further hearing. Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied. No person may bring an action under this section to obtain judicial review of any order of the Commission unless—

(A) such person shall have made application to the Commission for rehearing under this subsection; and

(B) the Commission shall have finally acted with respect to such application.

For purposes of this section, if the Commission fails to act within 30 days after the filing of such application, such failure to act shall be deemed final agency action with respect to such application.

(3) Authority to modify orders

At any time before the filing of the record of a proceeding in a United States Court of Appeals, pursuant to paragraph (4), the Commission may, after providing notice it determines reasonable and proper, modify or set aside, in whole or in part, any order issued under the provisions of this chapter.

(4) Judicial review

Any person who is a party to a proceeding under this chapter aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of

Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 60 days after the final action of the Commission on the application for rehearing required under paragraph (2). A copy of such petition shall forthwith be transmitted by the clerk of such court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to such order of the Commission shall be considered by the court if such objection was not urged before the Commission in the application for rehearing unless there was reasonable ground for the failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court deems proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive. The Commission shall also file with the court its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Orders remain effective

The filing of an application for rehearing under paragraph (2) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(b) Review of rules and orders

Except as provided in subsections (a) and (c), judicial review of any rule or order, within the meaning of section 551(4) of title 5, issued under this chapter may be obtained in the United States Court of Appeals for any appropriate circuit pursuant to the provisions of chapter 7 of title 5, except that the second sentence of section 705 thereof shall not apply.

(c) Judicial review of emergency orders

Except with respect to enforcement of orders or subpenas under section 3364(a) of this title, the United States Court of Appeals for the Federal Circuit shall have exclusive original jurisdiction to review all civil cases and controversies under section 3361, 3362 or 3363 of this title, including any order issued, or other action taken, under such section. The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 3364(a)(2) of this title; such appeals shall be taken by the filing of a notice of appeal with the United States Court of Appeals for the Federal Circuit within thirty days after the entry of judgment by the district court. Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, under section 3361, 3362, or 3363 of this title.

(Pub. L. 95–621, title V, §506, Nov. 9, 1978, 92 Stat. 3404; Pub. L. 101–60, §3(a)(5), July 26, 1989, 103 Stat. 158; Pub. L. 102–572, title I, §102(b), Oct. 29, 1992, 106 Stat. 4506.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted "the United States Court of Appeals for the Federal

Circuit" for "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," before "shall have exclusive original jurisdiction" and substituted "United States Court of Appeals for the Federal Circuit" for "Temporary Emergency Court of Appeals" in two places.

1989—Subsec. (d). Pub. L. 101–60 struck out subsec. (d) which related to judicial review of certain incremental pricing determinations.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102–572, set out as a note under section 905 of Title 2, The Congress.

§3417. Repealed. Pub. L. 101–60, §3(a)(6), July 26, 1989, 103 Stat. 158

Section, Pub. L. 95–621, title V, §507, Nov. 9, 1978, 92 Stat. 3406, related to congressional review of Presidential reimposition of maximum lawful prices under section 3332 of this title, congressional reimposition of maximum lawful prices under section 3332 of this title, and congressional disapproval of incremental pricing under section 3342(c) or 3346(d)(2) of this title.

§3418. Applicability of other Federal statutory provisions relating to information-gathering

In order to obtain information for the purpose of carrying out its functions under this chapter, the Commission shall have the same authority as is vested in the Secretary under 7151(a) of title 42 with respect to the exercise of authority under section 796(b) of this title and section 772(b), (c), and (d) of this title.

(Pub. L. 95–621, title V, §508(b), Nov. 9, 1978, 92 Stat. 3408.)

SUBCHAPTER VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

§3431. Coordination with the Natural Gas Act

(a) Jurisdiction of the Commission under the Natural Gas Act

(1) Sales

(A) Application to first sales

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.], and the jurisdiction of the Commission under such Act shall not apply to any natural gas solely by reason of any first sale of such natural gas.

(B) Authorized sales or assignments

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

(i) authorized under section 3362(a) or 3371(b) of this title; or

(ii) pursuant to any assigned [1] authorized under section 3372(a) of this title.

(C) Natural-gas company

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6) et seq.]) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of subparagraph (A) or (B) of this paragraph.

(2) Transportation

(A) Jurisdiction of the Commission

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)] the provisions of such Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is—

(i) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(ii) authorized by the Commission under section 3371(a) of this title.

(B) Natural-gas company

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6)]) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

(b) Charges deemed just and reasonable

(1) Sales

(A) First sales

Except as otherwise provided in this subsection, for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable.

(B) Emergency sales

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid in any sale authorized under section 3362(a) of this title shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established under such section and applicable to such sale.

(C) Sales by intrastate pipelines

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d] any amount paid in any sale authorized by the Commission under section 3371(b) of this title shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established by the Commission and applicable to such sale.

(D) Assignments

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid pursuant to the terms of any contract with respect to that portion of which the Commission has authorized an assignment authorized under section 3372(a) of this title shall be deemed to be just and reasonable.

(E) Affiliated entities limitation

For purposes of paragraph (1), in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable if, in addition to satisfying the requirements of such paragraph, such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

(2) Other charges

(A) Allocation

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 3363(b), (c), or (d) of this title shall be deemed to be just and reasonable if such amount is prescribed by the President under section 3363(h)(1) of this title.

(B) Transportation

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 3371(a) of this title shall be deemed to be just and reasonable if such amount does not exceed that approved by the Commission under such section.

(c) Guaranteed passthrough

(1) Certificate may not be denied based upon price

The Commission may not deny, or condition the grant of, any certificate under section 7 of the Natural Gas Act [15 U.S.C. 717f] based upon the amount paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.

(2) Recovery of just and reasonable prices paid

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas if, under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

(Pub. L. 95–621, title VI, §601, Nov. 9, 1978, 92 Stat. 3409; Pub. L. 101–60, §3(a)(7), (b)(7), July 26, 1989, 103 Stat. 158, 159.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1), (2)(A), (B), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

AMENDMENTS

1989—Subsec. (a)(1)(A). Pub. L. 101–60, §3(b)(7)(A), in heading substituted "Application to first sales" for "Natural gas not committed or dedicated" and amended text generally. Prior to amendment, text read as follows: "For purposes of section 1(b) of the Natural Gas Act, effective on the first day of the first month beginning after November 9, 1978, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of November 8, 1978, solely by reason of any first sale of such natural gas."

Subsec. (a)(1)(B). Pub. L. 101–60, §3(b)(7)(B), (C), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to committed or dedicated natural gas which was high-cost natural gas, new natural gas, or natural gas produced from any new, onshore production well.

Subsec. (a)(1)(C). Pub. L. 101–60, §3(b)(7)(C), (D), redesignated subpar. (D) as (C) and substituted "subparagraph (A) or (B)" for "subparagraph (A), (B), or (C)". Former subpar. (C) redesignated (B).

Subsec. (a)(1)(D). Pub. L. 101–60, §3(b)(7)(C), redesignated subpar. (D) as (C).

Subsec. (a)(1)(E). Pub. L. 101–60, §3(b)(7)(B), struck out subpar. (E), "Certain additional natural gas", which read as follows: "For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of July 25, 1989, and which is not subject to a maximum lawful price under part A of subchapter I of this chapter by reason of section 3331(f) of this title, effective as of the date such gas ceases to be subject to such maximum lawful price."

Pub. L. 101–60, §3(a)(7)(A), substituted "Certain additional natural gas" for "Alaskan natural gas" in heading and amended text generally. Prior to amendment, text read as follows: "Subparagraph (B)(ii) and (iii)

shall not apply with respect to natural gas produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976."

Subsec. (b)(1)(A). Pub. L. 101–60, §3(b)(7)(E), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

"(i) such amount does not exceed the applicable maximum lawful price established under subchapter I of this chapter; or

"(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to part B of subchapter I of this chapter."

Subsec. (b)(1)(D). Pub. L. 101–60, §3(b)(7)(F), struck out before period at end "if such amount does not exceed the applicable maximum lawful price established under subchapter I of this chapter".

Subsec. (c)(2). Pub. L. 101–60, §3(a)(7)(B), substituted "purchase of natural gas if, under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act," for "purchase of natural gas if—

"(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, and

"(B) such recovery is not inconsistent with any requirement of any rule under section 3341 of this title (including any amendment under section 3342 of this title),".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 3(b)(7) of Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

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

§3432. Effect on State laws

(a) Authority to prescribe maximum lawful prices

Nothing in this chapter shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State.

(b) Common carriers

No person shall be subject to regulation as a common carrier under any provision of Federal or State law by reason of any transportation—

(1) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (i) of this title; or

(2) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95–621, title VI, §602, Nov. 9, 1978, 92 Stat. 3411; Pub. L. 101–60, §3(b)(8), July 26, 1989, 103 Stat. 159.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–60 struck out "lower" after "prescribe" in heading and struck out before period at end "which does not exceed the applicable maximum lawful price, if any, under subchapter I of this chapter".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–60 effective Jan. 1, 1993, see section 3(b) of Pub. L. 101–60, set out as a note under section 3372 of this title.

CHAPTER 61—SOFT DRINK INTERBRAND COMPETITION

Sec.

§3501. Exclusive territorial licenses to manufacture, distribute, and sell trademarked soft drink products; ultimate resale to consumers; substantial and effective competition

Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: *Provided*, That such product is in substantial and effective competition with other products of the same general class in the relevant market or markets.

(Pub. L. 96–308, §2, July 9, 1980, 94 Stat. 939.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–308, §1, July 9, 1980, 94 Stat. 939, provided that: "This Act [enacting this chapter] may be cited as the 'Soft Drink Interbrand Competition Act'."

SUSPENSION OF STATUTE OF LIMITATIONS ON INSTITUTION OF ANTITRUST PROCEEDINGS BY UNITED STATES; ENFORCEMENT OF TRADEMARK LICENSING AGREEMENT PROVISIONS CONCERNING SOFT DRINK PRODUCTS

Pub. L. 96–308, §4, July 9, 1980, 94 Stat. 939, provided that: "In the case of any proceeding instituted by the United States described in subsection (i) of section 5 of the Clayton Act (relating to suspension of the statute of limitations on the institution of proceedings by the United States) (15 U.S.C. 16(i)) which is pending on the date of the enactment of this Act [July 9, 1980], that subsection shall not apply with respect to any right of action referred to in that subsection based in whole or in part on any matter complained of in that proceeding consisting of the existence or enforcement of any provision described in section 2 of this Act [this section] in any trademark licensing contract or agreement described in that section."

§3502. Price fixing agreements, horizontal restraints of trade, or group boycotts

Nothing in this chapter shall be construed to legalize the enforcement of provisions described in section 3501 of this title in trademark licensing contracts or agreements described in that section by means of price fixing agreements, horizontal restraints of trade, or group boycotts, if such agreements, restraints, or boycotts would otherwise be unlawful.

(Pub. L. 96–308, §3, July 9, 1980, 94 Stat. 939.)

§3503. "Antitrust law" defined

As used in this chapter, the term "antitrust law" means the Sherman Act (15 U.S.C. 1 et seq.), the

Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.). (Pub. L. 96–308, §5, July 9, 1980, 94 Stat. 939.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Sherman Act (15 U.S.C. 1 et seq.), referred to in text, is act July 2, 1890, ch. 647, 26 Stat. 209, which is classified to sections 1 to 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CHAPTER 62—CONDOMINIUM AND COOPERATIVE CONVERSION PROTECTION AND ABUSE RELIEF

Sec.

§3601. Congressional findings and purpose

(a) The Congress finds and declares that—

(1) there is a shortage of adequate and affordable housing throughout the Nation, especially for low- and moderate-income and elderly and handicapped persons;

(2) the number of conversions of rental housing to condominiums and cooperatives is accelerating, which in some communities may restrict the shelter options of low- and moderate-income and elderly and handicapped persons;

(3) certain long-term leasing arrangements for recreation and other condominium- or cooperative-related facilities which have been used in the formation of cooperative and condominium projects may be unconscionable; in certain situations State governments are unable to provide appropriate relief; as a result of these leases, economic and social hardships may have been imposed upon cooperative and condominium owners, which may threaten the continued use

and acceptability of these forms of ownership and interfere with the interstate sale of cooperatives and condominiums; appropriate relief from these abuses requires Federal action; and

(4) there is a Federal involvement with the cooperative and condominium housing markets through the operation of Federal tax, housing, and community development laws, through the operation of federally chartered and insured financial institutions, and through other Federal activities; that the creation of many condominiums and cooperatives is undertaken by entities operating on an interstate basis.

(b) The purposes of this chapter are to seek to minimize the adverse impacts of condominium and cooperative conversions particularly on the housing opportunities of low- and moderate-income and elderly and handicapped persons, to assure fair and equitable principles are followed in the establishment of condominium and cooperative opportunities, and to provide appropriate relief where long-term leases of recreation and other cooperative- and condominium-related facilities are determined to be unconscionable.

(Pub. L. 96–399, title VI, §602, Oct. 8, 1980, 94 Stat. 1672.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 96–399, title VI, §618, Oct. 8, 1980, 94 Stat. 1680, provided that: "The provisions of this title [enacting this chapter] shall become effective upon enactment [Oct. 8, 1980], except that section 609 [section 3608 of this title], and the prohibition included in section 610 [section 3609 of this title] as it relates to a lease with respect to which a cause of action may be established under section 609, shall become effective one year after enactment."

SHORT TITLE

Pub. L. 96–399, title VI, §601, Oct. 8, 1980, 94 Stat. 1672, provided that: "This title [enacting this chapter] may be cited as the 'Condominium and Cooperative Abuse Relief Act of 1980'."

§3602. Conversion lending

It is the sense of the Congress that lending by federally insured lending institutions for the conversion of rental housing to condominiums and cooperative housing should be discouraged where there are adverse impacts on housing opportunities of the low- and moderate-income and elderly and handicapped tenants involved.

(Pub. L. 96–399, title VI, §603, Oct. 8, 1980, 94 Stat. 1673.)

§3603. Definitions

For the purpose of this chapter—

(1) "affiliate of a developer" means any person who controls, is controlled by, or is under common control with a developer. A person "controls" a developer if the person (A) is a general partner, officer, director, or employer of the developer, (B) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more then 20 per centum of the voting interests of the developer, (C) controls in any manner the election of a majority of the directors of the developer, or (D) has contributed more than 20 per centum of the capital of the developer. A person "is controlled by" a developer if the developer (i) is a general partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds

proxies representing, more than 20 per centum of the voting interests of the person, (iii) controls in any manner the election of a majority of the directors, or (iv) has contributed more than 20 per centum of the capital of the person;

(2) "automatic rent increase clause" means a provision in a lease permitting periodic increases in the fee under the lease which is effective automatically or at the sole option of the lessor, and which provides that the fee shall increase at the rate of an economic, commodity, or consumer price index or at a percentage rate such that the actual increases in the rental payment over the lease term cannot be established with specificity at the time the lease is entered into;

(3) "common elements" means all portions of the cooperative or condominium project, other than the units designated for separate ownership or for exclusive possession or use;

(4) "condominium association" means the organization, whose membership consists exclusively of all the unit owners in the condominium project, which is, or will be responsible for the operation, administration, and management of the condominium project;

(5) "condominium project" means real estate (A) which has five or more residential condominium units, in each residential structure, and the remaining portions of the real estate are designated for common ownership solely by the owners of those units, each owner having an undivided interest in the common elements, and (B) where such units are or have been offered for sale or sold, directly or indirectly, through the use of any means or instruments of transportation or communication of interstate commerce, or the mails;

(6) "condominium unit" means a portion of a condominium project designated for separate ownership;

(7) "conversion project" means a project, which has five or more residential units, which was used primarily for residential rental purposes immediately prior to being converted to a condominium or cooperative project;

(8) "convey or conveyance" means (A) a transfer to a purchaser of legal title in a unit at settlement, other than as security for an obligation, or (B) the acquisition by a purchaser of a leasehold interest for more than five years;

(9) "cooperative association" means an organization that owns the record interest in the residential cooperative property; or a leasehold of the residential property of a cooperative project and that is responsible for the operation of the cooperative project;

(10) "cooperative project" means real estate (A) which has five or more residential cooperative units, in each residential structure, subject to separate use and possession by one or more individual cooperative unit owners whose interest in such units and in the undivided assets of the cooperative association which are appurtenant to the unit are evidenced by a membership or share interest in a cooperative association and a lease or other muniment of title or possession granted by the cooperative association as the owner of all the cooperative property, and (B) an interest in which is or has been offered for sale or lease or sold, or leased directly or indirectly, through use of any means or instruments of transportation or communication in interstate commerce or of the mails;

(11) "cooperative property" means the real estate and personal property subject to cooperative ownership and all other property owned by the cooperative association;

(12) "cooperative unit" means a part of the cooperative property which is subject to exclusive use and possession by a cooperative unit owner. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents;

(13) "cooperative unit owner" means the person having a membership or share interest in the cooperative association and holding a lease, or other muniment of title or possession, of a cooperative unit that is granted by the cooperative association as the owner of the cooperative property;

(14) "developer" means (A) any person who offers to sell or sells his interest in a cooperative or condominium unit not previously conveyed, or (B) any successor of such person who offers to sell or sells his interests in units in a cooperative or condominium project and who has the authority to exercise special developer control in the project including the right to: add, convert, or withdraw real estate from the cooperative or condominium project, and maintain sales offices, management

offices and rental units; exercise easements through common elements for the purpose of making improvements within the cooperative or condominium; or exercise control of the owners' association;

(15) "interstate commerce" means trade, traffic, transportation, communication, or exchange among the States, or between any foreign country and a State, or any transaction which affects such trade, traffic, transportation, communication, or exchange;

(16) "lease" includes any agreement or arrangement containing a condominium or cooperative unit owner's obligation, individually, collectively, or through an association to make payments for a leasehold interest or for other rights to use or possess real estate, or personal property (which rights may include the right to receive services with respect to such real estate or personal property), except a lease does not include mortgages or other such agreements for the purchase of real estate;

(17) "person" means a natural person, corporation, partnership, association, trust or other entity, or any combination thereof;

(18) "purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (A) a leasehold interest (including renewal options) of less than five years, or (B) as security for an obligation;

(19) "real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;

(20) "residential" means used as a dwelling;

(21) "sale", "sale of a cooperative unit" or "sale of a condominium unit" means any obligation or arrangement for consideration for conveyance to a purchaser of a cooperative or condominium unit, excluding options or reservations not binding on the purchaser;

(22) "special developer control" means any right arising under State law, cooperative or condominium instruments, the association's bylaws, charter or articles of association or incorporation, or power of attorney or similar agreement, through which the developer may control or direct the unit owners' association or its executive board. A developer's right to exercise the voting share allocated to any condominium or cooperative unit which he owns is not deemed a right of special developer control if the voting share allocated to that condominium or cooperative unit is the same voting share as would be allocated to the same condominium or cooperative unit were that unit owned by any other unit owner at that time;

(23) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(24) "tenants' organization" means a bona fide organization of tenants who represent a majority of the occupied rental units in a rental housing project.

(Pub. L. 96–399, title VI, §604, Oct. 8, 1980, 94 Stat. 1673.)

§3604. Exemptions

The provisions of this chapter shall not apply to—

(1) a cooperative or condominium unit sold or offered for sale by the Federal Government, by any State or local government, by any corporate instrumentality of the United States, or by any agency thereof;

(2) a cooperative or condominium project in which all units are restricted to nonresidential purposes or uses; or

(3) any lease or portion thereof—

(A) which establishes any leasehold or other estate or interest in, over or under land on or in which one or more residential condominium or cooperative units are located, the termination of which will terminate the condominium or cooperative project, or reduce the number of units in

such project, or

(B) which establishes a leasehold interest in, or other rights to use, possess, or gain access to, a condominium or cooperative unit.

(Pub. L. 96–399, title VI, §605, Oct. 8, 1980, 94 Stat. 1675.)

§3605. Notice of conversion and opportunity to purchase; responsibility of State and local governments

It is the sense of the Congress that, when multifamily rental housing projects are converted to condominium or cooperative use, tenants in those projects are entitled to adequate notice of the pending conversion and to receive the first opportunity to purchase units in the converted projects and that State and local governments which have not already provided for such notice and opportunity for purchase should move toward that end. The Congress believes it is the responsibility of State and local governments to provide for such notice and opportunity to purchase in a prompt manner. The Congress has decided not to intervene and therefore leaves this responsibility to State and local governments to be carried out.

(Pub. L. 96–399, title VI, §606, Oct. 8, 1980, 94 Stat. 1676.)

§3606. Federal Housing Administration mortgage or loan insurance; expedition of application process and decision

Where an application for mortgage or loan insurance in connection with a conversion or purchase of a rental housing project being undertaken by a tenants' organization is submitted, the Secretary of Housing and Urban Development shall expedite the processing of the application in every way and shall make a final decision on such application at the earliest practicable time.

(Pub. L. 96–399, title VI, §607, Oct. 8, 1980, 94 Stat. 1676.)

§3607. Termination of self-dealing contracts

(a) Operation, maintenance, and management contracts; penalty

Any contract or portion thereof which is entered into after October 8, 1980, and which—

(1) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such project;

(2) is between such unit owners or such association and the developer or an affiliate of the developer;

(3) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association; and

(4) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer,

may be terminated without penalty by such unit owners or such association.

(b) Time of termination

Any termination under this section may occur only during the two-year period beginning on the date on which—

(1) special developer control over the association is terminated; or

(2) the developer owns 25 per centum or less of the units in the conversion project,

whichever occurs first.

(c) Vote of owners of units

A termination under this section shall be by a vote of owners of not less than two-thirds of the units other than the units owned by the developer or an affiliate of the developer.

(d) Effective date of termination

Following the unit owners' vote, the termination shall be effective ninety days after hand delivering notice or mailing notice by prepaid United States mail to the parties to the contract.

(Pub. L. 96–399, title VI, §608, Oct. 8, 1980, 94 Stat. 1676.)

EDITORIAL NOTES

CODIFICATION

In subsec. (a), "October 8, 1980" was substituted for "the effective date of this title". See Effective Date note set out under section 3601 of this title.

§3608. Judicial determinations respecting unconscionable leases

(a) Lease characteristics; authorization by unit owners; conditions precedent to action

Cooperative and condominium unit owners through the unit owners' association may bring an action seeking a judicial determination that a lease or leases, or portions thereof, were unconscionable at the time they were made. An action may be brought under this section if each such lease has all of the following characteristics:

(1) it was made in connection with a cooperative or condominium project;

(2) it was entered into while the cooperative or condominium owners' association was controlled by the developer either through special developer control or because the developer held a majority of the votes in the owners' association;

(3) it had to be accepted or ratified by purchasers or through the unit owners' association as a condition of purchase of a unit in the cooperative or condominium project;

(4) it is for a period of more than twenty-one years or is for a period of less than twenty-one years but contains automatic renewal provisions for a period of more than twenty-one years;

(5) it contains an automatic rent increase clause; and

(6) it was entered into prior to June 4, 1975.

Such action must be authorized by the cooperative or condominium unit owners through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, and may be brought by the cooperative or condominium unit owners through the units owners' association. Prior to instituting such action, the cooperative or condominium unit owners must, through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, agree to enter into negotiation with the lessor and must seek through such negotiation to eliminate or modify any lease terms that are alleged to be unconscionable; if an agreement is not reached in ninety days from the date on which the authorizing vote was taken, the unit owners may authorize an action after following the procedure specified in the preceding sentence.

(b) Presumption of unconscionability; rebuttal

A rebuttal presumption of unconscionability exists if it is established that, in addition to the characteristics set forth in subsection (a) of this section, the lease—

(1) creates a lien subjecting any unit to foreclosure for failure to make payments;

(2) contains provisions requiring either the cooperative or condominium unit owners or the cooperative or condominium association as lessees to assume all or substantially all obligations and liabilities associated with the maintenance, management and use of the leased property, in addition to the obligation to make lease payments;

(3) contains an automatic rent increase clause without establishing a specific maximum lease

payment; and

(4) requires an annual rental which exceeds 25 per centum of the appraised value of the leased property as improved: *Provided*, That, for purposes of this paragraph "annual rental" means the amount due during the first twelve months of the lease for all units, regardless of whether such units were occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium or after the sale of a membership or share interest in the cooperative association to a party who is not an affiliate of the developer.

Once the rebuttable presumption is established, the court, in making its finding, shall consider the lease or portion of the lease to be unconscionable unless proven otherwise by the preponderance of the evidence to the contrary.

(c) Presentation of evidence after finding of unconscionability

Whenever it is claimed, or appears to the court, that a lease or any portion thereof is, or may have been, unconscionable at the time it was made, the parties shall be afforded a reasonable opportunity to present evidence at least as to–

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests;

(3) the effect and purpose of the lease or portion of the lease or portion thereof, including its relationship to other contracts between the association, the unit owners and the developer or an affiliate of the developer; and

(4) the disparity between the amount charged under the lease and the value of the real estate subject to the lease measured by the price at which similar real estate was readily obtainable in similar transactions.

(d) Remedial relief; matters considered; attorneys' fees

Upon finding that any lease, or portion thereof, is unconscionable, the court shall exercise its authority to grant remedial relief as necessary to avoid an unconscionable result, taking into consideration the economic value of the lease. Such relief may include, but shall not be limited to rescission, reformation, restitution, the award of damages and reasonable attorney fees and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plantiff [1] is frivolous, malicious, or lacking in substantial merit.

(e) Actions allowed after termination of special developer control

Nothing in this section may be construed to authorize the bringing of an action by cooperative and condominium unit owners' association, seeking a judicial determination that a lease or leases, or portions thereof, are unconscionable, where such unit owners or a unit owners' association representing them has, after the termination of special developer control, reached an agreement with a holder of such lease or leases which either—

(1) sets forth the terms and conditions under which such lease or leases is or shall be purchased by such unit owners or associations; or

(2) reforms any clause in the lease which contained an automatic rent increase clause, unless such agreement was entered into when the leaseholder or his affiliate held a majority of the votes in the owners' association.

(Pub. L. 96–399, title VI, §609, Oct. 8, 1980, 94 Stat. 1677.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96–399, set out as a note under section 3601 of this title.

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

§3609. Void lease or contract provisions

Any provision in any lease or contract requiring unit owners or the owners' association, in any conversion project involving a contract meeting the requirements of section 3607 of this title of in any project involving a lease meeting the requirements of section 3608 of this title, to reimburse, regardless of outcome, the developer, his successor, or affiliate of the developer for attorneys' fees or money judgments, in a suit between unit owners or the owners' association and the developer arising under the lease or agreement, is against public policy and void.

(Pub. L. 96–399, title VI, §610, Oct. 8, 1980, 94 Stat. 1678.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1980, except that prohibition included in this section as it relates to a lease with respect to which a cause of action may be established under section 3608 of this title, shall be effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96–399, set out as a note under section 3601 of this title.

§3610. Relationship of statutory provisions to State and local laws

Nothing in this chapter may be construed to prevent or limit the authority of any State or local government to enact and enforce any law, ordinance, or code with regard to any condominium, cooperative, or conversion project, if such law, ordinance, or code does not abridge, deny, or contravene any standard for consumer protection established under this chapter. Notwithstanding the preceding sentence, the provisions of this chapter, except for the application of section 3608 of this title and the prohibition included in section 3609 of this title as it relates to a lease with respect to which a cause of action may be established under section 3608 of this title, shall not apply in the case of any State or local government which has the authority to enact and enforce such a law, ordinance, or code, if, during the three-year period following October 8, 1980, such State or local government enacts a law, ordinance, or code, or amendments thereto, stating in substance that such provisions of this chapter shall not apply in that State or local government jurisdiction.

(Pub. L. 96–399, title VI, §611, Oct. 8, 1980, 94 Stat. 1679.)

§3611. Additional remedies

(a) Suits at law or equity

Unless otherwise limited as in section 3607 or 3608 of this title, any person aggrieved by a violation of this chapter may sue at law or in equity.

(b) Recovery of actual damages

In any action authorized by this section for a violation of section 3607 or 3609 of this title where actual damages have been suffered, such damages may be awarded or such other relief granted as deemed fair, just, and equitable.

(c) Contribution

Every person who becomes liable to make any payment under this section may recover contributions from any person who if sued separately, would have been liable to make the same payment.

(d) Amounts recoverable; defendant's attorneys' fees

The amounts recoverable under this section may include interest paid, reasonable attorneys' fees,

independent engineer and appraisers' fees, and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff is frivolous, malicious, or lacking in substantial merit.

(Pub. L. 96–399, title VI, §612, Oct. 8, 1980, 94 Stat. 1679.)

§3612. Concurrent State and Federal jurisdiction; venue; removal of cases

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction under this chapter and, concurrent with State courts, of actions at law or in equity brought under this chapter without regard to the amount in controversy. Any such action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, and process in such cases may be served in other districts of which the defendant is an inhabitant or wherever the defendant may be found. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where any officer or employee of the United States in his official capacity is a party.

(Pub. L. 96–399, title VI, §613, Oct. 8, 1980, 94 Stat. 1679.)

§3613. Limitation of actions

No action shall be maintained to enforce any right or liability created by this chapter unless brought within six years after such cause of action accrued, except that an action pursuant to section 3608 of this title must be brought within four years after October 8, 1980.

(Pub. L. 96–399, title VI, §614, Oct. 8, 1980, 94 Stat. 1680.)

§3614. Waiver of rights as void

Any condition, stipulation, or provision binding any person to waive compliance with any provisions of this chapter shall be void.

(Pub. L. 96–399, title VI, §615, Oct. 8, 1980, 94 Stat. 1680.)

§3615. Nonexclusion of other statutory rights and remedies

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist under Federal or State law.

(Pub. L. 96–399, title VI, §616, Oct. 8, 1980, 94 Stat. 1680.)

§3616. Separability

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter shall not be affected thereby.

(Pub. L. 96–399, title VI, §617, Oct. 8, 1980, 94 Stat. 1680.)

CHAPTER 63—TECHNOLOGY INNOVATION

Sec.

§3701. Findings

The Congress finds and declares that:

(1) Technology and industrial innovation are central to the economic, environmental, and social well-being of citizens of the United States.

(2) Technology and industrial innovation offer an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services and enhanced competitiveness of United States products in world markets.

(3) Many new discoveries and advances in science occur in universities and Federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, Federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

(4) Small businesses have performed an important role in advancing industrial and technological innovation.

(5) Industrial and technological innovation in the United States may be lagging when compared to historical patterns and other industrialized nations.

(6) Increased industrial and technological innovation would reduce trade deficits, stabilize the dollar, increase productivity gains, increase employment, and stabilize prices.

(7) Government antitrust, economic, trade, patent, procurement, regulatory, research and development, and tax policies have significant impacts upon industrial innovation and development of technology, but there is insufficient knowledge of their effects in particular sectors of the economy.

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the Federal Government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The Federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments, which include inventions, computer software, and training technologies, should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means.

(11) The Nation should give fuller recognition to individuals and companies which have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(Pub. L. 96–480, §2, Oct. 21, 1980, 94 Stat. 2311; Pub. L. 99–502, §9(f)(1), Oct. 20, 1986, 100 Stat. 1797.)

EDITORIAL NOTES

AMENDMENTS

1986—Par. (10). Pub. L. 99–502 inserted ", which include inventions, computer software, and training technologies,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2017 AMENDMENT

Pub. L. 114–329, title IV, §401(a), Jan. 6, 2017, 130 Stat. 3016, provided that: "This section [enacting section 3724 of this title and amending sections 272, 278, and 3719 of this title] may be cited as the 'Science Prize Competition Act'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–404, §1, Nov. 1, 2000, 114 Stat. 1742, provided that: "This Act [enacting section 7261c of Title 42, The Public Health and Welfare, amending sections 3703, 3704, 3707, 3710, 3710a, 3710c, 3714, and 3715 of this title and sections 200, 202, 207, and 209 of Title 35, Patents, and enacting provisions set out as notes under this section and section 3710a of this title] may be cited as the 'Technology Transfer Commercialization Act of 2000'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–113, §1, Mar. 7, 1996, 110 Stat. 775, provided that: "This Act [amending sections 272, 278, 278e, 278g–2, 3710, 3710a, 3710c, 3710d, 5401, 5402, 5404 to 5406, 5408, 5409, and 5412 of this title and section 210 of Title 35, Patents, repealing sections 5403 and 5413 of this title, and enacting provisions set out as notes under this section and sections 272 and 275 of this title] may be cited as the 'National Technology Transfer and Advancement Act of 1995'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–245, §1, Feb. 14, 1992, 106 Stat. 7, provided that: "This Act [enacting sections 1536, 3704b–1, 3704b–2, 3716, and 3717 of this title and section 6618 of Title 42, The Public Health and Welfare, amending sections 272, 278d, 278g, 278g–1, 278k, 278n, 1453, 1454, 3703, 3704, 3704b, 3710, 3710a, 3711a, 4603, 4603a, and 4632 of this title and section 6683 of Title 42, enacting provisions set out as notes under this section, sections 271, 278f, 278n, and 1453 of this title, and section 6611 of Title 42, and amending provisions set out as a note under section 278l of this title] may be cited as the 'American Technology Preeminence Act of 1991'."

Pub. L. 102–245, title I, §101, Feb. 14, 1992, 106 Stat. 7, provided that: "This title [enacting sections 1536, 3704b–1, and 3704b–2 of this title, amending sections 278d, 278g, 278g–1, 278k, 1453, 1454, 4603, 4603a, and 4632 of this title, enacting provisions set out as notes under this section and sections 278f and 1453 of this title, and amending provisions set out as a note under section 278l of this title] may be cited as the 'Technology Administration Authorization Act of 1991'."

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–189, div. C, title XXXI, §3131, Nov. 29, 1989, 103 Stat. 1674, provided that: "This part [part C (§§3131–3133) of title XXXI of div. C of Pub. L. 101–189, amending sections 3710, 3710a, and 3710c of this title and enacting provisions set out as notes under this section and section 3710a of this title] may be cited as the 'National Competitiveness Technology Transfer Act of 1989'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–519, title II, §211, Oct. 24, 1988, 102 Stat. 2594, provided that: "This subtitle [subtitle B (§§211, 212) of title II of Pub. L. 100–519, enacting section 3704b of this title and amending section 3710 of this title] may be cited as the 'National Technical Information Act of 1988'."

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–107, §1, Aug. 20, 1987, 101 Stat. 724, provided that: "This Act [enacting section 3711a of this title, amending section 3708 of this title, and enacting provisions set out as a note under section 3711a of this title] may be cited as the 'Malcolm Baldrige National Quality Improvement Act of 1987'."

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–502, §1, Oct. 20, 1986, 100 Stat. 1785, provided that: "This Act [enacting sections 3710a to 3710d of this title, amending this section, sections 3702 to 3705, 3707, 3708, 3710 to 3710d, and 3711 to 3714 of this title, and section 210 of Title 35, Patents, and repealing section 3709 of this title] may be cited as the 'Federal Technology Transfer Act of 1986'. "

Pub. L. 99–382, §1, Aug. 14, 1986, 100 Stat. 811, provided: "That this Act [amending section 3704 of this title] may be cited as the 'Japanese Technical Literature Act of 1986'."

SHORT TITLE

Pub. L. 96–480, §1, Oct. 21, 1980, 94 Stat. 2311, provided: "That this Act [enacting this chapter] may be cited as the 'Stevenson-Wydler Technology Innovation Act of 1980'."

STUDY ON ECONOMIC COMPETITIVENESS AND INNOVATIVE CAPACITY OF UNITED STATES AND DEVELOPMENT OF NATIONAL ECONOMIC COMPETITIVENESS STRATEGY

Pub. L. 111–358, title VI, §604, Jan. 4, 2011, 124 Stat. 4037, as amended by Pub. L. 117–286, §4(a)(70), Dec. 27, 2022, 136 Stat. 4313, provided that:

"(a) STUDY.—

"(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Jan. 4, 2011], the Secretary of Commerce shall complete a comprehensive study of the economic competitiveness and innovative capacity of the United States.

"(2) MATTERS COVERED.—The study required by paragraph (1) shall include the following:

"(A) An analysis of the United States economy and innovation infrastructure.

"(B) An assessment of the following:

"(i) The current competitive and innovation performance of the United States economy relative to other countries that compete economically with the United States.

"(ii) Economic competitiveness and domestic innovation in the current business climate, including tax and Federal regulatory policy.

"(iii) The business climate of the United States and those of other countries that compete economically with the United States.

"(iv) Regional issues that influence the economic competitiveness and innovation capacity of the United States, including—

"(I) the roles of State and local governments and institutions of higher education; and

"(II) regional factors that contribute positively to innovation.

"(v) The effectiveness of the Federal Government in supporting and promoting economic competitiveness and innovation, including any duplicative efforts of, or gaps in coverage between, Federal agencies and departments.

"(vi) Barriers to competitiveness in newly emerging business or technology sectors, factors influencing underperforming economic sectors, unique issues facing small and medium enterprises, and barriers to the development and evolution of start-ups, firms, and industries.

"(vii) The effects of domestic and international trade policy on the competitiveness of the United States and the United States economy.

"(viii) United States export promotion and export finance programs relative to export promotion and export finance programs of other countries that compete economically with the United States, including Canada, France, Germany, Italy, Japan, Korea, and the United Kingdom, with noting of export promotion and export finance programs carried out by such countries that are not analogous to any programs carried out by the United States.

"(ix) The effectiveness of current policies and programs affecting exports, including an assessment of Federal trade restrictions and State and Federal export promotion activities.

"(x) The effectiveness of the Federal Government and Federally funded research and development centers in supporting and promoting technology commercialization and technology transfer.

"(xi) Domestic and international intellectual property policies and practices.

"(xii) Manufacturing capacity, logistics, and supply chain dynamics of major export sectors, including access to a skilled workforce, physical infrastructure, and broadband network infrastructure.

"(xiii) Federal and State policies relating to science, technology, and education and other relevant Federal and State policies designed to promote commercial innovation, including immigration policies.

"(C) Development of recommendations on the following:

"(i) How the United States should invest in human capital.

"(ii) How the United States should facilitate entrepreneurship and innovation.

"(iii) How best to develop opportunities for locally and regionally driven innovation by providing Federal support.

"(iv) How best to strengthen the economic infrastructure and industrial base of the United States.

"(v) How to improve the international competitiveness of the United States.

"(3) CONSULTATION.—

"(A) IN GENERAL.—The study required by paragraph (1) shall be conducted in consultation with the National Economic Council of the Office of Policy Development, such Federal agencies as the Secretary considers appropriate, and the Innovation Advisory Board established under subparagraph (B). The Secretary shall also establish a process for obtaining comments from the public.

"(B) INNOVATION ADVISORY BOARD.—

"(i) IN GENERAL.—The Secretary shall establish an Innovation Advisory Board for purposes of obtaining advice with respect to the conduct of the study required by paragraph (1).

"(ii) COMPOSITION.—The Advisory Board established under clause (i) shall be comprised of 15 members, appointed by the Secretary—

"(I) who shall represent all major industry sectors;

"(II) a majority of whom should be from private industry, including large and small firms, representing advanced technology sectors and more traditional sectors that use technology; and

"(III) who may include economic or innovation policy experts, State and local government officials active in technology-based economic development, and representatives from higher education.

"(iii) EXEMPTION FROM CHAPTER 10 OF TITLE 5, UNITED STATES CODE .—Chapter 10 of title 5, United States Code, shall not apply to the advisory board established under clause (i).

"(b) STRATEGY.—

"(1) IN GENERAL.—Not later than 1 year after the completion of the study required by subsection (a), the Secretary shall develop, based on the study required by subsection (a)(1), a national 10-year strategy to strengthen the innovative and competitive capacity of the Federal Government, State and local

governments, United States institutions of higher education, and the private sector of the United States.

"(2) ELEMENTS.—The strategy required by paragraph (1) shall include the following:

"(A) Actions to be taken by individual Federal agencies and departments to improve competitiveness.

"(B) Proposed legislative actions for consideration by Congress.

"(C) Annual goals and milestones for the 10-year period of the strategy.

"(D) A plan for monitoring the progress of the Federal Government with respect to improving conditions for innovation and the competitiveness of the United States.

"(c) REPORT.—

"(1) IN GENERAL.—Upon the completion of the strategy required by subsection (b), the Secretary of Commerce shall submit to Congress and the President a report on the study conducted under subsection (a) and the strategy developed under subsection (b).

"(2) ELEMENTS.—The report required by paragraph (1) shall include the following:

"(A) The findings of the Secretary with respect to the study conducted under subsection (a).

"(B) The strategy required by subsection (b)."

PROMOTING USE OF HIGH-END COMPUTING SIMULATION AND MODELING BY SMALL- AND MEDIUM-SIZED MANUFACTURERS

Pub. L. 111–358, title VI, §605, Jan. 4, 2011, 124 Stat. 4040, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) the utilization of high-end computing simulation and modeling by large-scale government contractors and Federal research entities has resulted in substantial improvements in the development of advanced manufacturing technologies; and

"(2) such simulation and modeling would also benefit small- and medium-sized manufacturers in the United States if such manufacturers were to deploy such simulation and modeling throughout their manufacturing chains.

"(b) POLICY.—It is the policy of the United States to take all effective measures practicable to ensure that Federal programs and policies encourage and contribute to the use of high-end computing simulation and modeling in the United States manufacturing sector.

"(c) STUDY.—

"(1) IN GENERAL.—Not later than 30 days after the date of the enactment of this Act [Jan. 4, 2011], the Secretary of Commerce, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, shall carry out, through an interagency consulting process, a study of the barriers to the use of high-end computing simulation and modeling by small- and medium-sized manufacturers in the United States.

"(2) FACTORS.—In carrying out the study required by paragraph (1), the Secretary of Commerce, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, shall consider the following:

"(A) The access of small- and medium-sized manufacturers in the United States to high-performance computing facilities and resources.

"(B) The availability of software and other applications tailored to meet the needs of such manufacturers.

"(C) Whether such manufacturers employ or have access to individuals with appropriate expertise for the use of such facilities and resources.

"(D) Whether such manufacturers have access to training to develop such expertise.

"(E) The availability of tools and other methods to such manufacturers to understand and manage the costs and risks associated with transitioning to the use of such facilities and resources.

"(3) REPORT.—Not later than 270 days after the commencement of the study required by paragraph (1), the Secretary of Commerce shall, in consultation with the Secretary of Energy and the Director of the Office of Science and Technology Policy, submit to Congress a report on such study. Such report shall include such recommendations for such legislative or administrative action as the Secretary of Commerce considers appropriate in light of the study to increase the utilization of high-end computing simulation and modeling by small- and medium-sized manufacturers in the United States.

"(d) AUTHORIZATION OF DEMONSTRATION AND PILOT PROGRAMS.—As part of the study required by subsection (c)(1), the Secretary of Commerce, the Secretary of Energy, and the Director of the Office of Science and Technology Policy may carry out such demonstration or pilot programs as either [the]

Secretary or the Director considers appropriate to gather experiential data to evaluate the feasibility and advisability of a specific program or policy initiative to reduce barriers to the utilization of high-end computer modeling and simulation by small- and medium-sized manufacturers in the United States."

CONGRESSIONAL FINDINGS; 2000 AMENDMENT

Pub. L. 106–404, §2, Nov. 1, 2000, 114 Stat. 1742, provided that: "The Congress finds that—

"(1) the importance of linking our unparalleled network of over 700 Federal laboratories and our Nation's universities with United States industry continues to hold great promise for our future economic prosperity;

"(2) the enactment of the Bayh-Dole Act [35 U.S.C. 200 et seq.] in 1980 was a landmark change in United States technology policy, and its success provides a framework for removing bureaucratic barriers and for simplifying the granting of licenses for inventions that are now in the Federal Government's patent portfolio;

"(3) Congress has demonstrated a commitment over the past 2 decades to fostering technology transfer from our Federal laboratories and to promoting public/private sector partnerships to enhance our international competitiveness;

"(4) Federal technology transfer activities have strengthened the ability of United States industry to compete in the global marketplace; developed a new paradigm for greater collaboration among the scientific enterprises that conduct our Nation's research and development—government, industry, and universities; and improved the quality of life for the American people, from medicine to materials;

"(5) the technology transfer process must be made 'industry friendly' for companies to be willing to invest the significant time and resources needed to develop new products, processes, and jobs using federally funded inventions; and

"(6) Federal technology licensing procedures should balance the public policy needs of adequately protecting the rights of the public, encouraging companies to develop existing government inventions, and making the entire system of licensing government technologies more consistent and simple."

CONGRESSIONAL FINDINGS; 1996 AMENDMENT

Pub. L. 104–113, §2, Mar. 7, 1996, 110 Stat. 775, provided that: "The Congress finds the following:

"(1) Bringing technology and industrial innovation to the marketplace is central to the economic, environmental, and social well-being of the people of the United States.

"(2) The Federal Government can help United States business to speed the development of new products and processes by entering into cooperative research and development agreements which make available the assistance of Federal laboratories to the private sector, but the commercialization of technology and industrial innovation in the United States depends upon actions by business.

"(3) The commercialization of technology and industrial innovation in the United States will be enhanced if companies, in return for reasonable compensation to the Federal Government, can more easily obtain exclusive licenses to inventions which develop as a result of cooperative research with scientists employed by Federal laboratories."

DEFINITIONS OF TERMS; 1992 AMENDMENT

Pub. L. 102–245, §2, Feb. 14, 1992, 106 Stat. 7, provided that: "As used in this Act [see Short Title of 1992 Amendment note above]—

"(1) the term 'high-resolution information systems' means equipment and techniques required to create, store, recover, and play back high-resolution images and accompanying sound;

"(2) the term 'advanced manufacturing technology' means numerically-controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving manufacturing and industrial processes;

"(3) the term 'advanced materials' means a field of research including the study of composites, ceramics, metals, polymers, superconducting materials, materials produced through biotechnology, and materials production technologies, including coated systems, that provide the potential for significant advantages over existing materials;

"(4) the term 'Institute' means the National Institute of Standards and Technology;

"(5) the term 'Secretary' means the Secretary of Commerce; and

"(6) the term 'Under Secretary' means the Under Secretary of Commerce for Technology."

CONGRESSIONAL STATEMENT OF POLICY; 1992 AMENDMENT

Pub. L. 102–245, title I, §102, Feb. 14, 1992, 106 Stat. 7, provided that: "Congress finds that in order to help United States industries to speed the development of new products and processes so as to maintain the

economic competitiveness of the Nation, it is necessary to strengthen the programs and activities of the Department of Commerce's Technology Administration and National Institute of Standards and Technology."

NATIONAL COMMISSION ON REDUCING CAPITAL COSTS FOR EMERGING TECHNOLOGY

Pub. L. 102–245, title IV, §401, Feb. 14, 1992, 106 Stat. 21, provided that:

"(a) ESTABLISHMENT AND PURPOSE.—There is established a National Commission on Reducing Capital Costs for Emerging Technology (hereafter in this section referred to as the 'Commission'), for the purpose of developing recommendations to increase the competitiveness of United States industry by encouraging investments in research, the development of new process and product technologies, and the production of those technologies.

"(b) ISSUES.—The function of the Commission shall be to address the following issues:

"(1) How has the overall cost of capital paid by United States companies differed during the past decade from that paid by companies in other industrial economies such as Germany, Japan, and the United Kingdom?

"(2) To what extent has the cost of capital faced by technology companies differed from the overall cost of capital in each of these nations during the same period?

"(3) To what extent do high capital costs in general inhibit investment in projects with long-term payoffs, such as the development and commercialization of new technology?

"(4) To what extent does the structure of the financial services industry in the United States affect the flow of capital to advanced technology investment, and to what extent do current practices in the equity markets raise the cost of capital and inhibit the availability of capital to fund research and development, purchase advanced manufacturing equipment, and fund other investments necessary to commercialize advanced technology?

"(5) In what ways do Government regulations influence the cost of capital in the United States?

"(6) To what extent have national differences in capital costs facilitated the foreign acquisition of technology-based United States companies?

"(7) What macroeconomic and other policies would promote greater investment in advanced manufacturing techniques, in research and development, and in other activities necessary to commercialize and produce new technologies?

"(8) What specific policies should the Federal Government follow in order to reduce the cost of capital for United States companies to levels that are near parity with those faced by the Nation's principal trading partners?

"(c) MEMBERSHIP.—(1) The Commission shall be composed of 9 members who are eminent in such fields as advanced technology, manufacturing, finance, and international economics and who are appointed as follows:

"(A) 3 individuals appointed by the President, one of whom shall chair the Commission.

"(B) 3 individuals appointed by the Speaker of the House of Representatives, 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives.

"(C) 3 individuals appointed by the President pro tempore of the Senate, 2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate.

"(2) Each member shall be appointed for the life of the Commission. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(d) PROCEDURES.—(1) The chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act [Feb. 14, 1992].

"(2) Recommendations of the Commission shall require the approval of three-quarters of the members of the Commission.

"(3) The Commission may use such personnel detailed from Federal agencies as may be necessary to enable it to carry out its duties.

"(4) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5, United States Code.

"(e) REPORTS.—The Commission shall, within 1 year after the date of enactment of this Act [Feb. 14, 1992], submit to the President and Congress a report containing legislative and other recommendations with respect to the issues addressed under subsection (b).

"(f) CONSULTATION.—The Commission shall consult, as appropriate, with the Commission on Technology and Procurement established by section 505 of this Act [set out below].

"(g) TERMINATION.—The Commission shall terminate 6 months after the submission of its report under

subsection (e).

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992 and 1993."

RESEARCH, DEVELOPMENT, TECHNOLOGY UTILIZATION, AND GOVERNMENT PROCUREMENT POLICY

Pub. L. 102–245, title V, §505, Feb. 14, 1992, 106 Stat. 25, provided that:

"(a) ESTABLISHMENT OF COMMISSION.—The Secretary, in consultation with the Administrator of the Office of Federal Procurement Policy, shall establish a Commission on Technology and Procurement (hereafter in this section referred to as the 'Commission'), for the purposes of analyzing the effect of Federal Government procurement laws, procedures, and policies on the development of advanced technologies within the United States and making recommendations on how Federal policy could be changed to promote further the development of advanced technologies.

"(b) ISSUES.—The Commission shall address the following issues:

"(1) To what extent, if any, should Federal Government technology purchase strategies be used to give domestic suppliers a competitive advantage in new generations of existing technologies and in initial market penetration for new technologies?

"(2) Under what conditions can Federal Government purchases of advanced technology-based products be based on performance specifications rather than on product specifications? Should Federal Government procurement first look to the commercial markets for products that will meet performance specifications before purchasing a unique product that has to be developed?

"(3) How can the Federal Government procurement laws, practices, and procedures be used as a strategic tool to foster the use of emerging technologies?

"(4) How can the Federal Government ensure that its suppliers adopt the principles embodied in the Malcolm Baldrige National Quality Award?

"(5) Should Federal Government procurement practices include cooperative efforts between the supplier and the Federal entity to develop products so as to be more easily marketed on a commercial basis? Should a program for the exchange of technical personnel to foster innovation in product development be part of such practices?

"(6) To what extent, if any, should Federal Government documents specify standards that are beneficial to domestic suppliers, aid the compatibility of advanced technologies, and speed the commercial acceptance of those technologies, and what would be the role of the Institute in such an effort?

"(7) Should Federal Government procurement be linked to the Advanced Technology Program and to technology transfer activities so that specification development can incorporate the latest technical advances available?

"(8) To what extent should worldwide, state of the art technology be required in Federal Government procurement?

"(c) MEMBERSHIP AND PROCEDURES.—(1) The Commission shall be composed of 15 members, 8 of whom shall constitute a quorum.

"(2) The Secretary, the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Administrator of General Services, or their designees who serve in executive level positions, shall serve as members of the Commission.

"(3) The Secretary shall appoint as members of the Commission, from among individuals not employed by the Federal Government—

"(A) 4 members who are eminent in advanced technology businesses representing manufacturing and services industries, including at least 1 member representing labor;

"(B) 3 members who are eminent in the fields of technology and international economic development; and

"(C) with the concurrence of the Administrator of the Office of Federal Procurement Policy, 3 members who are eminent in the field of Federal Government procurement.

"(4) The Secretary shall appoint a Commission chairman from among the members of the Commission. The chairman shall call the first meeting of the Commission within 90 days after the date of enactment of this Act [Feb. 14, 1992].

"(5) The Secretary and the Administrator of the Office of Federal Procurement Policy shall provide such staff as may be required by the Commission to carry out its responsibilities.

"(6) Members of the Commission, other than full-time employees of the Federal Government, while attending meetings of the Commission or otherwise performing duties of the Commission while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of

chapter 57 of title 5, United States Code.

"(d) REPORTS.—(1) The Commission shall, within 1 year after the date of enactment of this Act [Feb. 14, 1992], submit to the Secretary, the Administrator of the Office of Federal Procurement Policy, the President, and Congress a report containing preliminary recommendations with respect to the issues addressed under subsection (b).

"(2) The Commission shall, within 2 years after the date of enactment of this Act, submit to the Secretary and Congress a final report containing final recommendations with respect to the issues addressed under subsection (b).

"(e) CONSULTATION.—The Commission shall consult, as appropriate, with the National Commission on Reducing Capital Costs for Emerging Technology.

"(f) TERMINATION.—The Commission shall terminate 6 months after the submission of its final report under subsection (d)(2).

"(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for the fiscal years 1992, 1993, and 1994."

STUDY OF TESTING AND CERTIFICATION

Pub. L. 102–245, title V, §508, Feb. 14, 1992, 106 Stat. 29, provided that:

"(a) CONTRACT WITH NATIONAL RESEARCH COUNCIL.—Within 90 days after the date of enactment of this Act [Feb. 14, 1992] and within available appropriations, the Secretary shall enter into a contract with the National Research Council for a thorough review of international product testing and certification issues. The National Research Council will be asked to address the following issues and make recommendations as appropriate:

"(1) The impact on United States manufacturers, testing and certification laboratories, certification organizations, and other affected bodies of the European Community's plans for testing and certification of regulated and nonregulated products of non-European origin.

"(2) Ways for United States manufacturers to gain acceptance of their products in the European Community and in other foreign countries and regions.

"(3) The feasibility and consequences of having mutual recognition agreements between testing and certification organizations in the United States and those of major trading partners on the accreditation of testing and certification laboratories and on quality control requirements.

"(4) Information coordination regarding product acceptance and conformity assessment mechanisms between the United States and foreign governments.

"(5) The appropriate Federal, State, and private roles in coordination and oversight of testing, certification, accreditation, and quality control to support national and international trade.

"(b) MEMBERSHIP.—In selecting the members of the review panel, the National Research Council shall consult with and draw from, among others, laboratory accreditation organizations, Federal and State government agencies involved in testing and certification, professional societies, trade associations, small business, and labor organizations.

"(c) REPORT.—A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President, and Congress within 18 months after the Secretary signs the contract with the National Research Council."

CONGRESSIONAL FINDINGS AND PURPOSES; 1989 AMENDMENT

Pub. L. 101–189, div. C, title XXXI, §3132, Nov. 29, 1989, 103 Stat. 1674, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of the security of this country;

"(2) there is a need to enhance United States competitiveness in both domestic and international markets;

"(3) innovation and the rapid application of commercially valuable technology are assuming a more significant role in near-term marketplace success;

"(4) the Federal laboratories and other facilities have outstanding capabilities in a variety of advanced technologies and skilled scientists, engineers, and technicians who could contribute substantially to the posture of United States industry in international competition;

"(5) improved opportunities for cooperative research and development agreements between contractor-managers of certain Federal laboratories and the private sector in the United States, consistent with the program missions at those facilities, particularly the national security functions involved in atomic energy defense activities, would contribute to our national well-being; and

"(6) more effective cooperation between those laboratories and the private sector in the United States

is required to provide speed and certainty in the technology transfer process.

"(b) PURPOSES.—The purposes of this part [part C (§§3131–3133) of title XXXI of div. C of Pub. L. 101–189, see Short Title of 1989 Amendment note above] are to—

"(1) enhance United States national security by promoting technology transfer between Government-owned, contractor-operated laboratories and the private sector in the United States; and

"(2) enhance collaboration between universities, the private sector, and Government-owned, contractor-operated laboratories in order to foster the development of technologies in areas of significant economic potential."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13185. TO STRENGTHEN THE FEDERAL GOVERNMENT-UNIVERSITY RESEARCH PARTNERSHIP

Ex. Ord. No. 13185, Dec. 28, 2000, 66 F.R. 701, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to keep the Federal Government-University research partnership strong, it is hereby ordered as follows:

SECTION 1. *Principles of the Government-University Partnership*. The partnership in science and technology that has evolved between the Federal Government and American universities has yielded benefits that are vital to each. It continues to prove exceptionally productive, successfully promoting the discovery of knowledge, stimulating technological innovation, improving the quality of life, educating and training the next generation of scientists and engineers, and contributing to America's economic prosperity and national security. In order to reaffirm and strengthen this partnership, this order sets forth the following guiding and operating principles that are fully described in the April 1999 National Science and Technology Council report, "Renewing the Government-University Partnership." These principles shall provide the framework for the development and analysis of all future Federal policies, rules, and regulations for the Federal Government-University research partnership.

(a) The guiding principles that shall govern interactions between the Federal Government and universities that perform research are:

(1) Research is an investment in the future;

(2) The integration of research and education is vital;

(3) Excellence is promoted when investments are guided by merit review; and

(4) Research must be conducted with integrity.

(b) The operating principles that shall assist agencies, universities, individual researchers, and auditing and regulatory bodies in implementing the guiding principles are:

(1) Agency cost-sharing policies and practices must be transparent;

(2) Partners should respect the merit review process;

(3) Agencies and universities should manage research in a cost-efficient manner;

(4) Accountability and accounting are not the same;

(5) The benefits of simplicity in policies and practices should be weighed against the costs;

(6) Change should be justified by need and the process made transparent.

(c) Each executive branch department or agency that supports research at universities shall regularly review its existing policies and procedures to ensure that they meet the spirit and intent of the guiding and operating principles stated above.

SEC. 2. *Office of Science and Technology (OSTP) Review of the Government-University Research Partnership*. (a) The OSTP, in conjunction with the National Science and Technology Council, shall conduct a regular review of the Government-University research partnership and prepare a report on the status of the partnership. The OSTP should receive input from all departments or agencies that have a major impact on the Government-University partnership through their support of research and education, policy making, regulatory activities, and research administration. In addition, OSTP may seek the input of the National Science Board and the President's Committee of Advisors for Science and Technology, as well as other stakeholders, such as State and local governments, industry, the National Academy of Sciences, and the Federal Demonstration Partnership.

(b) The purpose of the review and the report is to determine the overall health of the Government-University research partnership, being mindful of the guiding and operating principles stated above. The report should include recommendations on how to improve the Government-University partnership.

(c) The Director of OSTP shall deliver the report to the President.

SEC. 3. *Judicial Review*. This order does not create any enforceable rights against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

§3702. Purpose

It is the purpose of this chapter to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of cooperative research centers;

(3) stimulating improved utilization of federally funded technology developments, including inventions, software, and training technologies, by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

(Pub. L. 96–480, §3, Oct. 21, 1980, 94 Stat. 2312; Pub. L. 99–502, §9(b)(1), (f)(2), Oct. 20, 1986, 100 Stat. 1795, 1797.)

EDITORIAL NOTES

AMENDMENTS

1986—Par. (2). Pub. L. 99–502, §9(b)(1), substituted "cooperative research centers" for "centers for industrial technology".

Par. (3). Pub. L. 99–502, §9(f)(2), inserted ", including inventions, software, and training technologies,".

§3703. Definitions

As used in this chapter, unless the context otherwise requires, the term—

(1) "Secretary" means the Secretary of Commerce.

(2) "Centers" means the Cooperative Research Centers established under section 3705 or 3707 of this title.

(3) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(4) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 3705 or 3707 of this title that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor.

(5) "Supporting agency" means either the Department of Commerce or the National Science Foundation, as appropriate.

(6) "Federal agency" means any executive agency as defined in section 105 of title 5 and the military departments as defined in section 102 of such title, as well as any agency of the legislative branch of the Federal Government.

(7) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under title 35 or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(8) "Made" when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

(9) "Small business firm" means a small business concern as defined in section 632 of this title

and implementing regulations of the Administrator of the Small Business Administration.

(10) "Training technology" means computer software and related materials which are developed by a Federal agency to train employees of such agency, including but not limited to software for computer-based instructional systems and for interactive video disc systems.

(11) "Clearinghouse" means the Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation established by section 3704a of this title.

(Pub. L. 96–480, §4, Oct. 21, 1980, 94 Stat. 2312; Pub. L. 99–502, §9(b)(2), (d), Oct. 20, 1986, 100 Stat. 1795, 1796; Pub. L. 100–418, title V, §5122(b), Aug. 23, 1988, 102 Stat. 1439; Pub. L. 100–519, title II, §201(d)(1), Oct. 24, 1988, 102 Stat. 2594; Pub. L. 102–245, title III, §304, Feb. 14, 1992, 106 Stat. 20; Pub. L. 106–404, §7(1), (2), Nov. 1, 2000, 114 Stat. 1745; Pub. L. 110–69, title III, §3002(c)(3), Aug. 9, 2007, 121 Stat. 586.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in par. (7), is Pub. L. 91–577, Dec. 24, 1970, 84 Stat. 1542, which is classified principally to chapter 57 (§2321 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of Title 7 and Tables.

AMENDMENTS

2007—Pub. L. 110–69 redesignated pars. (2) and (4) to (13) as (1) and (2) to (11), respectively, and struck out pars. (1) and (3) which defined "Office" and "Under Secretary", respectively.

2000—Pars. (4), (6). Pub. L. 106–404 made technical amendments to references in original act which appear in text as references to sections 3705 and 3707 of this title.

1992—Par. (8). Pub. L. 102–245 inserted before period at end ", as well as any agency of the legislative branch of the Federal Government".

1988—Par. (1). Pub. L. 100–519, §201(d)(1)(A), substituted "Technology Policy" for "Productivity, Technology, and Innovation".

Par. (3). Pub. L. 100–519, §201(d)(1)(B), amended par. (3) generally, substituting provisions defining "Under Secretary" for provisions defining "Assistant Secretary".

Par. (13). Pub. L. 100–418 added par. (13).

1986—Par. (1). Pub. L. 99–502, §9(b)(2)(A), substituted "Productivity, Technology, and Innovation" for "Industrial Technology".

Par. (3). Pub. L. 99–502, §9(b)(2)(B), substituted " 'Assistant Secretary' means the Assistant Secretary for Productivity, Technology, and Innovation" for " 'Director' means the Director of the Office of Industrial Technology".

Par. (4). Pub. L. 99–502, §9(b)(2)(C), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Par. (6). Pub. L. 99–502, §9(b)(2)(D), (E), redesignated par. (7) as (6), substituted "owned, leased, or otherwise used by a Federal agency and funded" for "owned and funded", and struck out former par. (6) which defined "Board" to mean the National Industrial Technology Board established pursuant to section 3709 of this title.

Pars. (7) to (12). Pub. L. 99–502, §9(b)(2)(D), (d), redesignated pars. (7) and (8) as (6) and (7), respectively, and added pars. (8) to (12).

§3704. Experimental Program to Stimulate Competitive Technology

(a) Program establishment

(1) In general

Beginning in fiscal year 1999, the Secretary shall establish a program to be known as the Experimental Program to Stimulate Competitive Technology (referred to in this subsection as the "program"). The purpose of the program shall be to strengthen the technological competitiveness of those States that have historically received less Federal research and development funds than those received by a majority of the States.

(2) Arrangements

In carrying out the program, the Secretary shall—

(A) enter into such arrangements as may be necessary to provide for the coordination of the program through the State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation; and

(B) cooperate with—

(i) any State science and technology council established under the program under subparagraph (A); and

(ii) representatives of small business firms and other appropriate technology-based businesses.

(3) Grants and cooperative agreements

In carrying out the program, the Secretary may make grants or enter into cooperative agreements to provide for—

(A) technology research and development;

(B) technology transfer from university research;

(C) technology deployment and diffusion; and

(D) the strengthening of technological capabilities through consortia comprised of—

(i) technology-based small business firms;

(ii) industries and emerging companies;

(iii) universities; and

(iv) State and local development agencies and entities.

(4) Requirements for making awards

(A) In general

In making awards under this subsection, the Secretary shall ensure that the awards are awarded on a competitive basis that includes a review of the merits of the activities that are the subject of the award.

(B) Matching requirement

The non-Federal share of the activities (other than planning activities) carried out under an award under this subsection shall be not less than 25 percent of the cost of those activities.

(5) Criteria for States

The Secretary shall establish criteria for achievement by each State that participates in the program. Upon the achievement of all such criteria, a State shall cease to be eligible to participate in the program.

(b) Coordination

To the extent practicable, in carrying out subsection (a), the Secretary shall coordinate the program with other programs of the Department of Commerce.

(c) Minority Serving Institution Digital and Wireless Technology Opportunity Program

(1) In general

The Secretary shall establish a Minority Serving Institution Digital and Wireless Technology Opportunity Program that awards grants, cooperative agreements, and contracts to eligible institutions to enable the eligible institutions in acquiring, and augmenting the institutions' use of, digital and wireless networking technologies to improve the quality and delivery of educational services at eligible institutions.

(2) Application and review procedures

(A) In general

To be eligible to receive a grant, cooperative agreement, or contract under this subsection, an eligible institution shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. Such application, at a minimum, shall

include a description of how the funds will be used, including a description of any digital and wireless networking technology to be acquired, and a description of how the institution will ensure that digital and wireless networking technology will be made accessible to, and employed by, students, faculty, and administrators. The Secretary, consistent with subparagraph (C) and in consultation with the advisory council established under subparagraph (B), shall establish procedures to review such applications. The Secretary shall publish the application requirements and review criteria in the Federal Register, along with a statement describing the availability of funds.

(B) Advisory council

The Secretary shall establish an advisory council to advise the Secretary on the best approaches to encourage maximum participation by eligible institutions in the program established under paragraph (1), and on the procedures to review applications submitted to the program. In selecting the members of the advisory council, the Secretary shall consult with representatives of appropriate organizations, including representatives of eligible institutions, to ensure that the membership of the advisory council includes representatives of minority businesses and eligible institution communities. The Secretary shall also consult with experts in digital and wireless networking technology to ensure that such expertise is represented on the advisory council.

(C) Review panels

Each application submitted under this subsection by an eligible institution shall be reviewed by a panel of individuals selected by the Secretary to judge the quality and merit of the proposal, including the extent to which the eligible institution can effectively and successfully utilize the proposed grant, cooperative agreement, or contract to carry out the program described in paragraph (1). The Secretary shall ensure that the review panels include representatives of minority serving institutions and others who are knowledgeable about eligible institutions and technology issues. The Secretary shall ensure that no individual assigned under this subsection to review any application has a conflict of interest with regard to that application. The Secretary shall take into consideration the recommendations of the review panel in determining whether to award a grant, cooperative agreement, or contract to an eligible institution.

(3) Awards

(A) Limitation

An eligible institution that receives a grant, cooperative agreement, or contract under this subsection that exceeds $2,500,000 shall not be eligible to receive another grant, cooperative agreement, or contract under this subsection.

(B) Consortia

Grants, cooperative agreements, and contracts may only be awarded to eligible institutions. Eligible institutions may seek funding under this subsection for consortia, which may include other eligible institutions, a State or a State educational agency, local educational agencies, institutions of higher education, community-based organizations, national nonprofit organizations, or businesses, including minority businesses.

(C) Planning grants

The Secretary may provide funds to develop strategic plans to implement grants, cooperative agreements, or contracts awarded under this subsection.

(D) Institutional diversity

In awarding grants, cooperative agreements, and contracts to eligible institutions, the Secretary shall ensure, to the extent practicable, that awards are made to all types of institutions eligible for assistance under this subsection.

(E) Need

In awarding funds under this subsection, the Secretary shall give priority to the eligible institution with the greatest demonstrated need for assistance.

(4) Authorized activities

An eligible institution may use a grant, cooperative agreement, or contract awarded under this subsection—

(A) to acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, wireless technology, and infrastructure to further the objective of the program described in paragraph (1);

(B) to develop and provide training, education, and professional development programs, including faculty development, to increase the use of, and usefulness of, digital and wireless networking technology;

(C) to provide teacher education, including the provision of preservice teacher training and in-service professional development at eligible institutions, library and media specialist training, and preschool and teacher aid certification to individuals who seek to acquire or enhance technology skills in order to use digital and wireless networking technology in the classroom or instructional process, including instruction in science, mathematics, engineering, and technology subjects;

(D) to obtain capacity-building technical assistance, including through remote technical support, technical assistance workshops, and distance learning services; or

(E) to foster the use of digital and wireless networking technology to improve research and education, including scientific, mathematics, engineering, and technology instruction.

(5) Information dissemination

The Secretary shall convene an annual meeting of eligible institutions receiving grants, cooperative agreements, or contracts under this subsection to foster collaboration and capacity-building activities among eligible institutions.

(6) Matching requirement

The Secretary may not award a grant, cooperative agreement, or contract to an eligible institution under this subsection unless such institution agrees that, with respect to the costs incurred by the institution in carrying out the program for which the grant, cooperative agreement, or contract was awarded, such institution shall make available, directly, or through donations from public or private entities, non-Federal contributions in an amount equal to 25 percent of the grant, cooperative agreement, or contract awarded by the Secretary, or $500,000, whichever is the lesser amount. The Secretary shall waive the matching requirement for any institution or consortium with no endowment, or an endowment that has a current dollar value lower than $50,000,000.

(7) Annual report and assessments

(A) Annual report required from recipients

Each eligible institution that receives a grant, cooperative agreement, or contract awarded under this subsection shall provide an annual report to the Secretary on its use of the grant, cooperative agreement, or contract.

(B) Independent assessments

(i) Contract to conduct assessments

Not later than 6 months after August 14, 2008, the Secretary shall enter into a contract with the National Academy of Public Administration to conduct periodic assessments of the program established under paragraph (1). The assessments shall be conducted once every 3 years during the 10-year period following August 14, 2008.

(ii) Evaluations and recommendations

The assessments described in clause (i) shall include—

(I) an evaluation of the effectiveness of the program established under paragraph (1) in improving the education and training of students, faculty, and staff at eligible institutions

that have been awarded grants, cooperative agreements, or contracts under the program;

(II) an evaluation of the effectiveness of the program in improving access to, and familiarity with, digital and wireless networking technology for students, faculty, and staff at all eligible institutions;

(III) an evaluation of the procedures established under paragraph (2)(A); and

(IV) recommendations for improving the program, including recommendations concerning the continuing need for Federal support.

(iii) Review of reports

In carrying out the assessments under this subparagraph, the National Academy of Public Administration shall review the reports submitted to the Secretary under subparagraph (A).

(iv) Report to Congress

Upon completion of each assessment under this subparagraph, the Secretary shall transmit the assessment to Congress along with a summary of the Secretary's plans, if any, to implement the recommendations of the National Academy of Public Administration.

(8) Definitions

In this subsection:

(A) Digital and wireless networking technology

The term "digital and wireless networking technology" means computer and communications equipment and software that facilitates the transmission of information in a digital format.

(B) Eligible institution

The term "eligible institution" means an institution that is—

(i) a part B institution, as defined in section 1061(2) of title 20, an institution identified in subparagraph (A), (B), or (C) of section 1063b(e)(1) of title 20, or a consortium of institutions described in this clause;

(ii) a Hispanic-serving institution, as defined in section 1101a(a)(5) of title 20;

(iii) a Tribal College or University, as defined in section 1059c(b)(3) of title 20;

(iv) an Alaska Native-serving institution, as defined in section 1059d(b) of title 20;

(v) a Native Hawaiian-serving institution, as defined in section 1059d(b) of title 20;

(vi) a Predominately Black Institution, as defined in section 1059e of title 20;

(vii) a Native American-serving, nontribal institution, as defined in section 1059f of title 20;

(viii) an Asian American and Native American Pacific Islander-serving institution, as defined in section 1059g of title 20; or

(ix) a minority institution, as defined in section 1067k of title 20, with an enrollment of needy students, as defined in section 1058(d) of title 20.

(C) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1001 of title 20.

(D) Local educational agency

The term "local educational agency" has the meaning given the term in section 7801 of title 20.

(E) Minority business

The term "minority business" includes HUBZone small business concerns (as defined in section 632(p) [1] of this title).

(F) Minority individual

The term "minority individual" means an American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), or Pacific Islander individual.

(G) State

The term "State" has the meaning given the term in section 7801 of title 20.

(H) State educational agency

The term "State educational agency" has the meaning given the term in section 7801 of title 20.

(Pub. L. 96–480, §5, Oct. 21, 1980, 94 Stat. 2312; Pub. L. 99–382, §2, Aug. 14, 1986, 100 Stat. 811; Pub. L. 99–502, §9(b)(3)–(5), (e)(2)(A), Oct. 20, 1986, 100 Stat. 1795, 1797; Pub. L. 100–519, title II, §201(a)–(c), (d)(2), Oct. 24, 1988, 102 Stat. 2593, 2594; Pub. L. 102–245, title III, §306, Feb. 14, 1992, 106 Stat. 20; Pub. L. 105–309, §9, Oct. 30, 1998, 112 Stat. 2938; Pub. L. 106–404, §7(3), Nov. 1, 2000, 114 Stat. 1745; Pub. L. 110–69, title III, §3002(a), Aug. 9, 2007, 121 Stat. 586; Pub. L. 110–315, title IX, §971, Aug. 14, 2008, 122 Stat. 3473; Pub. L. 114–95, title IX, §9215(sss), Dec. 10, 2015, 129 Stat. 2190.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 632(p) of this title, referred to in subsec. (c)(8)(E), was redesignated section 657a(b) of this title by Pub. L. 115–91, div. A, title XVII, §1701(a)(2), Dec. 12, 2017, 131 Stat. 1795.

AMENDMENTS

2015—Subsec. (c)(8)(D), (G), (H). Pub. L. 114–95 made technical amendments to references in original act which appear in text as references to section 7801 of title 20.

2008—Subsec. (c). Pub. L. 110–315 added subsec. (c).

2007—Pub. L. 110–69, §3002(a)(5), substituted "Experimental program to stimulate competitive technology" for "Commerce and technological innovation" in section catchline.

Subsec. (a). Pub. L. 110–69, §3002(a)(3)(B), (E), substituted "Program establishment" for "Experimental Program to Stimulate Competitive Technology" in heading and struck out ", acting through the Under Secretary," after "Secretary" wherever appearing in text.

Pub. L. 110–69, §3002(a)(1), (2), redesignated subsec. (f) as (a) and struck out former subsec. (a) which related to the establishment of a Technology Administration within the Department of Commerce.

Subsec. (a)(1). Pub. L. 110–69, §3002(a)(3)(A), substituted "Beginning in fiscal year 1999, the Secretary shall establish" for "The Secretary, acting through the Under Secretary, shall establish for fiscal year 1999".

Subsec. (a)(6). Pub. L. 110–69, §3002(a)(3)(C), redesignated par. (6) as subsec. (b).

Subsec. (a)(7). Pub. L. 110–69, §3002(a)(3)(D), struck out par. (7) which required the Under Secretary of Commerce for Technology to submit a report on the Experimental Program to Stimulate Competitive Technology no later than 90 days after Oct. 30, 1998.

Subsec. (b). Pub. L. 110–69, §3002(a)(1), (3)(C), (4), redesignated subsec. (a)(6) as (b), substituted "subsection (a)" for "this subsection", and struck out former subsec. (b) which related to appointment of Under Secretary of Commerce for Technology and Assistant Secretary of Commerce for Technology Policy.

Subsecs. (c) to (e). Pub. L. 110–69, §3002(a)(1), struck out subsecs. (c) to (e) which related, respectively, to duties of the Secretary, Japanese technical literature, and a progress report required within 3 years after Oct. 21, 1980.

Subsec. (f). Pub. L. 110–69, §3002(a)(2), redesignated subsec. (f) as (a).

2000—Subsec. (c)(11). Pub. L. 106–404 substituted "State or local governments" for "State of local governments".

1998—Subsec. (f). Pub. L. 105–309 added subsec. (f).

1992—Subsec. (c)(13) to (15). Pub. L. 102–245 added par. (13) and redesignated former pars. (13) and (14) as (14) and (15), respectively.

1988—Subsec. (a). Pub. L. 100–519, §201(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Secretary shall establish and maintain an Office of Productivity, Technology, and Innovation in accordance with the provisions, findings, and purposes of this chapter."

Subsec. (b). Pub. L. 100–519, §201(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The President shall appoint, by and with the advice and consent of the Senate, an Assistant Secretary for Productivity, Technology, and Innovation."

Subsec. (c). Pub. L. 100–519, §201(c)(2), substituted "Under Secretary, as appropriate," for "Assistant

Secretary, on a continuing basis," in introductory provisions.

Subsec. (c)(1) to (9). Pub. L. 100–519, §201(c)(1), (2), added pars. (1) to (4) and redesignated former pars. (1) to (5) as (5) to (9), respectively. Former pars. (6) to (9) redesignated (10) to (13), respectively.

Subsec. (c)(10). Pub. L. 100–519, §201(c)(1), (3), redesignated former par. (6) as (10) and substituted "Under Secretary" for "Assistant Secretary". Former par. (10) redesignated (14).

Subsec. (c)(11) to (14). Pub. L. 100–519, §201(c)(1), redesignated former pars. (7) to (10) as (11) to (14), respectively.

Subsec. (d)(1). Pub. L. 100–519, §201(d)(2), substituted "and the Under Secretary shall establish, and through the National Technical Information Service and with the cooperation of" for "shall establish and, through the National Technical Information Service and".

1986—Subsec. (a). Pub. L. 99–502, §9(b)(3), substituted "Office of Productivity, Technology, and Innovation" for "Office of Industrial Technology".

Subsec. (b). Pub. L. 99–502, §9(b)(4), substituted "an Assistant Secretary for Productivity, Technology, and Innovation" for "a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of title 5".

Subsec. (c). Pub. L. 99–502, §9(b)(5)(A), substituted "the Assistant Secretary" for "the Director" in provisions preceding par. (1).

Subsec. (c)(6). Pub. L. 99–502, §9(b)(5)(A), substituted "the Assistant Secretary" for "the Director".

Subsec. (c)(7) to (10). Pub. L. 99–502, §9(b)(5)(B), (C), added pars. (7) and (8) and redesignated former pars. (7) and (8) as (9) and (10), respectively.

Subsec. (d). Pub. L. 99–382, §2(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99–502, §9(e)(2)(A), which directed the insertion of "(as then in effect)" in subsec. (d), was executed to subsec. (e) to reflect the probable intent of Congress in view of the redesignation of subsec. (d) as (e) by Pub. L. 99–382.

Pub. L. 99–382, §2(1), redesignated subsec. (d) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

CONSTRUCTION

Pub. L. 110–69, title III, §3002(b), Aug. 9, 2007, 121 Stat. 586, provided that: "The amendments made by subsection (a) [amending this section] shall not be construed to eliminate the National Institute of Standards and Technology or the National Technical Information Service."

TRANSITION PROVISION

Pub. L. 100–519, title II, §201(e), Oct. 24, 1988, 102 Stat. 2594, provided that: "The individual serving as the Assistant Secretary of Commerce for Productivity, Technology, and Innovation immediately before the date of enactment of this Act [Oct. 24, 1988] shall serve as Acting Assistant Secretary of Commerce for Technology Policy until the Assistant Secretary takes office."

COMMERCIAL SPACE PROGRAMS

Pub. L. 100–519, title II, §201(f), as added by Pub. L. 100–685, title II, §219, Nov. 17, 1988, 102 Stat. 4095, provided that: "Nothing in this section [amending this section, sections 3703 and 3710 of this title, and section 5314 of Title 5, Government Organization and Employees, and enacting provisions formerly set out as a note above] authorizes the Department to establish an Office of Commercial Space Programs or to place such an office into the Technology Administration without prior authorization of the Congress."

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

§3704a. Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation

(a) Establishment

There is established within the Office of Productivity, Technology, and Innovation a Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation. The Clearinghouse shall serve as a central repository of information on initiatives by State and local governments to enhance the competitiveness of American business through the stimulation of productivity, technology, and innovation and Federal efforts to assist State and local governments to enhance competitiveness.

(b) Responsibilities

The Clearinghouse may—

(1) establish relationships with State and local governments, and regional and multistate organizations of such governments, which carry out such initiatives;

(2) collect information on the nature, extent, and effects of such initiatives, particularly information useful to the Congress, Federal agencies, State and local governments, regional and multistate organizations of such governments, businesses, and the public throughout the United States;

(3) disseminate information collected under paragraph (2) through reports, directories, handbooks, conferences, and seminars;

(4) provide technical assistance and advice to such governments with respect to such initiatives, including assistance in determining sources of assistance from Federal agencies which may be available to support such initiatives;

(5) study ways in which Federal agencies, including Federal laboratories, are able to use their existing policies and programs to assist State and local governments, and regional and multistate organizations of such governments, to enhance the competitiveness of American business;

(6) make periodic recommendations to the Secretary, and to other Federal agencies upon their request, concerning modifications in Federal policies and programs which would improve Federal assistance to State and local technology and business assistance programs;

(7) develop methodologies to evaluate State and local programs, and, when requested, advise State and local governments, and regional and multistate organizations of such governments, as to which programs are most effective in enhancing the competitiveness of American business through the stimulation of productivity, technology, and innovation; and

(8) make use of, and disseminate, the nationwide study of State industrial extension programs conducted by the Secretary.

(c) Contracts

In carrying out subsection (b), the Secretary may enter into contracts for the purpose of collecting information on the nature, extent, and effects of initiatives.

(Pub. L. 96–480, §6, as added Pub. L. 100–418, title V, §5122(a)(2), Aug. 23, 1988, 102 Stat. 1438.)

EDITORIAL NOTES

CODIFICATION

Subsec. (d) of this section, which required the Secretary to prepare and transmit a triennial report to Congress, including recommendations to the President, Congress, and Federal agencies, on initiatives by State and local governments to enhance the competitiveness of American businesses through the stimulation of productivity, technology, and innovation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 50 of House Document No. 103–7.

§3704b. National Technical Information Service

(a) Powers

(1) The Secretary of Commerce, acting through the Director of the National Technical Information

Service (hereafter in this section referred to as the "Director") is authorized to do the following:

(A) Enter into such contracts, cooperative agreements, joint ventures, and other transactions, in accordance with all relevant provisions of Federal law applicable to such contracts and agreements, and under reasonable terms and conditions, as may be necessary in the conduct of the business of the National Technical Information Service (hereafter in this section referred to as the "Service").

(B) In addition to the authority regarding fees contained in section 2 of the Act entitled "An Act to provide for the dissemination of technological, scientific, and engineering information to American business and industry, and for other purposes" enacted September 9, 1950 (15 U.S.C. 1152), retain and, subject to appropriations Acts, utilize its net revenues to the extent necessary to implement the plan submitted under subsection (f)(3)(D).

(C) Enter into contracts for the performance of part or all of the functions performed by the Promotion Division of the Service prior to October 24, 1988. The details of any such contract, and a statement of its effect on the operations and personnel of the Service, shall be provided to the appropriate committees of the Congress 30 days in advance of the execution of such contract.

(D) Employ such personnel as may be necessary to conduct the business of the Service.

(E) For the period of October 1, 1991 through September 30, 1992, only, retain and use all earned and unearned monies heretofore or hereafter received, including receipts, revenues, and advanced payments and deposits, to fund all obligations and expenses, including inventories and capital equipment.

An increase or decrease in the personnel of the Service shall not affect or be affected by any ceilings on the number or grade of personnel.

(2) The functions and activities of the Service specified in subsection (e)(1) through (6) are permanent Federal functions to be carried out by the Secretary through the Service and its employees, and shall not be transferred from the Service, by contract or otherwise, to the private sector on a permanent or temporary basis without express approval of the Congress. Functions or activities—

(A) for the procurement of supplies, materials, and equipment by the Service;

(B) referred to in paragraph (1)(C); or

(C) to be performed through joint ventures or cooperative agreements which do not result in a reduction in the Federal workforce of the affected programs of the service,[1]

shall not be considered functions or activities for purposes of this paragraph.

(3) For the purposes of this subsection, the term "net revenues" means the excess of revenues and receipts from any source, other than royalties and other income described in section 13(a)(4) [2] of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)(4)), over operating expenses.

(4) Omitted.

(b) Director of the Service

The management of the Service shall be vested in a Director who shall report to the Director of the National Institute of Standards and Technology and the Secretary of Commerce.

(c) Advisory Board

(1) There is established the Advisory Board of the National Technical Information Service, which shall be composed of a chairman and four other members appointed by the Secretary.

(2) In appointing members of the Advisory Board the Secretary shall solicit recommendations from the major users and beneficiaries of the Service's activities and shall select individuals experienced in providing or utilizing technical information.

(3) The Advisory Board shall review the general policies and operations of the Service, including policies in connection with fees and charges for its services, and shall advise the Secretary and the Director with respect thereto.

(4) The Advisory Board shall meet at the call of the Secretary, but not less often than once each

six months.

(d) Audits

The Secretary of Commerce shall provide for annual independent audits of the Service's financial statements beginning with fiscal year 1988, to be conducted in accordance with generally accepted accounting principles.

(e) Functions

The Secretary of Commerce, acting through the Service, shall—

(1) establish and maintain a permanent repository of nonclassified scientific, technical, and engineering information;

(2) cooperate and coordinate its operations with other Government scientific, technical, and engineering information programs;

(3) make selected bibliographic information products available in a timely manner to depository libraries as part of the Depository Library Program of the Government Publishing Office;

(4) in conjunction with the private sector as appropriate, collect, translate into English, and disseminate unclassified foreign scientific, technical, and engineering information;

(5) implement new methods or media for the dissemination of scientific, technical, and engineering information, including producing and disseminating information products in electronic format; and

(6) carry out the functions and activities of the Secretary under the Act entitled "An Act to provide for the dissemination of technological, scientific, and engineering information to American business and industry, and for other purposes" enacted September 9, 1950 [15 U.S.C. 1151 et seq.], and the functions and activities of the Secretary performed through the National Technical Information Service as of October 24, 1988, under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.].

(f) Notification of Congress

(1) The Secretary of Commerce and the Director shall keep the appropriate committees of Congress fully and currently informed about all activities related to the carrying out of the functions of the Service, including changes in fee policies.

(2) Within 90 days after October 24, 1988, the Secretary of Commerce shall submit to the Congress a report on the current fee structure of the Service, including an explanation of the basis for the fees, taking into consideration all applicable costs, and the adequacy of the fees, along with reasons for the declining sales at the Service of scientific, technical, and engineering publications. Such report shall explain any actions planned or taken to increase such sales at reasonable fees.

(3) The Secretary shall submit an annual report to the Congress which shall—

(A) summarize the operations of the Service during the preceding year, including financial details and staff levels broken down by major activities;

(B) detail the operating plan of the Service, including specific expense and staff needs, for the upcoming year;

(C) set forth details of modernization progress made in the preceding year;

(D) describe the long-term modernization plans of the Service; and

(E) include the results of the most recent annual audit carried out under subsection (d).

(4) The Secretary shall also give the Congress detailed advance notice of not less than 30 calendar days of—

(A) any proposed reduction-in-force;

(B) any joint venture or cooperative agreement which involves a financial incentive to the joint venturer or contractor; and

(C) any change in the operating plan submitted under paragraph (3)(B) which would result in a variation from such plan with respect to expense levels of more than 10 percent.

(Pub. L. 100–519, title II, §212, Oct. 24, 1988, 102 Stat. 2594; Pub. L. 102–140, title II, Oct. 28, 1991, 105 Stat. 804; Pub. L. 102–245, title V, §506(c), Feb. 14, 1992, 106 Stat. 27; Pub. L. 110–161,

div. B, title I, §109, Dec. 26, 2007, 121 Stat. 1893; Pub. L. 113–235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537.)

EDITORIAL NOTES

REFERENCES IN TEXT

This section, referred to in subsec. (a)(1), was in the original "this subtitle", meaning subtitle B (§§211, 212) of title II of Pub. L. 100–519, Oct. 24, 1988, 102 Stat. 2594, which enacted section 3704b of this title and amended section 3710 of this title. For complete classification of this subtitle to the Code, see Short Title of 1988 Amendment note set out under section 3701 of this title and Tables.

Section 13(a)(4) of the Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (a)(3), probably means section 14(a)(4) of the Act, which is classified to section 3710c(a)(4) of this title. Section 13 of the Act was renumbered section 14 by Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438.

The Act entitled "An Act to provide for the dissemination of technological, scientific, and engineering information to American business and industry, and for other purposes" enacted September 9, 1950, referred to in subsec. (e)(6), is act Sept. 9, 1950, ch. 936, 64 Stat. 823, which is classified generally to chapter 23 (§1151 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (e)(6), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Technical Information Act of 1988, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

Subsec. (a)(4) of this section repealed subsec. (h) of section 3710 of this title.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–161 substituted "Director of the National Institute of Standards and Technology" for "Under Secretary of Commerce for Technology".

1992—Subsec. (e)(5). Pub. L. 102–245 inserted ", including producing and disseminating information products in electronic format" after "engineering information".

1991—Subsec. (a)(1)(E). Pub. L. 102–140 added subpar. (E).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

"Government Publishing Office" substituted for "Government Printing Office" in subsec. (e)(3) on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

NATIONAL TECHNICAL INFORMATION SERVICE REVOLVING FUND

Pub. L. 102–395, title II, Oct. 6, 1992, 106 Stat. 1853, provided that: "For establishment of a National Technical Information Service Revolving Fund, $8,000,000 without fiscal year limitation: *Provided*, That unexpended balances in Information Products and Services shall be transferred to and merged with this account, to remain available until expended. Notwithstanding 15 U.S.C. 1525 and 1526, all payments collected by the National Technical Information Service in performing its activities authorized by chapters 23 and 63 of title 15 of the United States Code shall be credited to this Revolving Fund. Without further

appropriations action, all expenses incurred in performing the activities of the National Technical Information Service, including modernization, capital equipment and inventory, shall be paid from the fund. A business-type budget for the fund shall be prepared in the manner prescribed by 31 U.S.C. 9103."

[1] So in original. Probably should be capitalized.

[2] See References in Text note below.

§3704b–1. Recovery of operating costs through fee collections

Operating costs for the National Technical Information Service associated with the acquisition, processing, storage, bibliographic control, and archiving of information and documents shall be recovered primarily through the collection of fees.

(Pub. L. 102–245, title I, §103(c), Feb. 14, 1992, 106 Stat. 8.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

§3704b–2. Transfer of Federal scientific and technical information

(a) Transfer

The head of each Federal executive department or agency shall transfer in a timely manner to the National Technical Information Service unclassified scientific, technical, and engineering information which results from federally funded research and development activities for dissemination to the private sector, academia, State and local governments, and Federal agencies. Only information which would otherwise be available for public dissemination shall be transferred under this subsection. Such information shall include technical reports and information, computer software, application assessments generated pursuant to section 3710(c) of this title, and information regarding training technology and other federally owned or originated technologies. The Secretary shall issue regulations within one year after February 14, 1992, outlining procedures for the ongoing transfer of such information to the National Technical Information Service.

(b) Annual report to Congress

As part of the annual report required under section 3704b(f)(3) of this title, the Secretary shall report to Congress on the status of efforts under this section to ensure access to Federal scientific and technical information by the public. Such report shall include—

(1) an evaluation of the comprehensiveness of transfers of information by each Federal executive department or agency under subsection (a);

(2) a description of the use of Federal scientific and technical information;

(3) plans for improving public access to Federal scientific and technical information; and

(4) recommendations for legislation necessary to improve public access to Federal scientific and technical information.

(Pub. L. 102–245, title I, §108, Feb. 14, 1992, 106 Stat. 13.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the

Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

§3705. Cooperative Research Centers

(a) Establishment

The Secretary shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) Activities

The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university research;

(2) assistance to individuals and small businesses in the generation, evaluation, and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c) Requirements

Prior to establishing a Center, the Secretary shall find that—

(1) consideration has been given to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(2) a high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(3) the host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including:

(A) the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to and inventions conceived or made under the auspices of the Center; and

(B) the consideration of means to place the Center, to the maximum extent feasible, on a self-sustaining basis;

(4) suitable consideration has been given to the university's or other nonprofit institution's capabilities and geographical location; and

(5) consideration has been given to any effects upon competition of the activities proposed under the Center.

(d) Planning grants

The Secretary is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing a plan required under subsection (c)(3).

(e) Research and development utilization

In the promotion of technology from research and development efforts by Centers under this section, chapter 18 of title 35 shall apply to the extent not inconsistent with this section.

(Pub. L. 96–480, §7, formerly §6, Oct. 21, 1980, 94 Stat. 2313; Pub. L. 99–502, §9(b)(6)–(10), Oct. 20, 1986, 100 Stat. 1796; renumbered §7, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7 of Pub. L. 96–480 was renumbered section 8 and is classified to section 3706 of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–502, §9(b)(7), substituted "Cooperative Research Centers" for "Centers for Industrial Technology".

Subsec. (b)(1). Pub. L. 99–502, §9(b)(8), struck out "basic and applied" after "industry-university".

Subsec. (e). Pub. L. 99–502, §9(b)(9), amended subsec. (e) generally. Prior to amendment, subsec. (e) provided that a Center of Industrial Technology had the option to acquire title to an invention conceived or made under its auspices and supported by Federal funds, authorized supporting agency to require the Center to grant licenses to the invention to responsible applicants in certain cases, and provided for judicial review of licensing determinations by the supporting agency.

Subsec. (f). Pub. L. 99–502, §9(b)(10), struck out subsec. (f) which read as follows: "The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request."

STATUTORY NOTES AND RELATED SUBSIDIARIES

MODEL PROGRAM

Pub. L. 101–510, div. A, title VIII, §827(b), Nov. 5, 1990, 104 Stat. 1607, as amended by Pub. L. 102–190, div. A, title X, §1062(a)(2), Dec. 5, 1991, 105 Stat. 1475, provided that:

"(1) In the administration of applicable provisions of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.] or section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418, 15 U.S.C. 278l note], the Secretary of Commerce shall develop, in consultation with the Secretary of Defense and the Secretary of Energy, model programs for national defense laboratories.

"(2) Model programs under this subsection shall involve Federal laboratories, small businesses, and partnership intermediaries. The purpose of the model programs is to demonstrate successful relationships between the Federal Government, State and local governments, and small businesses which encourage economic growth through the commercial application of technology resulting from federally funded research.

"(3) In this subsection, the term 'national defense laboratory' means any laboratory, federally funded research and development center (FFRDC), or other center established under section 7 or 9 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3705, 3707) that is owned by the Federal Government, whether operated by the Federal Government or by a contractor, and—

"(A) is under the jurisdiction of the Secretary of Defense; or

"(B) is under the jurisdiction of the Secretary of Energy, but only if the primary function of the laboratory, FFRDC, or other center under the Secretary's jurisdiction is to support the national defense activities of the Department of Defense or the Department of Energy."

§3706. Grants and cooperative agreements

(a) In general

The Secretary may make grants and enter into cooperative agreements according to the provisions of this section in order to assist any activity consistent with this chapter, including activities performed by individuals.

(b) Eligibility and procedure

Any person or institution may apply to the Secretary for a grant or cooperative agreement available under this section. Application shall be made in such form and manner, and with such content and other submissions, as the Assistant Secretary shall prescribe. The Secretary shall act upon each such application within 90 days after the date on which all required information is received.

(c) Terms and conditions

(1) Any grant made, or cooperative agreement entered into, under this section shall be subject to the limitations and provisions set forth in paragraph (2) of this subsection, and to such other terms, conditions, and requirements as the Secretary deems necessary or appropriate.

(2) Any person who receives or utilizes any proceeds of any grant made or cooperative agreement entered into under this section shall keep such records as the Secretary shall by regulation prescribe as being necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition by such recipient of such proceeds, the total cost of the program or project in connection with which such proceeds were used, and the amount, if any, of such costs which was provided through other sources.

(Pub. L. 96–480, §8, formerly §7, Oct. 21, 1980, 94 Stat. 2315; renumbered §8 and amended Pub. L. 100–418, title V, §§5115(b)(1), 5122(a)(1), Aug. 23, 1988, 102 Stat. 1433, 1438; Pub. L. 114–329, title II, §203, Jan. 6, 2017, 130 Stat. 2998.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 8 of Pub. L. 96–480 was renumbered section 9 and is classified to section 3707 of this title.

AMENDMENTS

2017—Subsec. (a). Pub. L. 114–329 struck out at end "The total amount of any such grant or cooperative agreement may not exceed 75 percent of the total cost of the program."

1988—Subsec. (b). Pub. L. 100–418, §5115(b)(1), substituted "Assistant Secretary" for "Director".

§3707. National Science Foundation Cooperative Research Centers

(a) Establishment and provisions

The National Science Foundation shall provide assistance for the establishment of Cooperative Research Centers. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 3705(a) of this title through the conduct of activities as provided in section 3705(b) of this title.

(b) Planning grants

The National Science Foundation is authorized to make available nonrenewable planning grants to universities or nonprofit institutions for the purpose of developing the plan, as described under section 3705(c)(3) of this title.

(c) Terms and conditions

Grants, contracts, and cooperative agreements entered into by the National Science Foundation in execution of the powers and duties of the National Science Foundation under this chapter shall be governed by the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.] and other pertinent Acts.

(Pub. L. 96–480, §9, formerly §8, Oct. 21, 1980, 94 Stat. 2316; Pub. L. 99–502, §9(b)(11), (12), (e)(2)(B), Oct. 20, 1986, 100 Stat. 1796, 1797; renumbered §9, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; Pub. L. 106–404, §7(4), Nov. 1, 2000, 114 Stat. 1745.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Science Foundation Act of 1950, referred to in subsec. (c), is act May 10, 1950, ch. 171, 64 Stat. 149, which is classified generally to chapter 16 (§1861 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1861 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 9 of Pub. L. 96–480 was renumbered section 10 and is classified to section 3708 of this title.

AMENDMENTS

2000—Subsecs. (a), (b). Pub. L. 106–404 made technical amendments to references in original act which appear in text as references to section 3705 of this title.

1986—Subsec. (a). Pub. L. 99–502 substituted "Cooperative Research Centers" for "Centers for Industrial Technology" and struck out last sentence which read as follows: "The provisions of sections 3705(e) and 3705(f) of this title shall apply to Centers established under this section."

§3708. Administrative arrangements

(a) Coordination

The Secretary and the National Science Foundation shall, on a continuing basis, obtain the advice and cooperation of departments and agencies whose missions contribute to or are affected by the programs established under this chapter, including the development of an agenda for research and policy experimentation. These departments and agencies shall include but not be limited to the Departments of Defense, Energy, Education, Health and Human Services, Housing and Urban Development, the Environmental Protection Agency, National Aeronautics and Space Administration, Small Business Administration, Council of Economic Advisers, Council on Environmental Quality, and Office of Science and Technology Policy.

(b) Cooperation

It is the sense of the Congress that departments and agencies, including the Federal laboratories, whose missions are affected by, or could contribute to, the programs established under this chapter, should, within the limits of budgetary authorizations and appropriations, support or participate in activities or projects authorized by this chapter.

(c) Administrative authorization

(1) Departments and agencies described in subsection (b) are authorized to participate in, contribute to, and serve as resources for the Centers and for any other activities authorized under this chapter.

(2) The Secretary and the National Science Foundation are authorized to receive moneys and to receive other forms of assistance from other departments or agencies to support activities of the Centers and any other activities authorized under this chapter.

(d) Cooperative efforts

The Secretary and the National Science Foundation shall, on a continuing basis, provide each other the opportunity to comment on any proposed program of activity under section 3705, 3707, 3710, 3710d, 3711a, or 3712 of this title before funds are committed to such program in order to mount complementary efforts and avoid duplication.

(Pub. L. 96–480, §10, formerly §9, Oct. 21, 1980, 94 Stat. 2316; Pub. L. 99–502, §9(e)(2)(C), Oct. 20, 1986, 100 Stat. 1797; Pub. L. 100–107, §3(b), Aug. 20, 1987, 101 Stat. 727; renumbered §10 and

amended Pub. L. 100–418, title V, §5122(a)(1), (c), Aug. 23, 1988, 102 Stat. 1438, 1439; Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10 of Pub. L. 96–480 was renumbered section 11 and is classified to section 3710 of this title.

Another prior section 10 of Pub. L. 96–480 related to National Industrial Technology Board and was classified to section 3709 of this title, prior to repeal by section 9(a) of Pub. L. 99–502.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–240 made technical amendment to reference to section 3712 of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (d). Pub. L. 100–418, §5122(c), made technical amendment to references to sections 3705, 3707, 3710, 3710d, 3711a, and 3712 of this title to reflect renumbering of corresponding sections of original act.

1987—Subsec. (d). Pub. L. 100–107 inserted reference to section 3711a of this title.

1986—Subsec. (d). Pub. L. 99–502 inserted references to sections 3710 and 3710d of this title.

§3709. Repealed. Pub. L. 99–502, §9(a), Oct. 20, 1986, 100 Stat. 1795

Section, Pub. L. 96–480, §10, Oct. 21, 1980, 94 Stat. 2317, related to establishment, duties, membership, and terms of National Industrial Technology Board.

§3710. Utilization of Federal technology

(a) Policy

(1) It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive where appropriate to transfer federally owned or originated technology to State and local governments and to the private sector.

(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.

(b) Establishment of Research and Technology Applications Offices

Each Federal laboratory shall establish an Office of Research and technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having 200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions as staff for its Office of Research and Technology Applications, and (2) each Federal agency which operates or directs one or more Federal laboratories shall make available sufficient funding, either as a separate line item or from the agency's research and development budget, to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.

(c) Functions of Research and Technology Applications Offices

It shall be the function of each Office of Research and Technology Applications—

(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer, and other organizations which link the research and development resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry;

(4) to provide technical assistance to State and local government officials; and

(5) to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) Dissemination of technical information

The National Technical Information Service shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) utilize the expertise and services of the National Science Foundation and the Federal Laboratory Consortium for Technology Transfer; particularly in dealing with State and local governments;

(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;

(4) provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection (c)(3);

(5) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems; and

(6) maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical, and engineering information.

(e) Establishment of Federal Laboratory Consortium for Technology Transfer

(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the "Consortium") which, in cooperation with Federal laboratories and the private sector, shall—

(A) develop and (with the consent of the Federal laboratory concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service, and

(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations;

(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curriculum design, long-term research planning, personnel needs projections, and productivity assessments;

(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government); and

(K) work with the Director of the National Institute on Disability and Rehabilitation Research to compile a compendium of current and projected Federal Laboratory technologies and projects that have or will have an intended or recognized impact on the available range of assistive technology for individuals with disabilities (as defined in section 3002 of title 29), including technologies and projects that incorporate the principles of universal design (as defined in section 3002 of title 29), as appropriate.

(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a senior representative appointed from each Federal agency with one or more member laboratories.

(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

(4) The Director of the National Institute of Standards and Technology shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Institute, as requested by the Consortium and approved by such Director.

(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

(6) Not later than one year after October 20, 1986, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of

funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made. Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles.

(7)(A) Subject to subparagraph (B), an amount equal to 0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Institute of Standards and Technology at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Institute to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000.

(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.

(f) Agency reports on utilization

(1) In general

Each Federal agency which operates or directs one or more Federal laboratories or which conducts activities under sections 207 and 209 of title 35 shall report annually to the Office of Management and Budget, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories under the provisions of this section and of sections 207 and 209 of title 35.

(2) Contents

The report shall include—

(A) an explanation of the agency's technology transfer program for the preceding fiscal year and the agency's plans for conducting its technology transfer function, including its plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing its intellectual property so as to advance the agency's mission and benefit the competitiveness of United States industry; and

(B) information on technology transfer activities for the preceding fiscal year, including—

(i) the number of patent applications filed;

(ii) the number of patents received;

(iii) the number of fully-executed licenses which received royalty income in the preceding fiscal year, categorized by whether they are exclusive, partially-exclusive, or non-exclusive, and the time elapsed from the date on which the license was requested by the licensee in writing to the date the license was executed;

(iv) the total earned royalty income including such statistical information as the total earned royalty income, of the top 1 percent, 5 percent, and 20 percent of the licenses, the range of royalty income, and the median, except where disclosure of such information would reveal the amount of royalty income associated with an individual license or licensee;

(v) what disposition was made of the income described in clause (iv);

(vi) the number of licenses terminated for cause; and

(vii) any other parameters or discussion that the agency deems relevant or unique to its practice of technology transfer.

(3) Copy to Secretary; Attorney General; Congress

The agency shall transmit a copy of the report to the Secretary of Commerce and the Attorney General for inclusion in the annual report to Congress and the President required by subsection (g)(2).

(4) Public availability

Each Federal agency reporting under this subsection is also strongly encouraged to make the

information contained in such report available to the public through Internet sites or other electronic means.

(g) Functions of Secretary

(1) The Secretary, in consultation with other Federal agencies, may—

(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

(2) REPORTS.—

(A) ANNUAL REPORT REQUIRED.—The Secretary, in consultation with the Attorney General and the Commissioner of Patents and Trademarks, shall submit each fiscal year, beginning 1 year after November 1, 2000, a summary report to the President, the United States Trade Representative, and the Congress on the use by Federal agencies and the Secretary of the technology transfer authorities specified in this chapter and in sections 207 and 209 of title 35.

(B) CONTENT.—The report shall—

(i) draw upon the reports prepared by the agencies under subsection (f);

(ii) discuss technology transfer best practices and effective approaches in the licensing and transfer of technology in the context of the agencies' missions; and

(iii) discuss the progress made toward development of additional useful measures of the outcomes of technology transfer programs of Federal agencies.

(C) PUBLIC AVAILABILITY.—The Secretary shall make the report available to the public through Internet sites or other electronic means.

(3) Not later than one year after October 20, 1986, the Secretary shall submit to the President and the Congress a report regarding—

(A) any copyright provisions or other types of barriers which tend to restrict or limit the transfer of federally funded computer software to the private sector and to State and local governments, and agencies of such State and local governments; and

(B) the feasibility and cost of compiling and maintaining a current and comprehensive inventory of all federally funded training software.

(h) Duplication of reporting

The reporting obligations imposed by this section—

(1) are not intended to impose requirements that duplicate requirements imposed by the Government Performance and Results Act of 1993 (31 U.S.C. 1101 note);

(2) are to be implemented in coordination with the implementation of that Act; and

(3) are satisfied if an agency provided the information concerning technology transfer activities described in this section in its annual submission under the Government Performance and Results Act of 1993 (31 U.S.C. 1101 note).

(i) Research equipment

The Director of a laboratory, or the head of any Federal agency or department, may loan, lease, or give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities. Title of ownership shall transfer with a gift under this section.

(Pub. L. 96–480, §11, Oct. 21, 1980, 94 Stat. 2318; renumbered §10 and amended Pub. L. 99–502, §§3–5, 9(e)(1), Oct. 20, 1986, 100 Stat. 1787, 1789, 1791, 1797; renumbered §11 and amended Pub.

L. 100–418, title V, §§5115(b)(2), 5122(a)(1), 5162(b), 5163(c)(1), (3), Aug. 23, 1988, 102 Stat. 1433, 1438, 1450, 1451; Pub. L. 100–519, title II, §§201(d)(3), 212(a)(4), Oct. 24, 1988, 102 Stat. 2594, 2595; Pub. L. 101–189, div. C, title XXXI, §3133(e), Nov. 29, 1989, 103 Stat. 1679; Pub. L. 102–245, title III, §§301, 303, Feb. 14, 1992, 106 Stat. 19, 20; Pub. L. 104–66, title III, §3001(f), Dec. 21, 1995, 109 Stat. 734; Pub. L. 104–113, §§3, 9, Mar. 7, 1996, 110 Stat. 775, 779; Pub. L. 105–394, title II, §212(d), Nov. 13, 1998, 112 Stat. 3655; Pub. L. 106–404, §§7(5), (6), 10(a), Nov. 1, 2000, 114 Stat. 1745–1747; Pub. L. 110–69, title III, §3002(c)(4), Aug. 9, 2007, 121 Stat. 586.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (h), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

AMENDMENTS

2007—Subsec. (g)(1). Pub. L. 110–69 struck out "through the Under Secretary, and" after "The Secretary," in introductory provisions.

2000—Subsec. (b). Pub. L. 106–404, §10(a)(1), struck out at end "The agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the agency's technology transfer program for the preceding year and the agency's plans for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry."

Subsec. (e)(1). Pub. L. 106–404, §7(5), substituted "in cooperation with Federal laboratories" for "in cooperation with Federal Laboratories" in introductory provisions.

Subsec. (f). Pub. L. 106–404, §10(a)(2), added subsec. (f).

Subsec. (g)(2). Pub. L. 106–404, §10(a)(3), added par. (2) and struck out former par. (2) which read as follows: "Two years after October 20, 1986, and every two years thereafter, the Secretary shall submit a summary report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this chapter. Other Federal agencies shall cooperate in the report's preparation."

Subsec. (h). Pub. L. 106–404, §10(a)(4), added subsec. (h).

Subsec. (i). Pub. L. 106–404, §7(6), substituted "a gift under this section" for "a gift under the section".

1998—Subsec. (e)(1)(K). Pub. L. 105–394 added subpar. (K).

1996—Subsec. (e)(7)(B). Pub. L. 104–113, §3, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

"(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

"(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996."

Subsec. (i). Pub. L. 104–113, §9, inserted "loan, lease, or" before "give".

1995—Subsec. (f). Pub. L. 104–66 struck out heading and text of subsec. (f). Text read as follows: "Each Federal agency which operates or directs one or more Federal laboratories shall report annually to the Congress, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section."

1992—Subsec. (e)(2). Pub. L. 102–245, §301(a), inserted "senior" before "representative".

Subsec. (e)(6). Pub. L. 102–245, §301(b), inserted at end "Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles."

Subsec. (e)(7)(B)(ii). Pub. L. 102–245, §301(c), substituted "1991, 1992, 1993, 1994, 1995, or 1996" for "or 1991".

Subsec. (e)(8). Pub. L. 102–245, §301(d), struck out former par. (8) which read as follows:

"(A) The Consortium shall use 5 percent of the funds provided in paragraph (7)(A) to establish

demonstration projects in technology transfer. To carry out such projects, the Consortium may arrange for grants or awards to, or enter into agreements with, nonprofit State, local, or private organizations or entities whose primary purposes are to facilitate cooperative research between the Federal laboratories and organizations not associated with the Federal laboratories, to transfer technology from the Federal laboratories, and to advance State and local economic activity.

"(B) The demonstration projects established under subparagraph (A) shall serve as model programs. Such projects shall be designed to develop programs and mechanisms for technology transfer from the Federal laboratories which may be utilized by the States and which will enhance Federal, State, and local programs for the transfer of technology.

"(C) Application for such grants, awards, or agreements shall be in such form and contain such information as the Consortium or its designee shall specify.

"(D) Any person who receives or utilizes any proceeds of a grant or award made, or agreement entered into, under this paragraph shall keep such records as the Consortium or its designee shall determine are necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition of such proceeds and the total cost of the project in connection with which such proceeds were used."

Subsec. (i). Pub. L. 102–245, §303, added subsec. (i).

1989—Subsec. (b). Pub. L. 101–189 struck out "after September 30, 1981," after "(2)", substituted "sufficient funding, either as a separate line item or from the agency's research and development budget," for "not less than 0.5 percent of the agency's research and development budget", struck out "agency head may waive the requirement set forth in clause (2) of the preceding sentence. If the agency head waives such requirement, the" after "transfer process. The", and substituted "agency's technology transfer program for the preceding year and the agency's plans for conducting its technology transfer function for the upcoming year, including plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry" for "reasons for the waiver and alternate plans for conducting the technology transfer function at the agency".

1988—Subsec. (d)(6). Pub. L. 100–418, §5163(c)(3), added par. (6).

Subsec. (e)(4). Pub. L. 100–418, §5115(b)(2), substituted "National Institute of Standards and Technology" for "National Bureau of Standards" and "Institute" for "Bureau".

Subsec. (e)(7)(A). Pub. L. 100–418, §5162(b), substituted "0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of" for "0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by".

Pub. L. 100–418, §5115(b)(2), substituted "National Institute of Standards and Technology" for "National Bureau of Standards" and "Institute" for "Bureau".

Subsec. (g)(1). Pub. L. 100–519, §201(d)(3), inserted reference to the Under Secretary.

Subsec. (h). Pub. L. 100–519, §212(a)(4), struck out subsec. (h) which read as follows: "None of the activities or functions of the National Technical Information Service which are not performed by contractors as of September 30, 1987, shall be contracted out or otherwise transferred from the Federal Government unless such transfer is expressly authorized by statute, or unless the value of all work performed under the contract and related contracts in each fiscal year does not exceed $250,000."

Pub. L. 100–418, §5163(c)(1), added subsec. (h).

1986—Subsec. (a). Pub. L. 99–502, §4(a), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (b). Pub. L. 99–502, §4(b)(1), substituted "200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions" for "a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time", inserted "Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.", substituted "requirement set forth in clause (2) of the preceding sentence" for "requirements set forth in (1) and/or (2) of this subsection", and substituted "such requirement" for "either requirement (1) or (2)".

Subsec. (c)(1). Pub. L. 99–502, §4(b)(2)(A), added par. (1) and struck out former par. (1) which read as follows: "to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;".

Subsec. (c)(3). Pub. L. 99–502, §4(b)(2)(B), substituted "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer," for "the Center for the Utilization of Federal

Technology" and struck out "and" after the semicolon.

Subsec. (c)(4). Pub. L. 99–502, §4(b)(2)(C), substituted "to State and local government officials; and" for "in response to requests from State and local government officials.".

Subsec. (c)(5). Pub. L. 99–502, §4(b)(2)(D), added par. (5).

Subsec. (d). Pub. L. 99–502, §4(c)(1), substituted "The National Technical Information Service shall" for "There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall" in introductory par.

Subsec. (d)(2). Pub. L. 99–502, §4(c)(2), (3), redesignated par. (3) as (2) and struck out "existing" before "Federal Laboratory". Former par. (2), which required the Center for the Utilization of Federal Technology to coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories, was struck out.

Subsec. (d)(3). Pub. L. 99–502, §4(c)(4), added par. (3). Former par. (3) redesignated (2).

Subsec. (d)(4). Pub. L. 99–502, §4(c)(4)–(6), redesignated par. (5) as (4) and substituted "subsection (c)(3)" for "subsection (c)(4)". Former par. (4), which required the Center for the Utilization of Federal Technology to receive requests for technical assistance from State and local governments and refer those requests to the appropriate Federal laboratories, was struck out.

Subsec. (d)(5), (6). Pub. L. 99–502, §4(c)(5), redesignated pars. (5) and (6) as (4) and (5), respectively.

Subsecs. (e), (f). Pub. L. 99–502, §§3, 4(d), added subsec. (e), redesignated former subsec. (e) as (f), substituted "report annually to the Congress, as part of the agency's annual budget submission, on the activities" for "prepare biennially a report summarizing the activities", and struck out "The report shall be transmitted to the Center for the Utilization of Federal Technology by November 1 of each year in which it is due.".

Subsec. (g). Pub. L. 99–502, §5, added subsec. (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Functions which the Director of the National Institute on Disability and Rehabilitation Research exercised before July 22, 2014 (including all related functions of any officer or employee of the National Institute on Disability and Rehabilitation Research), transferred to the National Institute on Disability, Independent Living, and Rehabilitation Research, see subsection (n) of section 3515e of Title 42, The Public Health and Welfare.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12591. FACILITATING ACCESS TO SCIENCE AND TECHNOLOGY

Ex. Ord. No. 12591, Apr. 10, 1987, 52 F.R. 13414, as amended by Ex. Ord. No. 12618, Dec. 22, 1987, 52 F.R. 48661, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Technology Transfer Act of 1986 (Public Law 99–502) [see Short Title of 1986 Amendments note set out under section 3701 of this title], the Trademark Clarification Act of 1984 (Public Law 98–620) [see Short Title of 1984 Amendment note set out under section 1051 of this title], and the University and Small Business Patent Procedure Act of 1980 (Public Law 96–517) [see Tables for classification], and in order to ensure that Federal agencies and laboratories assist universities and the private sector in broadening our technology base by moving new knowledge from the research laboratory into the development of new products and processes, it is hereby ordered as follows:

SECTION 1. *Transfer of Federally Funded Technology.*

(a) The head of each Executive department and agency, to the extent permitted by law, shall encourage and facilitate collaboration among Federal laboratories, State and local governments, universities, and the private sector, particularly small business, in order to assist in the transfer of technology to the marketplace.

(b) The head of each Executive department and agency shall, within overall funding allocations and to the extent permitted by law:

(1) delegate authority to its government-owned, government-operated Federal laboratories:

(A) to enter into cooperative research and development agreements with other Federal laboratories, State and local governments, universities, and the private sector; and

(B) to license, assign, or waive rights to intellectual property developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.

(2) identify and encourage persons to act as conduits between and among Federal laboratories, universities, and the private sector for the transfer of technology developed from federally funded research and development efforts;

(3) ensure that State and local governments, universities, and the private sector are provided with information on the technology, expertise, and facilities available in Federal laboratories;

(4) promote the commercialization, in accord with my Memorandum to the Heads of Executive Departments and Agencies of February 18, 1983, of patentable results of federally funded research by granting to all contractors, regardless of size, the title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the government;

(5) administer all patents and licenses to inventions made with federal assistance, which are owned by the non-profit contractor or grantee, in accordance with Section 202(c)(7) of Title 35 of the United States Code as amended by Public Law 98–620, without regard to limitations on licensing found in that section prior to amendment or in Institutional Patent Agreements now in effect that were entered into before that law was enacted on November 8, 1984, unless, in the case of an invention that has not been marketed, the funding agency determines, based on information in its files, that the contractor or grantee has not taken adequate steps to market the inventions, in accordance with applicable law or an Institutional Patent Agreement;

(6) implement, as expeditiously as practicable, royalty-sharing programs with inventors who were employees of the agency at the time their inventions were made, and cash award programs; and

(7) cooperate, under policy guidance provided by the Office of Federal Procurement Policy, with the heads of other affected departments and agencies in the development of a uniform policy permitting Federal contractors to retain rights to software, engineering drawings, and other technical data generated by Federal grants and contracts, in exchange for royalty-free use by or on behalf of the government.

SEC. 2. *Establishment of the Technology Share Program*. The Secretaries of Agriculture, Commerce, Energy, and Health and Human Services and the Administrator of the National Aeronautics and Space Administration shall select one or more of their Federal laboratories to participate in the Technology Share Program. Consistent with its mission and policies and within its overall funding allocation in any year, each Federal laboratory so selected shall:

(a) Identify areas of research and technology of potential importance to long-term national economic competitiveness and in which the laboratory possesses special competence and/or unique facilities;

(b) Establish a mechanism through which the laboratory performs research in areas identified in Section 2(a) as a participant of a consortium composed of United States industries and universities. All consortia so established shall have, at a minimum, three individual companies that conduct the majority of their business in the United States; and

(c) Limit its participation in any consortium so established to the use of laboratory personnel and facilities. However, each laboratory may also provide financial support generally not to exceed 25 percent of the total budget for the activities of the consortium. Such financial support by any laboratory in all such consortia shall be limited to a maximum of $5 million per annum.

SEC. 3. *Technology Exchange—Scientists and Engineers*. The Executive Director of the President's Commission on Executive Exchange shall assist Federal agencies, where appropriate, by developing and implementing an exchange program whereby scientists and engineers in the private sector may take temporary assignments in Federal laboratories, and scientists and engineers in Federal laboratories may take temporary assignments in the private sector.

SEC. 4. *International Science and Technology*. In order to ensure that the United States benefits from and fully exploits scientific research and technology developed abroad,

(a) The head of each Executive department and agency, when negotiating or entering into cooperative research and development agreements and licensing arrangements with foreign persons or industrial organizations (where these entities are directly or indirectly controlled by a foreign company or government), shall, in consultation with the United States Trade Representative, give appropriate consideration:

(1) to whether such foreign companies or governments permit and encourage United States agencies, organizations, or persons to enter into cooperative research and development agreements and licensing arrangements on a comparable basis;

(2) to whether those foreign governments have policies to protect the United States intellectual property rights; and

(3) where cooperative research will involve data, technologies, or products subject to national security export controls under the laws of the United States, to whether those foreign governments have adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under such

national security export controls, either through participation in the Coordinating Committee for Multilateral Export Controls (COCOM) or through other international agreements to which the United States and such foreign governments are signatories.

(b) The Secretary of State shall develop a recruitment policy that encourages scientists and engineers from other Federal agencies, academic institutions, and industry to apply for assignments in embassies of the United States; and

(c) The Secretaries of State and Commerce and the Director of the National Science Foundation shall develop a central mechanism for the prompt and efficient dissemination of science and technology information developed abroad to users in Federal laboratories, academic institutions, and the private sector on a fee-for-service basis.

SEC. 5. *Technology Transfer from the Department of Defense*. Within 6 months of the date of this Order [Apr. 10, 1987], the Secretary of Defense shall identify a list of funded technologies that would be potentially useful to United States industries and universities. The Secretary shall then accelerate efforts to make these technologies more readily available to United States industries and universities.

SEC. 6. *Basic Science and Technology Centers*. The head of each Executive department and agency shall examine the potential for including the establishment of university research centers in engineering, science, or technology in the strategy and planning for any future research and development programs. Such university centers shall be jointly funded by the Federal Government, the private sector, and, where appropriate, the States and shall focus on areas of fundamental research and technology that are both scientifically promising and have the potential to contribute to the Nation's long-term economic competitiveness.

SEC. 7. *Reporting Requirements*. (a) Within 1 year from the date of this Order [Apr. 10, 1987], the Director of the Office of Science and Technology Policy shall convene an interagency task force comprised of the heads of representative agencies and the directors of representative Federal laboratories, or their designees, in order to identify and disseminate creative approaches to technology transfer from Federal laboratories. The task force will report to the President on the progress of and problems with technology transfer from Federal laboratories.

(b) Specifically, the report shall include:

(1) a listing of current technology transfer programs and an assessment of the effectiveness of these programs;

(2) identification of new or creative approaches to technology transfer that might serve as model programs for Federal laboratories;

(3) criteria to assess the effectiveness and impact on the Nation's economy of planned or future technology transfer efforts; and

(4) a compilation and assessment of the Technology Share Program established in Section 2 and, where appropriate, related cooperative research and development venture programs.

SEC. 8. *Relation to Existing Law*. Nothing in this Order shall affect the continued applicability of any existing laws or regulations relating to the transfer of United States technology to other nations. The head of any Executive department or agency may exclude from consideration, under this Order, any technology that would be, if transferred, detrimental to the interests of national security.

RONALD REAGAN.

§3710a. Cooperative research and development agreements

(a) General authority

Each Federal agency may permit the director of any of its Government-operated Federal laboratories, and, to the extent provided in an agency-approved joint work statement or, if permitted by the agency, in an agency-approved annual strategic plan, the director of any of its Government-owned, contractor-operated laboratories—

(1) to enter into cooperative research and development agreements on behalf of such agency (subject to subsection (c) of this section) with other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency); and

(2) to negotiate licensing agreements under section 207 of title 35, or under other authorities (in

the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for inventions made or other intellectual property developed at the laboratory and other inventions or other intellectual property that may be voluntarily assigned to the Government.

(b) Enumerated authority

(1) Under an agreement entered into pursuant to subsection (a)(1), the laboratory may grant, or agree to grant in advance, to a collaborating party patent licenses or assignments, or options thereto, in any invention made in whole or in part by a laboratory employee under the agreement, or, subject to section 209 of title 35, may grant a license to an invention which is federally owned, for which a patent application was filed before the signing of the agreement, and directly within the scope of the work under the agreement, for reasonable compensation when appropriate. The laboratory shall ensure, through such agreement, that the collaborating party has the option to choose an exclusive license for a pre-negotiated field of use for any such invention under the agreement or, if there is more than one collaborating party, that the collaborating parties are offered the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one party. In consideration for the Government's contribution under the agreement, grants under this paragraph shall be subject to the following explicit conditions:

(A) A nonexclusive, nontransferable, irrevocable, paid-up license from the collaborating party to the laboratory to practice the invention or have the invention practiced throughout the world by or on behalf of the Government. In the exercise of such license, the Government shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of section 552(b)(4) of title 5 or which would be considered as such if it had been obtained from a non-Federal party.

(B) If a laboratory assigns title or grants an exclusive license to such an invention, the Government shall retain the right—

(i) to require the collaborating party to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the invention in the applicant's licensed field of use, on terms that are reasonable under the circumstances; or

(ii) if the collaborating party fails to grant such a license, to grant the license itself.

(C) The Government may exercise its right retained under subparagraph (B) only in exceptional circumstances and only if the Government determines that—

(i) the action is necessary to meet health or safety needs that are not reasonably satisfied by the collaborating party;

(ii) the action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the collaborating party; or

(iii) the collaborating party has failed to comply with an agreement containing provisions described in subsection (c)(4)(B).

This determination is subject to administrative appeal and judicial review under section 203(2) [1] of title 35.

(2) Under agreements entered into pursuant to subsection (a)(1), the laboratory shall ensure that a collaborating party may retain title to any invention made solely by its employee in exchange for normally granting the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government for research or other Government purposes.

(3) Under an agreement entered into pursuant to subsection (a)(1), a laboratory may—

(A) accept, retain, and use funds, personnel, services, and property from a collaborating party and provide personnel, services, and property to a collaborating party;

(B) use funds received from a collaborating party in accordance with subparagraph (A) to hire personnel to carry out the agreement who will not be subject to full-time-equivalent restrictions of the agency;

(C) to the extent consistent with any applicable agency requirements or standards of conduct, permit an employee or former employee of the laboratory to participate in an effort to commercialize an invention made by the employee or former employee while in the employment or service of the Government; and

(D) waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party.

(4) A collaborating party in an exclusive license in any invention made under an agreement entered into pursuant to subsection (a)(1) shall have the right of enforcement under chapter 29 of title 35.

(5) A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement pursuant to subsection (a)(1) may use or obligate royalties or other income accruing to the laboratory under such agreement with respect to any invention only—

(A) for payments to inventors;

(B) for purposes described in clauses (i), (ii), (iii), and (iv) of section 3710c(a)(1)(B) of this title; and

(C) for scientific research and development consistent with the research and development missions and objectives of the laboratory.

(6)(A) In the case of a laboratory that is part of the National Nuclear Security Administration, a designated official of that Administration may waive any license retained by the Government under paragraph (1)(A), (2), or (3)(D), in whole or in part and according to negotiated terms and conditions, if the designated official finds that the retention of the license by the Government would substantially inhibit the commercialization of an invention that would otherwise serve an important national security mission.

(B) The authority to grant a waiver under subparagraph (A) shall expire on the date that is five years after October 30, 2000. The expiration under the preceding sentence of authority to grant a waiver under subparagraph (A) shall not affect any waiver granted under that subparagraph before the expiration of such authority.

(C) Not later than February 15 of each year, the Administrator for Nuclear Security shall submit to Congress a report on any waivers granted under this paragraph during the preceding year.

(c) Contract considerations

(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

(2) The agency in permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this chapter.

(3)(A) Any agency using the authority given it under subsection (a) shall review standards of conduct for its employees for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with Federal agencies (including the agency with which the employee involved is or was formerly employed).

(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall—

(A) give special consideration to small business firms, and consortia involving small business

firms; and

(B) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

(5)(A) If the head of the agency or his designee desires an opportunity to disapprove or require the modification of any such agreement presented by the director of a Government-operated laboratory, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

(B) In any case in which the head of an agency or his designee disapproves or requires the modification of an agreement presented by the director of a Government-operated laboratory under this section, the head of the agency or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(C)(i) Any non-Federal entity that operates a laboratory pursuant to a contract with a Federal agency shall submit to the agency any cooperative research and development agreement that the entity proposes to enter into and the joint work statement if required with respect to that agreement.

(ii) A Federal agency that receives a proposed agreement and joint work statement under clause (i) shall review and approve, request specific modifications to, or disapprove the proposed agreement and joint work statement within 30 days after such submission. No agreement may be entered into by a Government-owned, contractor-operated laboratory under this section before both approval of the agreement and approval of a joint work statement under this clause.

(iii) In any case in which an agency which has contracted with an entity referred to in clause (i) disapproves or requests the modification of a cooperative research and development agreement or joint work statement submitted under that clause, the agency shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

(iv) Any agency that has contracted with a non-Federal entity to operate a laboratory may develop and provide to such laboratory one or more model cooperative research and development agreements for purposes of standardizing practices and procedures, resolving common legal issues, and enabling review of cooperative research and development agreements to be carried out in a routine and prompt manner.

(v) A Federal agency may waive the requirements of clause (i) or (ii) under such circumstances as the agency considers appropriate.

(6) Each agency shall maintain a record of all agreements entered into under this section.

(7) (A) No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, which is obtained in the conduct of research or as a result of activities under this chapter from a non-Federal party participating in a cooperative research and development agreement shall be disclosed.

(B)(i) Subject to clause (ii), the director, or in the case of a contractor-operated laboratory, the agency, for a period of up to 5 years after development of information that results from research and development activities conducted under this chapter and that would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party participating in a cooperative research and development agreement, may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(II) [2] The agency may authorize the director to provide appropriate protections against dissemination described in clause (i) for a total period of not more than 30 years if the agency determines that the nature of the information protected against dissemination, including nuclear technology, could reasonably require an extended period of that protection to reach commercialization.

(d) Definitions

As used in this section—

(1) the term "cooperative research and development agreement" means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31;

(2) the term "laboratory" means—

(A) a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government;

(B) a group of Government-owned, contractor-operated facilities (including a weapon production facility of the Department of Energy) under a common contract, when a substantial purpose of the contract is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government; and

(C) a Government-owned, contractor-operated facility (including a weapon production facility of the Department of Energy) that is not under a common contract described in subparagraph (B), and the primary purpose of which is the performance of research and development, or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components, for the Federal Government,

but such term does not include any facility covered by Executive Order No. 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

(3) the term "joint work statement" means a proposal prepared for a Federal agency by the director of a Government-owned, contractor-operated laboratory describing the purpose and scope of a proposed cooperative research and development agreement, and assigning rights and responsibilities among the agency, the laboratory, and any other party or parties to the proposed agreement; and

(4) the term "weapon production facility of the Department of Energy" means a facility under the control or jurisdiction of the Secretary of Energy that is operated for national security purposes and is engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

(e) Determination of laboratory missions

For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its laboratories.

(f) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(g) Principles

In implementing this section, each agency which has contracted with a non-Federal entity to operate a laboratory shall be guided by the following principles:

(1) The implementation shall advance program missions at the laboratory, including any national security mission.

(2) Classified information and unclassified sensitive information protected by law, regulation, or Executive order shall be appropriately safeguarded.

(Pub. L. 96–480, §12, as added and renumbered §11, Pub. L. 99–502, §§2, 9(e)(1), Oct. 20, 1986, 100 Stat. 1785, 1797; renumbered §12, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102

Stat. 1438; amended Pub. L. 100–519, title III, §301, Oct. 24, 1988, 102 Stat. 2597; Pub. L. 101–189, div. C, title XXXI, §3133(a), (b), Nov. 29, 1989, 103 Stat. 1675, 1677; Pub. L. 102–25, title VII, §705(g), Apr. 6, 1991, 105 Stat. 121; Pub. L. 102–245, title III, §302(a), Feb. 14, 1992, 106 Stat. 20; Pub. L. 102–484, div. C, title XXXI, §3135(a), Oct. 23, 1992, 106 Stat. 2640; Pub. L. 103–160, div. C, title XXXI, §3160, Nov. 30, 1993, 107 Stat. 1957; Pub. L. 104–113, §4, Mar. 7, 1996, 110 Stat. 775; Pub. L. 106–398, §1 [div. C, title XXXI, §3196], Oct. 30, 2000, 114 Stat. 1654, 1654A–481; Pub. L. 106–404, §3, Nov. 1, 2000, 114 Stat. 1742; Pub. L. 117–58, div. D, title III, §40322(b)(1), Nov. 15, 2021, 135 Stat. 1018.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 203(2) of title 35, referred to in subsec. (b)(1)(C), was redesignated section 203(b) of title 35 by Pub. L. 107–273, div. C, title III, §13206(a)(14)(A)(i), Nov. 2, 2002, 116 Stat. 1905.

Executive Order No. 12344, referred to in subsec. (d)(2), is set out as a note under section 2511 of Title 50, War and National Defense.

AMENDMENTS

2021—Subsec. (c)(7)(B). Pub. L. 117–58 designated existing provisions as cl. (i), substituted "Subject to clause (ii), the director" for "The director", and added cl. (II).

2000—Subsec. (a). Pub. L. 106–398, §1 [div. C, title XXXI, §3196(a)], substituted "joint work statement or, if permitted by the agency, in an agency-approved annual strategic plan," for "joint work statement," in introductory provisions.

Subsec. (b)(1). Pub. L. 106–404, in first sentence, inserted "or, subject to section 209 of title 35, may grant a license to an invention which is federally owned, for which a patent application was filed before the signing of the agreement, and directly within the scope of the work under the agreement," after "under the agreement,".

Subsec. (b)(6). Pub. L. 106–398, §1 [div. C, title XXXI, §3196(b)], added par. (6).

Subsec. (c)(5)(C), (D). Pub. L. 106–398, §1 [div. C, title XXXI, §3196(c)], redesignated subpar. (D) as (C), struck out "with a small business firm" after "enter into" and inserted "if" after "statement" in cl. (i), added cls. (iv) and (v), and struck out former subpar. (C) which related to the duties of an agency which has contracted with a non-Federal entity to operate a laboratory with respect to review and approval of joint work statements and agreements under this section and with respect to providing the entity with model cooperative research and development agreements.

1996—Subsec. (b). Pub. L. 104–113 amended subsec. (b) generally, to require that laboratory ensure that collaborating party be provided option of choosing exclusive license for pre-negotiated field of use for any invention under agreement or that collaborating party be offered option of holding licensing rights that collectively encompass rights that would be held under such exclusive license by one party, to set forth explicit conditions that grants under par. (1) were to be subject to, and to require laboratory to ensure that collaborating party might retain title to any invention made solely by its employee in exchange for normally granting Government nonexclusive, nontransferable, irrevocable, paid-up license to practice invention by or on behalf of Government for research or for other Government purposes.

1993—Subsec. (d)(2)(B). Pub. L. 103–160, §3160(1), inserted "(including a weapon production facility of the Department of Energy)" after "facilities" and ", or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components," after "research and development".

Subsec. (d)(2)(C). Pub. L. 103–160, §3160(2), inserted "(including a weapon production facility of the Department of Energy)" after "facility" and ", or the production, maintenance, testing, or dismantlement of a nuclear weapon or its components," after "research and development".

Subsec. (d)(4). Pub. L. 103–160, §3160(3)–(5), added par. (4).

1992—Subsec. (c)(5)(C)(i). Pub. L. 102–484, §3135(a)(1), substituted "Except as provided in subparagraph (D), any agency" for "Any agency".

Subsec. (c)(5)(D). Pub. L. 102–484, §3135(a)(2), added subpar. (D).

Subsec. (d)(1). Pub. L. 102–245 inserted "intellectual property," after "equipment," in two places.

1991—Subsec. (d)(2). Pub. L. 102–25 substituted "naval" for "Naval" in concluding provisions.

1989—Subsec. (a). Pub. L. 101–189, §3133(a)(1)(A), inserted ", and, to the extent provided in an agency-approved joint work statement, the director of any of its Government-owned, contractor-operated laboratories" after "Government-operated Federal laboratories" in introductory provisions.

Subsec. (a)(2). Pub. L. 101–189, §3133(a)(1)(B), (C), substituted "(in the case of a Government-owned, contractor-operated laboratory, subject to subsection (c) of this section) for" for "for Government-owned" and struck out "of Federal employees" before "that may be voluntarily".

Subsec. (b). Pub. L. 101–189, §3133(a)(2)(A), (C), inserted ", and, to the extent provided in an agency-approved joint work statement, a Government-owned, contractor-operated laboratory," after "Government-operated Federal laboratory" in introductory provisions and inserted concluding provisions "A Government-owned, contractor-operated laboratory that enters into a cooperative research and development agreement under subsection (a)(1) of this section may use or obligate royalties or other income accruing to such laboratory under such agreement with respect to any invention only (i) for payments to inventors; (ii) for the purposes described in section 3710c(a)(1)(B)(i), (ii), and (iv) of this title; and (iii) for scientific research and development consistent with the research and development mission and objectives of the laboratory."

Subsec. (b)(2). Pub. L. 101–189, §3133(a)(2)(B), substituted "a laboratory employee" for "a Federal employee".

Subsec. (c)(3)(A). Pub. L. 101–189, §3133(a)(3), substituted "standards of conduct for its employees" for "employee standards of conduct".

Subsec. (c)(5)(A). Pub. L. 101–189, §3133(a)(4), inserted "presented by the director of a Government-operated laboratory" after "any such agreement".

Subsec. (c)(5)(B). Pub. L. 101–189, §3133(a)(5), inserted "by the director of a Government-operated laboratory" after "an agreement presented".

Subsec. (c)(5)(C). Pub. L. 101–189, §3133(a)(6), added subpar. (C).

Subsec. (c)(7). Pub. L. 101–189, §3133(a)(7), added par. (7).

Subsec. (d)(2). Pub. L. 101–189, §3133(a)(8)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the term 'laboratory' means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government."

Subsec. (d)(3). Pub. L. 101–189, §3133(a)(8)(A), (C), added par. (3).

Subsec. (g). Pub. L. 101–189, §3133(b), added subsec. (g).

1988—Subsec. (a)(2). Pub. L. 100–519, §301(1), substituted "or other intellectual property developed at the laboratory and other inventions or other intellectual property" for "at the laboratory and other inventions".

Subsec. (b)(4), (5). Pub. L. 100–519, §301(2), added par. (4) and redesignated former par. (4) as (5).

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPLICABILITY OF 2021 AMENDMENT

Pub. L. 117–58, div. D, title III, §40322(b)(2), Nov. 15, 2021, 135 Stat. 1018, provided that:

"(A) DEFINITION.—In this subsection, the term 'cooperative research and development agreement' has the meaning given the term in section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)).

"(B) RETROACTIVE EFFECT.—Clause (ii) [sic] of section 12(c)(7)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(7)(B)), as added by subsection (a) of this section, shall apply with respect to any cooperative research and development agreement that is in effect as of the day before the date of enactment of this Act [Nov. 15, 2021]."

WAGE RATE REQUIREMENTS

For provisions relating to rates of wages to be paid to laborers and mechanics on projects for construction, alteration, or repair work funded under div. D or an amendment by div. D of Pub. L. 117–58, including authority of Secretary of Labor, see section 18851 of Title 42, The Public Health and Welfare.

REVIEW OF COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT PROCEDURES

Pub. L. 106–404, §8, Nov. 1, 2000, 114 Stat. 1746, provided that:

"(a) REVIEW.—Within 90 days after the date of the enactment of this Act [Nov. 1, 2000], each Federal agency with a federally funded laboratory that has in effect on that date of the enactment one or more cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) shall report to the Committee on National Security of the National Science and Technology Council and the Congress on the general policies and procedures used by that agency to gather and consider the views of other agencies on—

"(1) joint work statements under section 12(c)(5)(C) or (D) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(c)(5)(C) or (D)); or

"(2) in the case of laboratories described in section 12(d)(2)(A) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)(A)), cooperative research and development agreements under such section 12,

with respect to major proposed cooperative research and development agreements that involve critical national security technology or may have a significant impact on domestic or international competitiveness.

"(b) PROCEDURES.—Within 1 year after the date of the enactment of this Act [Nov. 1, 2000], the Committee on National Security of the National Science and Technology Council, in conjunction with relevant Federal agencies and national laboratories, shall—

"(1) determine the adequacy of existing procedures and methods for interagency coordination and awareness with respect to cooperative research and development agreements described in subsection (a); and

"(2) establish and distribute to appropriate Federal agencies—

"(A) specific criteria to indicate the necessity for gathering and considering the views of other agencies on joint work statements or cooperative research and development agreements as described in subsection (a); and

"(B) additional procedures, if any, for carrying out such gathering and considering of agency views with respect to cooperative research and development agreements described in subsection (a).

Procedures established under this subsection shall be designed to the extent possible to use or modify existing procedures, to minimize burdens on Federal agencies, to encourage industrial partnerships with national laboratories, and to minimize delay in the approval or disapproval of joint work statements and cooperative research and development agreements.

"(c) LIMITATION.—Nothing in this Act [see Short Title of 2000 Amendment note set out under section 3701 of this title], nor any procedures established under this section shall provide to the Office of Science and Technology Policy, the National Science and Technology Council, or any Federal agency the authority to disapprove a cooperative research and development agreement or joint work statement, under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a), of another Federal agency."

MAGNETIC LEVITATION TECHNOLOGY

The Secretary of the Army, in cooperation with the Secretary of Transportation, authorized to conduct research and development activities on magnetic levitation technology using contracts or cooperative research and development agreements under this section, see section 417 of Pub. L. 101–640, set out as a note under section 2313 of Title 33, Navigation and Navigable Waters.

CONTRACT PROVISIONS

Section 3133(d) of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title VIII, §828(a), Nov. 5, 1990, 104 Stat. 1607, provided that:

"(1) Not later than 150 days after the date of enactment of this Act [Nov. 29, 1989], each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall propose for inclusion in that laboratory's operating contract, to the extent not already included and subject to paragraph (6), appropriate contract provisions that—

"(A) establish technology transfer, including cooperative research and development agreements, as a mission for the laboratory under section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710(a)(1)];

"(B) describe the respective obligations and responsibilities of the agency and the laboratory with respect to this part [part C (§§3131–3133) of title XXXI of div. C of Pub. L. 101–189, see Short Title of 1989 Amendment note under section 3701 of this title] and section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a];

"(C) require that, except as provided in paragraph (2), no employee of the laboratory shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a cooperative research and development agreement if, to such employee's knowledge—

"(i) such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the laboratory) in which such employee serves as an officer, director, trustee, partner, or employee—

"(I) holds a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

"(II) receives a gift or gratuity from any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement; or

"(ii) a financial interest in any entity, other than the laboratory, that has a substantial interest in the preparation, negotiation, or approval of the cooperative research and development agreement, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment;

"(D) require that each employee of the laboratory who negotiates or approves a cooperative research and development agreement shall certify to the agency that the circumstances described in subparagraph (C)(i) and (ii) do not apply to such employee;

"(E) require the laboratory to widely disseminate information on opportunities to participate with the laboratory in technology transfer, including cooperative research and development agreements; and

"(F) provides for an accounting of all royalty or other income received under cooperative research and development agreements.

"(2) The requirements described in paragraph (1)(C) and (D) shall not apply in a case where the negotiating or approving employee advises the agency that reviewed the applicable joint work statement under section 12(c)(5)(C)(i) of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a(c)(5)(C)(i)] in advance of the matter in which he is to participate and the nature of any financial interest described in paragraph (1)(C), and where the agency employee determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the laboratory employee's service in that matter.

"(3) Not later than 180 days after the date of enactment of this Act [Nov. 29, 1989], each agency which has contracted with a non-Federal entity to operate a Government-owned laboratory shall submit a report to the Congress which includes a copy of each contract provision amended pursuant to this subsection.

"(4) No Government-owned, contractor-operated laboratory may enter into a cooperative research and development agreement under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3710a] unless—

"(A) that laboratory's operating contract contains the provisions described in paragraph (1)(A) through (F); or

"(B) such laboratory agrees in a separate writing to be bound by the provisions described in paragraph (1)(A) through (F).

"(5) Any contract for a Government-owned, contractor-operated laboratory entered into after the expiration of 150 days after the date of enactment of this Act [Nov. 29, 1989] shall contain the provisions described in paragraph (1)(A) through (F).

"(6) Contract provisions referred to in paragraph (1) shall include only such provisions as are necessary to carry out paragraphs (1) and (2) of this subsection."

[Pub. L. 101–510, div. A, title VIII, §828(b), Nov. 5, 1990, 104 Stat. 1607, provided that: "Paragraph (6) of 3133(d) of such Act [Pub. L. 101–189, set out above], as added by subsection (a), shall apply only to contracts entered into after the date of enactment of this Act [Nov. 5, 1990]."]

[1] See References in Text note below.

[2] So in original. Probably should be (ii).

§3710b. Rewards for scientific, engineering, and technical personnel of Federal agencies

The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

(1) inventions, innovations, computer software, or other outstanding scientific or technological contributions of value to the United States due to commercial application or due to contributions to missions of the Federal agency or the Federal government,[1] or

(2) exemplary activities that promote the domestic transfer of science and technology development within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.

(Pub. L. 96–480, §13, as added and renumbered §12, Pub. L. 99–502, §§6, 9(e)(1), Oct. 20, 1986,

100 Stat. 1792, 1797; renumbered §13, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; amended Pub. L. 100–519, title III, §302, Oct. 24, 1988, 102 Stat. 2597.)

EDITORIAL NOTES

AMENDMENTS

1988—Par. (1). Pub. L. 100–519 inserted "computer software," after "inventions, innovations,".

[1] *So in original. Probably should be capitalized.*

§3710c. Distribution of royalties received by Federal agencies

(a) In general

(1) Except as provided in paragraphs (2) and (4), any royalties or other payments received by a Federal agency from the licensing and assignment of inventions under agreements entered into by Federal laboratories under section 3710a of this title, and from the licensing of inventions of Federal laboratories under section 207 of title 35 or under any other provision of law, shall be retained by the laboratory which produced the invention and shall be disposed of as follows:

(A)(i) The head of the agency or laboratory, or such individual's designee, shall pay each year the first $2,000, and thereafter at least 15 percent, of the royalties or other payments, other than payments of patent costs as delineated by a license or assignment agreement, to the inventor or coinventors, if the inventor's or coinventor's rights are assigned to the United States.

(ii) An agency or laboratory may provide appropriate incentives, from royalties, or other payments, to laboratory employees who are not an inventor of such inventions but who substantially increased the technical value of such inventions.

(iii) The agency or laboratory shall retain the royalties and other payments received from an invention until the agency or laboratory makes payments to employees of a laboratory under clause (i) or (ii).

(B) The balance of the royalties or other payments shall be transferred by the agency to its laboratories, with the majority share of the royalties or other payments from any invention going to the laboratory where the invention occurred. The royalties or other payments so transferred to any laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the 2 succeeding fiscal years—

(i) to reward scientific, engineering, and technical employees of the laboratory, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications;

(ii) to further scientific exchange among the laboratories of the agency;

(iii) for education and training of employees consistent with the research and development missions and objectives of the agency or laboratory, and for other activities that increase the potential for transfer of the technology of the laboratories of the agency;

(iv) for payment of expenses incidental to the administration and licensing of intellectual property by the agency or laboratory with respect to inventions made at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for intellectual property management and licensing services; or

(v) for scientific research and development consistent with the research and development missions and objectives of the laboratory.

(C) All royalties or other payments retained by the agency or laboratory after payments have been made pursuant to subparagraphs (A) and (B) that is unobligated and unexpended at the end of the second fiscal year succeeding the fiscal year in which the royalties and other payments were received shall be paid into the Treasury.

(2) If, after payments to inventors under paragraph (1), the royalties or other payments received by an agency in any fiscal year exceed 5 percent of the budget of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated under paragraph (1)(B). Any funds not so used or obligated shall be paid into the Treasury of the United States.

(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory or agency. Payments made under this section shall not exceed $150,000 per year to any one person, unless the President approves a larger award (with the excess over $150,000 being treated as a Presidential award under section 4504 of title 5).

(4) A Federal agency receiving royalties or other payments as a result of invention management services performed for another Federal agency or laboratory under section 207 of title 35, may retain such royalties or payments to the extent required to offset payments to inventors under clause (i) of paragraph (1)(A), costs and expenses incurred under clause (iv) of paragraph (1)(B), and the cost of foreign patenting and maintenance for any invention of the other agency. All royalties and other payments remaining after offsetting the payments to inventors, costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with paragraph (1)(B).

(b) Certain assignments

If the invention involved was one assigned to the Federal agency—

(1) by a contractor, grantee, or participant, or an employee of a contractor, grantee, or participant, in an agreement or other arrangement with the agency, or

(2) by an employee of the agency who was not working in the laboratory at the time the invention was made,

the agency unit that was involved in such assignment shall be considered to be a laboratory for purposes of this section.

(c) Reports

The Comptroller General shall transmit a report to the appropriate committees of the Senate and House of Representatives on the effectiveness of Federal technology transfer programs, including findings, conclusions, and recommendations for improvements in such programs. The report shall be integrated with, and submitted at the same time as, the report required by section 202(b)(3) [1] of title 35.

(Pub. L. 96–480, §14, as added, renumbered §13, and amended Pub. L. 99–502, §§7, 9(e)(1), (3), Oct. 20, 1986, 100 Stat. 1792, 1797; renumbered §14 and amended Pub. L. 100–418, title V, §§5122(a)(1), 5162(a), Aug. 23, 1988, 102 Stat. 1438, 1450; Pub. L. 100–519, title III, §303(a), Oct. 24, 1988, 102 Stat. 2597; Pub. L. 101–189, div. C, title XXXI, §3133(c), Nov. 29, 1989, 103 Stat. 1677; Pub. L. 104–113, §5, Mar. 7, 1996, 110 Stat. 777; Pub. L. 106–404, §§7(7), 10(b), Nov. 1, 2000, 114 Stat. 1746, 1749.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 202(b)(3) of title 35, referred to in subsec. (c), was struck out and section 202(b)(4) was redesignated section 202(b)(3) by Pub. L. 111–8, div. G, title I, §1301(h), Mar. 11, 2009, 123 Stat. 829.

AMENDMENTS

2000—Subsec. (a)(1)(A)(i). Pub. L. 106–404, §7(7)(A), (B), inserted ", other than payments of patent costs as delineated by a license or assignment agreement," after "or other payments" and ", if the inventor's or coinventor's rights are assigned to the United States" before period at end.

Subsec. (a)(1)(B). Pub. L. 106–404, §7(7)(C), substituted "2 succeeding fiscal years" for "succeeding fiscal year" in introductory provisions.

Subsec. (a)(2). Pub. L. 106–404, §7(7)(D), struck out "Government-operated laboratories of the" before "agency for that year,".

Subsec. (b)(2). Pub. L. 106–404, §7(7)(E), substituted "invention" for "inventon".

Subsec. (c). Pub. L. 106–404, §10(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows:

"(1) In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.

"(2) The Comptroller General, five years after October 20, 1986, shall review the effectiveness of the various royalty-sharing programs established under this section and report to the appropriate committees of the House of Representatives and the Senate, in a timely manner, his findings, conclusions, and recommendations for improvements in such programs."

1996—Subsec. (a)(1). Pub. L. 104–113, §5(1), amended par. (1) generally, restructuring subpar. (A) to require head of agency or his designee to pay each year first $2,000, and thereafter at least 15 percent of royalties or other income received by agency on account of any invention to inventor or coinventors if they had assigned their rights in invention to United States and to authorize agencies to provide incentives to laboratory employees who substantially increase technical value of inventions, restructuring subpar. (B) to reorder cls. (i) to (iv), to add cl. (v), and to strike out closing provisions which required unobligated or unused funds to be paid into Treasury, and adding subpar. (C).

Subsec. (a)(2). Pub. L. 104–113, §5(2), in first sentence, inserted "or other payments" after "royalties" and substituted "under paragraph (1)(B)" for "for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year".

Subsec. (a)(3). Pub. L. 104–113, §5(3), substituted "$150,000" for "$100,000" in two places.

Subsec. (a)(4). Pub. L. 104–113, §5(4), in first sentence, substituted "other payments" for "other income", "such royalties or payments" for "such royalties or income", "offset payments to inventors" for "offset the payment of royalties to inventors", and "clause (iv) of paragraph (1)(B)" for "clause (i) of paragraph (1)(B)" and, in second sentence, substituted "other payments" for "other income", substituted "offsetting the payments to inventors" for "payment of the royalties", and struck out "clauses (i) through (iv) of" before "paragraph (1)(B)".

Subsec. (b)(1). Pub. L. 104–113, §5(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "by a contractor, grantee, or participant in a cooperative agreement with the agency, or".

1989—Subsec. (a)(1). Pub. L. 101–189, §3133(c)(1), in introductory provisions, inserted "by Government-operated Federal laboratories" after "entered into" and made technical amendment to reference to section 3710a of this title to correct reference to corresponding section of original Act, requiring no change in text.

Subsec. (a)(1)(B)(ii). Pub. L. 101–189, §3133(c)(2), inserted ", including payments to inventors and developers of sensitive or classified technology, regardless of whether the technology has commercial applications" after "that laboratory".

Subsec. (a)(1)(B)(iv). Pub. L. 101–189, §3133(c)(3), substituted "technology of the laboratories" for "technology of the Government-operated laboratories".

1988—Subsec. (a)(1)(A)(i). Pub. L. 100–519, §303(a)(1), substituted "has assigned his or her rights in the invention to the United States" for "was an employee of the agency at the time the invention was made".

Subsec. (a)(1)(A)(ii). Pub. L. 100–519, §303(a)(2), substituted "under clause (i)" for "who were employed by the agency at the time the invention was made and whose names appear on licensed inventions".

Subsec. (a)(4). Pub. L. 100–418, §5162(a), substituted "may" for "shall" and "any invention of the other agency" for "such invention performed at the request of the other agency or laboratory" in first sentence.

1986—Subsec. (a)(1). Pub. L. 99–502, §9(e)(3), in introductory par. made technical amendment to reference to section 3710a of this title to reflect renumbering of corresponding section of original act.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–519, title III, §303(b), Oct. 24, 1988, 102 Stat. 2597, provided that: "This section [amending this section] shall be effective as of October 20, 1986."

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

§3710d. Employee activities

(a) In general

If a Federal agency which has ownership of or the right of ownership to an invention made by a Federal employee does not intend to file for a patent application or otherwise to promote commercialization of such invention, the agency shall allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to obtain or retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely filing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

(b) "Special Government employees" defined

For purposes of this section, Federal employees include "special Government employees" as defined in section 202 of title 18.

(c) Relationship to other laws

Nothing in this section is intended to limit or diminish existing authorities of any agency.

(Pub. L. 96–480, §15, as added and renumbered §14, Pub. L. 99–502, §§8, 9(e)(1), Oct. 20, 1986, 100 Stat. 1794, 1797; renumbered §15, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; amended Pub. L. 104–113, §6, Mar. 7, 1996, 110 Stat. 779.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–113 substituted "ownership of or the right of ownership to an invention made by a Federal employee" for "the right of ownership to an invention under this chapter" and inserted "obtain or" before "retain title to the invention".

§3711. National Technology and Innovation Medal

(a) Establishment

There is hereby established a National Technology and Innovation Medal, which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommendations submitted by the Office of Science and Technology Policy, may prescribe.

(b) Award

The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) Presentation

The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

(Pub. L. 96–480, §16, formerly §12, Oct. 21, 1980, 94 Stat. 2319; renumbered §16, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §15, Pub. L. 99–502, §9(e)(1), Oct. 20, 1986, 100

Stat. 1797; renumbered §16, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; Pub. L. 110–69, title I, §1003, Aug. 9, 2007, 121 Stat. 576.)

EDITORIAL NOTES

AMENDMENTS

2007—Pub. L. 110–69, §1003(1), which directed substitution of "National Technology and Innovation Medal" for "National Medal" in section catchline, was executed by making the substitution for "National Technology Medal" to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 110–69, §1003(2), substituted "Technology and Innovation Medal" for "Technology Medal".

STATUTORY NOTES AND RELATED SUBSIDIARIES

NATIONAL TECHNOLOGY MEDAL FOR ENVIRONMENTAL TECHNOLOGY

Pub. L. 105–309, §10, Oct. 30, 1998, 112 Stat. 2939, provided that: "In the administration of section 16 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3711), Environmental Technology shall be established as a separate nomination category with appropriate unique criteria for that category."

§3711a. Malcolm Baldrige National Quality Award

(a) Establishment

There is hereby established the Malcolm Baldrige National Quality Award, which shall be evidenced by a medal bearing the inscriptions "Malcolm Baldrige National Quality Award" and "The Quest for Excellence". The medal shall be of such design and materials and bear such additional inscriptions as the Secretary may prescribe.

(b) Making and presentation of award

(1) The President (on the basis of recommendations received from the Secretary), or the Secretary, shall periodically make the award to companies and other organizations which in the judgment of the President or the Secretary have substantially benefited the economic or social well-being of the United States through improvements in the quality of their goods or services resulting from the effective practice of quality management, and which as a consequence are deserving of special recognition.

(2) The presentation of the award shall be made by the President or the Secretary with such ceremonies as the President or the Secretary may deem proper.

(3) An organization to which an award is made under this section, and which agrees to help other American organizations improve their quality management, may publicize its receipt of such award and use the award in its advertising, but it shall be ineligible to receive another such award in the same category for a period of 5 years.

(c) Categories in which award may be given

(1) Subject to paragraph (2), separate awards shall be made to qualifying organizations in each of the following categories—

(A) Small businesses.
(B) Companies or their subsidiaries.
(C) Companies which primarily provide services.
(D) Health care providers.
(E) Education providers.
(F) Nonprofit organizations.
(G) Community.

(2) The Secretary may at any time expand, subdivide, or otherwise modify the list of categories

within which awards may be made as initially in effect under paragraph (1), and may establish separate awards for other organizations including units of government, upon a determination that the objectives of this section would be better served thereby; except that any such expansion, subdivision, modification, or establishment shall not be effective unless and until the Secretary has submitted a detailed description thereof to the Congress and a period of 30 days has elapsed since that submission.

(3) In any year, not more than 18 awards may be made under this section to recipients who have not previously received an award under this section, and no award shall be made within any category described in paragraph (1) if there are no qualifying enterprises in that category.

(d) Criteria for qualification

(1) An organization may qualify for an award under this section only if it—

(A) applies to the Director of the National Institute of Standards and Technology in writing, for the award,

(B) permits a rigorous evaluation of the way in which its business and other operations have contributed to improvements in the quality of goods and services, and

(C) meets such requirements and specifications as the Secretary, after receiving recommendations from the Board of Overseers established under paragraph (2)(B) and the Director of the National Institute of Standards and Technology, determines to be appropriate to achieve the objectives of this section.

In applying the provisions of subparagraph (C) with respect to any organization, the Director of the National Institute of Standards and Technology shall rely upon an intensive evaluation by a competent board of examiners which shall review the evidence submitted by the organization and, through a site visit, verify the accuracy of the quality improvements claimed. The examination should encompass all aspects of the organization's current practice of quality management, as well as the organization's provision for quality management in its future goals. The award shall be given only to organizations which have made outstanding improvements in the quality of their goods or services (or both) and which demonstrate effective quality management through the training and involvement of all levels of personnel in quality improvement.

(2)(A) The Director of the National Institute of Standards and Technology shall, under appropriate contractual arrangements, carry out the Director's responsibilities under subparagraphs (A) and (B) of paragraph (1) through one or more broad-based nonprofit entities which are leaders in the field of quality management and which have a history of service to society.

(B) The Secretary shall appoint a board of overseers for the award, consisting of at least five persons selected for their preeminence in the field of quality management. This board shall meet annually to review the work of the contractor or contractors and make such suggestions for the improvement of the award process as they deem necessary. The board shall report the results of the award activities to the Director of the National Institute of Standards and Technology each year, along with its recommendations for improvement of the process.

(e) Information and technology transfer program

The Director of the National Institute of Standards and Technology shall ensure that all program participants receive the complete results of their audits as well as detailed explanations of all suggestions for improvements. The Director shall also provide information about the awards and the successful quality improvement strategies and programs of the award-winning participants to all participants and other appropriate groups.

(f) Funding

The Secretary is authorized to seek and accept gifts from public and private sources to carry out the program under this section. If additional sums are needed to cover the full cost of the program, the Secretary shall impose fees upon the organizations applying for the award in amounts sufficient to provide such additional sums. The Director is authorized to use appropriated funds to carry out responsibilities under this chapter.

(g) Report

The Secretary shall prepare and submit to the President and the Congress, within 3 years after August 20, 1987, a report on the progress, findings, and conclusions of activities conducted pursuant to this section along with recommendations for possible modifications thereof.

(Pub. L. 96–480, §17, formerly §16, as added Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §17 and amended Pub. L. 100–418, title V, §§5115(b)(2)(A), 5122(a)(1), Aug. 23, 1988, 102 Stat. 1433, 1438; Pub. L. 102–245, title III, §305, Feb. 14, 1992, 106 Stat. 20; Pub. L. 105–309, §3, Oct. 30, 1998, 112 Stat. 2935; Pub. L. 108–320, §1, Oct. 5, 2004, 118 Stat. 1213; Pub. L. 110–69, title III, §3010, Aug. 9, 2007, 121 Stat. 592; Pub. L. 117–167, div. B, title II, §10246(b)(1), Aug. 9, 2022, 136 Stat. 1492.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (c)(1)(D), (E). Pub. L. 117–167, §10246(b)(1)(A), realigned margin.

Subsec. (c)(1)(G). Pub. L. 117–167, §10246(b)(1)(B), added subpar. (G).

2007—Subsec. (c)(3). Pub. L. 110–69 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Not more than two awards may be made within any subcategory in any year, unless the Secretary determines that a third award is merited and can be given at no additional cost to the Federal Government (and no award shall be made within any category or subcategory if there are no qualifying enterprises in that category or subcategory)."

2004—Subsec. (c)(1)(F). Pub. L. 108–320 added subpar. (F).

1998—Subsec. (c)(1)(D), (E). Pub. L. 105–309, §3(b), added subpars. (D) and (E).

Subsec. (c)(3). Pub. L. 105–309, §3(a), inserted ", unless the Secretary determines that a third award is merited and can be given at no additional cost to the Federal Government" after "in any year".

1992—Subsec. (f). Pub. L. 102–245 inserted at end "The Director is authorized to use appropriated funds to carry out responsibilities under this chapter."

1988—Subsecs. (d), (e). Pub. L. 100–418, §5115(b)(2)(A), substituted "National Institute of Standards and Technology" for "National Bureau of Standards" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

FINDINGS AND PURPOSES

Pub. L. 100–107, §2, Aug. 20, 1987, 101 Stat. 724, provided that:

"(a) FINDINGS.—The Congress finds and declares that—

"(1) the leadership of the United States in product and process quality has been challenged strongly (and sometimes successfully) by foreign competition, and our Nation's productivity growth has improved less than our competitors over the last two decades;

"(2) American business and industry are beginning to understand that poor quality costs companies as much as 20 percent of sales revenues nationally, and that improved quality of goods and services goes hand in hand with improved productivity, lower costs, and increased profitability;

"(3) strategic planning for quality and quality improvement programs, through a commitment to excellence in manufacturing and services, are becoming more and more essential to the well-being of our Nation's economy and our ability to compete effectively in the global marketplace;

"(4) improved management understanding of the factory floor, worker involvement in quality, and greater emphasis on statistical process control can lead to dramatic improvements in the cost and quality of manufactured products;

"(5) the concept of quality improvement is directly applicable to small companies as well as large, to service industries as well as manufacturing, and to the public sector as well as private enterprise;

"(6) in order to be successful, quality improvement programs must be management-led and customer-oriented and this may require fundamental changes in the way companies and agencies do business;

"(7) several major industrial nations have successfully coupled rigorous private sector quality audits with national awards giving special recognition to those enterprises the audits identify as the very best; and

"(8) a national quality award program of this kind in the United States would help improve quality and

productivity by—

"(A) helping to stimulate American companies to improve quality and productivity for the pride of recognition while obtaining a competitive edge through increased profits,

"(B) recognizing the achievements of those companies which improve the quality of their goods and services and providing an example to others,

"(C) establishing guidelines and criteria that can be used by business, industrial, governmental, and other organizations in evaluating their own quality improvement efforts, and

"(D) providing specific guidance for other American organizations that wish to learn how to manage for high quality by making available detailed information on how winning organizations were able to change their cultures and achieve eminence.

"(b) PURPOSE.—It is the purpose of this Act [enacting this section, amending section 3708 of this title, and enacting provisions set out as a note under section 3701 of this title] to provide for the establishment and conduct of a national quality improvement program under which (1) awards are given to selected companies and other organizations in the United States that practice effective quality management and as a result make significant improvements in the quality of their goods and services, and (2) information is disseminated about the successful strategies and programs."

§3711b. Conference on advanced automotive technologies

Not later than 180 days after December 18, 1991, the Secretary of Commerce, through the Under Secretary of Commerce for Technology, in consultation with other appropriate officials, shall convene a conference of domestic motor vehicle manufacturers, parts suppliers, Federal laboratories, and motor vehicle users to explore ways in which cooperatively they can improve the competitiveness of the United States motor vehicle industry by developing new technologies which will enhance the safety and energy savings, and lessen the environmental impact of domestic motor vehicles, and the results of such conference shall be published and then submitted to the President and to the Committees on Science, Space, and Technology and Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(Pub. L. 96–480, §18, as added Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2.

§3711c. Advanced motor vehicle research award

(a) Establishment

There is established a National Award for the Advancement of Motor Vehicle Research and Development. The award shall consist of a medal, and a cash prize if funding is available for the prize under subsection (c). The medal shall be of such design and materials and bear inscriptions as is determined by the Secretary of Transportation.

(b) Making and presenting award

The Secretary of Transportation shall periodically make and present the award to domestic motor vehicle manufacturers, suppliers, or Federal laboratory personnel who, in the opinion of the Secretary of Transportation, have substantially improved domestic motor vehicle research and development in safety, energy savings, or environmental impact. No person may receive the award more than once every 5 years.

(c) Funding for award

The Secretary of Transportation may seek and accept gifts of money from private sources for the purpose of making cash prize awards under this section. Such money may be used only for that purpose, and only such money may be used for that purpose.

(Pub. L. 96–480, §19, as added Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2184.)

§3712. Personnel exchanges

The Secretary, the Secretary of Energy, and the Director of the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

(Pub. L. 96–480, §20, formerly §13, Oct. 21, 1980, 94 Stat. 2320; renumbered §17, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §16, Pub. L. 99–502, §9(e)(1), Oct. 20, 1986, 100 Stat. 1797; renumbered §17, Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §18, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; renumbered §20, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 109–58, title X, §1009(c), Aug. 8, 2005, 119 Stat. 936.)

EDITORIAL NOTES

AMENDMENTS

2005—Pub. L. 109–58 substituted ", the Secretary of Energy, and the Director of the National Science Foundation" for "and the National Science Foundation".

§3713. Authorization of appropriations

(a)(1) There is authorized to be appropriated to the Secretary for the purposes of carrying out sections 3710(g) and 3711 of this title not to exceed $3,400,000 for the fiscal year ending September 30, 1988.

(2) Of the amount authorized under paragraph (1) of this subsection, $2,400,000 is authorized only for the Office of Productivity, Technology, and Innovation; and $500,000 is authorized only for the patent licensing activities of the National Technical Information Service.

(b) In addition to the authorization of appropriations provided under subsection (a) of this section, there is authorized to be appropriated to the Secretary for the purposes of carrying out section 3704a of this title not to exceed $500,000 for the fiscal year ending September 30, 1988, $1,000,000 for the fiscal year ending September 30, 1989, and $1,500,000 for the fiscal year ending September 30, 1990.

(c) Such sums as may be appropriated under subsections (a) and (b) shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this chapter only such sums may be appropriated as the Congress may authorize by law.

(Pub. L. 96–480, §21, formerly §14, Oct. 21, 1980, 94 Stat. 2320; renumbered §18, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §17, Pub. L. 99–502, §9(e)(1), Oct. 20, 1986, 100 Stat. 1797; renumbered §18, Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §19 and amended Pub. L. 100–418, title V, §§5122(a)(1), 5152, Aug. 23, 1988, 102 Stat. 1438, 1449; renumbered §21, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 110–69, title III, §3002(c)(5), Aug. 9, 2007, 121 Stat. 586.)

EDITORIAL NOTES

AMENDMENTS

2007—Subsec. (a)(1). Pub. L. 110–69, §3002(c)(5)(A), substituted "sections 3710(g) and 3711" for "sections 3704, 3710(g), and 3711".

Subsec. (a)(2). Pub. L. 110–69, §3002(c)(5)(B), struck out "$500,000 is authorized only for the purpose of carrying out the requirements of the Japanese technical literature program established under section 3704(d) of this title;" after "Innovation;".

1988—Subsec. (a). Pub. L. 100–418, §5152, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "There is authorized to be appropriated to the Secretary for purposes of carrying out section 3705 of this title, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985."

Subsec. (b). Pub. L. 100–418, §5152, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "In addition to authorizations of appropriations under subsection (a) of this section, there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this chapter, not to exceed $5,000,000 for the fiscal year ending September 30, 1981, $9,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985."

§3714. Spending authority

No payments shall be made or contracts shall be entered into pursuant to the provisions of this chapter (other than sections 3710a, 3710b, and 3710c of this title) except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 96–480, §22, formerly §15, Oct. 21, 1980, 94 Stat. 2320; renumbered §19, Pub. L. 99–502, §2, Oct. 20, 1986, 100 Stat. 1785; renumbered §18, and amended Pub. L. 99–502, §9(b)(13), (e)(1), (4), Oct. 20, 1986, 100 Stat. 1796, 1797; renumbered §19, Pub. L. 100–107, §3(a), Aug. 20, 1987, 101 Stat. 725; renumbered §20, Pub. L. 100–418, title V, §5122(a)(1), Aug. 23, 1988, 102 Stat. 1438; renumbered §22, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 106–404, §7(8), Nov. 1, 2000, 114 Stat. 1746.)

EDITORIAL NOTES

AMENDMENTS

2000—Pub. L. 106–404 made technical amendments to references in original act which appear in text as references to sections 3710a, 3710b, and 3710c of this title.

1986—Pub. L. 99–502, §9(e)(4), made technical amendment to references to sections 3710a, 3710b, and 3710c of this title to reflect renumbering of corresponding sections of original act.

Pub. L. 99–502, §9(b)(13), inserted exception relating to sections 3710a, 3710b, and 3710c of this title.

§3715. Use of partnership intermediaries

(a) Authority

Subject to the approval of the Secretary or head of the affected department or agency, the Director of a Federal laboratory, or in the case of a federally funded research and development center that is not a laboratory (as defined in section 3710a(d)(2) of this title), the Federal employee who is the contract officer, may—

(1) enter into a contract or memorandum of understanding with a partnership intermediary that provides for the partnership intermediary to perform services for the Federal laboratory that increase the likelihood of success in the conduct of cooperative or joint activities of such Federal laboratory with small business firms, institutions of higher education as defined in section 1141(a) [1] of title 20, or educational institutions within the meaning of section 2194 of title 10; and

(2) pay the Federal costs of such contract or memorandum of understanding out of funds available for the support of the technology transfer function pursuant to section 3710(b) of this title.

(b) Omitted

(c) "Partnership intermediary" defined

For purposes of this section, the term "partnership intermediary" means an agency of a State or local government, or a nonprofit entity owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government, that assists, counsels, advises, evaluates, or otherwise cooperates with small business firms, institutions of higher education as defined in section 1141(a) [1] of title 20, or educational institutions within the meaning of section 2194 of title 10, that need or can make demonstrably productive use of technology-related assistance from a Federal laboratory, including State programs receiving funds under cooperative agreements entered into under section 5121(b) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 278l note).

(Pub. L. 96–480, §23, formerly §21, as added Pub. L. 101–510, div. A, title VIII, §827(a), Nov. 5, 1990, 104 Stat. 1606; amended Pub. L. 102–190, div. A, title VIII, §836, Dec. 5, 1991, 105 Stat. 1448; renumbered §23, Pub. L. 102–240, title VI, §6019, Dec. 18, 1991, 105 Stat. 2183; Pub. L. 106–404, §9, Nov. 1, 2000, 114 Stat. 1747.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1141(a) of title 20, referred to in subsecs. (a)(1) and (c), was repealed by Pub. L. 105–244, §3, title I, §101(b), title VII, §702, Oct. 7, 1998, 112 Stat. 1585, 1616, 1803, effective Oct. 1, 1998. However, the term "institution of higher education" is defined in section 1001 of Title 20, Education.

CODIFICATION

Subsec. (b) of this section, which required the Secretary to include in each triennial report required under section 3704d of this title a discussion and evaluation of activities carried out pursuant to this section, was omitted because of the termination of the triennial reporting requirement. See Codification note set out after section 3704a of this title.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–404, §9(1), inserted ", institutions of higher education as defined in section 1141(a) of title 20, or educational institutions within the meaning of section 2194 of title 10" after "small business firms".

Subsec. (c). Pub. L. 106–404, §9(2), inserted ", institutions of higher education as defined in section 1141(a) of title 20, or educational institutions within the meaning of section 2194 of title 10," after "small business firms".

1991—Subsec. (a). Pub. L. 102–190 inserted "that is not a laboratory (as defined in section 3710a(d)(2) of this title)" after "center" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

PARTICIPATION IN PROGRAMS PROMOTING RESEARCH, DEVELOPMENT, DEMONSTRATION, OR TRANSFER OF TECHNOLOGY

Pub. L. 103–337, div. A, title II, §217(f), Oct. 5, 1994, 108 Stat. 2695, as amended by Pub. L. 105–261, div. C, title XXXI, §3136, Oct. 17, 1998, 112 Stat. 2248; Pub. L. 111–84, div. A, title II, §254, Oct. 28, 2009, 123 Stat. 2243, provided that:

"(1)(A) A federally funded research and development center of the Department of Defense, of the National Aeronautics and Space Administration, or of the Department of Energy that functions primarily as a research laboratory may respond to solicitations and announcements under programs authorized by the Federal Government for the purpose of promoting the research, development, demonstration, or transfer of technology in a manner consistent with the terms and conditions of such program.

"(B) A federally funded research and development center of the Department of Energy described in subparagraph (A) may respond to solicitations and announcements described in that subparagraph only for activities conducted by the center under contract with or on behalf of the Department of Defense.

"(C) A federally funded research and development center of the National Aeronautics and Space Administration that functions primarily as a research laboratory may respond to broad agency announcements under programs authorized by the Federal Government for the purpose of promoting the research, development, demonstration, or transfer of technology in a manner consistent with the terms and conditions of such program.

"(2) A federally funded research and development center described in paragraph (1)(A) that responds to a solicitation or announcement described in such paragraph shall not be considered to be engaging in a competitive procedure and may use, among other authorities, cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)) [sic] as the instruments of participation in the solicitation or announcement."

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

§3716. Critical industries

(a) Identification of industries and development of plan

The Secretary shall—

(1) identify those civilian industries in the United States that are necessary to support a robust manufacturing infrastructure and critical to the economic security of the United States; and

(2) list the major research and development initiatives being undertaken, and the substantial investments being made, by the Federal Government, including its research laboratories, in each of the critical industries identified under paragraph (1).

(b) Initial report

The Secretary shall submit a report to the Congress within 1 year after February 14, 1992, on the actions taken under subsection (a).

(Pub. L. 102–245, title V, §504, Feb. 14, 1992, 106 Stat. 24.)

EDITORIAL NOTES

CODIFICATION

Subsec. (c) of this section, which required the Secretary to annually submit to Congress an update of the report submitted under subsec. (b) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 52 of House Document No. 103–7.

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

§3717. National Quality Council

(a) Establishment and functions

There is established a National Quality Council (hereafter in this section referred to as the "Council"). The functions of the Council shall be—

(1) to establish national goals and priorities for Quality performance in business, education, government, and all other sectors of the Nation;

(2) to encourage and support the voluntary adoption of these goals and priorities by companies, unions, professional and business associations, coalition groups, and units of government, as well as private and nonprofit organizations;

(3) to arouse and maintain the interest of the people of the United States in Quality performance, and to encourage the adoption and institution of Quality performance methods by all corporations, government agencies, and other organizations; and

(4) to conduct a White House Conference on Quality Performance in the American Workplace

that would bring together in a single forum national leaders in business, labor, education, professional societies, the media, government, and politics to address Quality performance as a means of improving United States competitiveness.

(b) Membership

The Council shall consist of not less than 17 or more than 20 members, appointed by the Secretary. Members shall include—

(1) at least 2 but not more than 3 representatives from manufacturing industry;

(2) at least 2 but not more than 3 representatives from service industry;

(3) at least 2 but not more than 3 representatives from national Quality not-for-profit organizations;

(4) two representatives from education, one with expertise in elementary and secondary education, and one with expertise in post-secondary education;

(5) one representative from labor;

(6) one representative from professional societies;

(7) one representative each from local and State government;

(8) one representative from the Federal Quality Institute;

(9) one representative from the National Institute of Standards and Technology;

(10) one representative from the Department of Defense;

(11) one representative from a civilian Federal agency not otherwise represented on the Council, to be rotated among such agencies every 2 years; and

(12) one representative from the Foundation for the Malcolm Baldrige National Quality Award.

(c) Terms

The term of office of each member of the Council appointed under paragraphs (1) through (7) of subsection (b) shall be 2 years, except that when making the initial appointments under such paragraphs; the Secretary shall appoint not more than 50 percent of the members to 1 year terms. No member appointed under such paragraphs shall serve on the Council for more than 2 consecutive terms.

(d) Chairman and Vice Chairman

The Secretary shall designate one of the members initially appointed to the Council as Chairman. Thereafter, the members of the Council shall annually elect one of their number as Chairman. The members of the Council shall also annually elect one of their members as Vice Chairman. No individual shall serve as Chairman or Vice Chairman for more than 2 consecutive years.

(e) Executive Director and employees

The Council shall appoint and fix the compensation of an Executive Director, who shall hire and fix the compensation of such additional employees as may be necessary to assist the Council in carrying out its functions. In hiring such additional employees, the Executive Director shall ensure that no individual hired has a conflict of interest with the responsibilities of the Council.

(f) Funding

There is established in the Treasury of the United States a National Quality Performance Trust Fund, into which all funds received by the Council, through private donations or otherwise, shall be deposited. Amounts in such Trust Fund shall be available to the Council, to the extent provided in advance in appropriations Acts, for the purpose of carrying out the functions of the Council under this Act.

(g) Contributions

The Council may not accept private donations from a single source in excess of $25,000 per year. Private donations from a single source in excess of $10,000 per year may be accepted by the Council only on approval of two-thirds of the Council.

(h) Annual report

The Council shall annually submit to the President and the Congress a comprehensive and detailed

report on—

(1) the progress in meeting the goals and priorities established by the Council;

(2) the Council's operations, activities, and financial condition;

(3) contributions to the Council from non-Federal sources;

(4) plans for the Council's operations and activities for the future; and

(5) any other information or recommendations the Council considers appropriate.

(Pub. L. 102–245, title V, §507, Feb. 14, 1992, 106 Stat. 27.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (f), is Pub. L. 102–245, Feb. 14, 1992, 106 Stat. 7, known as the American Technology Preeminence Act of 1991. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 3701 of this title and Tables.

CODIFICATION

Section was enacted as part of the American Technology Preeminence Act of 1991, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to annually submitting a report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 184 of House Document No. 103–7.

§3718. President's Council on Innovation and Competitiveness

(a) In general

The President shall establish a President's Council on Innovation and Competitiveness.

(b) Duties

The duties of the Council shall include—

(1) monitoring implementation of public laws and initiatives for promoting innovation, including policies related to research funding, taxation, immigration, trade, and education that are proposed in this Act or in any other Act;

(2) providing advice to the President with respect to global trends in competitiveness and innovation and allocation of Federal resources in education, job training, and technology research and development considering such global trends in competitiveness and innovation;

(3) in consultation with the Director of the Office of Management and Budget, developing a process for using metrics to assess the impact of existing and proposed policies and rules that affect innovation capabilities in the United States;

(4) identifying opportunities and making recommendations for the heads of executive agencies to improve innovation, monitoring, and reporting on the implementation of such recommendations;

(5) developing metrics for measuring the progress of the Federal Government with respect to improving conditions for innovation, including through talent development, investment, and infrastructure improvements; and

(6) submitting to the President and Congress an annual report on such progress.

(c) Membership and coordination

(1) Membership

The Council shall be composed of the Secretary or head of each of the following:

(A) The Department of Commerce.
(B) The Department of Defense.
(C) The Department of Education.
(D) The Department of Energy.
(E) The Department of Health and Human Services.
(F) The Department of Homeland Security.
(G) The Department of Labor.
(H) The Department of the Treasury.
(I) The National Aeronautics and Space Administration.
(J) The Securities and Exchange Commission.
(K) The National Science Foundation.
(L) The Office of the United States Trade Representative.
(M) The Office of Management and Budget.
(N) The Office of Science and Technology Policy.
(O) The Environmental Protection Agency.
(P) The Small Business Administration.
(Q) Any other department or agency designated by the President.

(2) Chairperson

The Secretary of Commerce shall serve as Chairperson of the Council.

(3) Coordination

The Chairperson of the Council shall ensure appropriate coordination between the Council and the National Economic Council, the National Security Council, and the National Science and Technology Council.

(4) Meetings

The Council shall meet on a semi-annual basis at the call of the Chairperson and the initial meeting of the Council shall occur not later than 6 months after August 9, 2007.

(d) Development of innovation agenda

(1) In general

The Council shall develop a comprehensive agenda for strengthening the innovation and competitiveness capabilities of the Federal Government, State governments, academia, and the private sector in the United States.

(2) Contents

The comprehensive agenda required by paragraph (1) shall include the following:

(A) An assessment of current strengths and weaknesses of the United States investment in research and development.

(B) Recommendations for addressing weaknesses and maintaining the United States as a world leader in research and development and technological innovation, including strategies for increasing the participation of individuals identified in section 1885a or 1885b of title 42 in science, technology, engineering, and mathematics fields.

(C) Recommendations for strengthening the innovation and competitiveness capabilities of the Federal Government, State governments, academia, and the private sector in the United States.

(3) Advisors

(A) Recommendation

Not later than 30 days after August 9, 2007, the National Academy of Sciences, in consultation with the National Academy of Engineering, the Institute of Medicine, and the National Research Council, shall develop and submit to the President a list of 50 individuals

that are recommended to serve as advisors to the Council during the development of the comprehensive agenda required by paragraph (1). The list of advisors shall include appropriate representatives from the following:

(i) The private sector of the economy.

(ii) Labor.

(iii) Various fields including information technology, energy, engineering, high-technology manufacturing, health care, and education.

(iv) Scientific organizations.

(v) Academic organizations and other nongovernmental organizations working in the area of science or technology.

(vi) Nongovernmental organizations, such as professional organizations, that represent individuals identified in section 1885a or 1885b of title 42 in the areas of science, engineering, technology, and mathematics.

(B) Designation

Not later than 30 days after the date that the National Academy of Sciences submits the list of recommended individuals to serve as advisors, the President shall designate 50 individuals to serve as advisors to the Council.

(C) Requirement to consult

The Council shall develop the comprehensive agenda required by paragraph (1) in consultation with the advisors.

(4) Initial submission and updates

(A) Initial submission

Not later than 1 year after August 9, 2007, the Council shall submit to Congress and the President the comprehensive agenda required by paragraph (1).

(B) Updates

At least once every 2 years, the Council shall update the comprehensive agenda required by paragraph (1) and submit each such update to Congress and the President.

(e) Optional assignment

Notwithstanding subsection (a) and paragraphs (1) and (2) of subsection (c), the President may designate an existing council to carry out the requirements of this section.

(Pub. L. 110–69, title I, §1006, Aug. 9, 2007, 121 Stat. 578.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act, also known as the America COMPETES Act, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

EXECUTIVE DOCUMENTS

DESIGNATION OF THE COMMITTEE ON TECHNOLOGY OF THE NATIONAL SCIENCE AND TECHNOLOGY COUNCIL TO CARRY OUT CERTAIN REQUIREMENTS OF THE AMERICA COMPETES ACT

Memorandum of the President of the United States, Apr. 10, 2008, 73 F.R. 20523, provided:

Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including section 1006(e) of the America COMPETES Act (Public Law 110–69)

(the "Act"), I hereby designate the Committee on Technology of the National Science and Technology Council to carry out the responsibilities assigned to the Council on Innovation and Competitiveness in section 1006 of the Act.

The Director of the Office of Science and Technology Policy is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§3719. Prize competitions

(a) Definitions

In this section:

(1) Agency

The term "agency" means a Federal agency.

(2) Director

The term "Director" means the Director of the Office of Science and Technology Policy.

(3) Federal agency

The term "Federal agency" has the meaning given under section 3703 of this title, except that term shall not include any agency of the legislative branch of the Federal Government.

(4) Head of an agency

The term "head of an agency" means the head of a Federal agency.

(b) In general

Each head of an agency, or the heads of multiple agencies in cooperation, may carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the respective agency.

(c) Prize competitions

For purposes of this section, a prize competition may be 1 or more of the following types of activities:

(1) A point solution prize that rewards and spurs the development of solutions for a particular, well-defined problem.

(2) An exposition prize competition that helps identify and promote a broad range of ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties.

(3) Participation prize competitions that create value during and after the competition by encouraging contestants to change their behavior or develop new skills that may have beneficial effects during and after the competition.

(4) Such other types of prize competitions as each head of an agency considers appropriate to stimulate innovation that has the potential to advance the mission of the respective agency.

(d) Topics

In selecting topics for prize competitions, the head of an agency shall consult widely both within and outside the Federal Government, and may empanel advisory committees.

(e) Advertising

The head of an agency shall widely advertise each prize competition to encourage broad participation.

(f) Requirements and registration

For each prize competition, the head of an agency shall publish a notice on a publicly accessible Government website, such as www.challenge.gov, announcing—

(1) the subject of the prize competition;

(2) the rules for being eligible to participate in the prize competition;
(3) the process for participants to register for the prize competition;
(4) the amount of the cash prize purse or non-cash prize award; and
(5) the basis on which a winner will be selected.

(g) Eligibility

To be eligible to win a cash prize purse under this section, an individual or entity—

(1) shall have registered to participate in the prize competition under any rules promulgated by the head of an agency under subsection (f);

(2) shall have complied with all the requirements under this section;

(3) in the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) may not be a Federal entity or Federal employee acting within the scope of their employment.

(h) Consultation with Federal employees

An individual or entity shall not be deemed ineligible under subsection (g) because the individual or entity used Federal facilities or consulted with Federal employees during a prize competition if the facilities and employees are made available to all individuals and entities participating in the prize competition on an equitable basis.

(i) Liability

(1) In general

(A) Definition

In this paragraph, the term "related entity" means a contractor or subcontractor at any tier, and a supplier, user, customer, cooperating party, grantee, investigator, or detailee.

(B) Liability

Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a prize competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

(2) Insurance

Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of an agency, for claims by—

(A) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a prize competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to prize competition activities; and

(B) the Federal Government for damage or loss to Government property resulting from such an activity.

(3) Waivers

(A) In general

An agency may waive the requirement under paragraph (2).

(B) List

The Director shall include a list of all of the waivers granted under this paragraph during the preceding fiscal year, including a detailed explanation of the reason for granting the waiver.

(4) Exception

The head of an agency may not require a participant to waive claims against the administering entity arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential business information of the participant.

(j) Intellectual property

(1) Prohibition on the government acquiring intellectual property rights

The Federal Government may not gain an interest in intellectual property developed by a participant in a prize competition without the written consent of the participant.

(2) Licenses

As appropriate and to further the goals of a prize competition, the Federal Government may negotiate a license for the use of intellectual property developed by a registered participant in a prize competition.

(k) Judges

(1) In general

For each prize competition, the head of an agency, either directly or through an agreement under subsection (l), shall appoint one or more qualified judges to select the winner or winners of the prize competition on the basis described under subsection (f). Judges for each prize competition may include individuals from outside the agency, including from the private sector.

(2) Restrictions

A judge may not—

(A) have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a prize competition; or

(B) have a familial or financial relationship with an individual who is a registered participant.

(3) Guidelines

The heads of agencies who carry out prize competitions under this section shall develop guidelines to ensure that the judges appointed for such prize competitions are fairly balanced and operate in a transparent manner.

(4) Exemption from chapter 10 of title 5

Chapter 10 of title 5 shall not apply to any committee, board, commission, panel, task force, or similar entity, created solely for the purpose of judging prize competitions under this section.

(l) Administering the competition

The head of an agency may enter into a grant, contract, cooperative agreement, or other agreement with a private sector for-profit or nonprofit entity or State or local government agency to administer the prize competition, subject to the provisions of this section.

(m) Funding

(1) In general

Support for a prize competition under this section, including financial support for the design and administration of a prize competition or funds for a cash prize purse, may consist of Federal appropriated funds and funds provided by private sector for-profit and nonprofit entities. The head of an agency may request and accept funds from other Federal agencies, State, United States territory, local, or tribal government agencies, private sector for-profit entities, and nonprofit entities, to be available to the extent provided by appropriations Acts, to support such prize competitions. The head of an agency may not give any special consideration to any agency or entity in return for a donation.

(2) Availability of funds

Notwithstanding any other provision of law, funds appropriated for cash prize purses or non-cash prize awards under this section shall remain available until expended. No provision in this section permits obligation or payment of funds in violation of section 1341 of title 31.

(3) Amount of prize

(A) Announcement

No prize competition may be announced under subsection (f) until all the funds needed to pay out the announced amount of the cash prize purse have been appropriated or committed in writing by a private or State, United States territory, local, or tribal government source.

(B) Increase in amount

The head of an agency may increase the amount of a cash prize purse or non-cash prize award after an initial announcement is made under subsection (f) only if—

(i) notice of the increase is provided in the same manner as the initial notice of the prize competition; and

(ii) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private or State, United States territory, local, or tribal government source.

(4) Limitation on amount

(A) Notice to Congress

No prize competition under this section may offer a cash prize purse or a non-cash prize award in an amount greater than $50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(B) Approval of head of agency

No prize competition under this section may result in the award of more than $1,000,000 in cash prize purses or non-cash prize awards without the approval of the head of an agency.

(n) General Services Administration assistance

Not later than 180 days after January 6, 2017, the General Services Administration shall provide government wide services to share best practices and assist agencies in developing guidelines for issuing prize competitions. The General Services Administration shall develop a contract vehicle for both for-profit and nonprofit entities and State, United States territory, local, and tribal government entities, to provide agencies access to relevant products and services, including technical assistance in structuring and conducting prize competitions to take maximum benefit of the marketplace as they identify and pursue prize competitions to further the policy objectives of the Federal Government.

(o) Compliance with existing law

(1) In general

The Federal Government shall not, by virtue of offering a prize competition or providing a cash prize purse or non-cash prize award under this section, be responsible for compliance by registered participants in a prize competition with Federal law, including licensing, export control, and nonproliferation laws, and related regulations.

(2) Other prize authority

Nothing in this section affects the prize authority authorized by any other provision of law.

(p) Biennial report

(1) In general

Not later than March 1 of every other year, the Director shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on the activities carried out during the preceding 2 fiscal years under the authority in subsection (b).

(2) Information included

A report under this subsection shall include, for each prize competition under subsection (b), the

following:

(A) Proposed goals

A description of the proposed goals of each prize competition.

(B) Preferable method

An analysis of why the utilization of the authority in subsection (b) was the preferable method of achieving the goals described in subparagraph (A) as opposed to other authorities available to the agency, such as contracts, grants, and cooperative agreements.

(C) Amount of cash prize purses or non-cash prize awards

The total amount of cash prize purses or non-cash prize awards awarded for each prize competition, including a description of amount of private funds contributed to the program, the sources of such funds, and the manner in which the amounts of cash prize purses or non-cash prize awards awarded and claimed were allocated among the accounts of the agency for recording as obligations and expenditures.

(D) Solicitations and evaluation of submissions

The methods used for the solicitation and evaluation of submissions under each prize competition, together with an assessment of the effectiveness of such methods and lessons learned for future prize competitions.

(E) Resources

A description of the resources, including personnel and funding, used in the execution of each prize competition together with a detailed description of the activities for which such resources were used and an accounting of how funding for execution was allocated among the accounts of the agency for recording as obligations and expenditures.

(F) Results

A description of how each prize competition advanced the mission of the agency concerned.

(G) Plan

A description of crosscutting topical areas and agency-specific mission needs that may be the strongest opportunities for prize competitions during the upcoming 2 fiscal years.

(Pub. L. 96–480, §24, as added Pub. L. 111–358, title I, §105(a), Jan. 4, 2011, 124 Stat. 3989; amended Pub. L. 114–329, title IV, §401(b), Jan. 6, 2017, 130 Stat. 3016; Pub. L. 117–286, §4(a)(71), Dec. 27, 2022, 136 Stat. 4313.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (k)(4). Pub. L. 117–286 substituted "chapter 10 of title 5" for "FACA" in heading and "Chapter 10 of title 5" for "The Federal Advisory Committee Act (5 U.S.C. App.)" in text.

2017—Subsec. (c). Pub. L. 114–329, §401(b)(1)(A), (B), substituted "Prize competitions" for "Prizes" in heading and "prize competition may be 1 or more of the following types of activities" for "prize may be one or more of the following" in introductory provisions.

Subsec. (c)(2). Pub. L. 114–329, §401(b)(1)(C), inserted "competition" after "prize".

Subsec. (c)(3), (4). Pub. L. 114–329, §401(b)(1)(D), substituted "prize competitions" for "prizes".

Subsec. (f). Pub. L. 114–329, §401(b)(2)(A), substituted "on a publicly accessible Government website, such as www.challenge.gov," for "in the Federal Register" in introductory provisions.

Subsec. (f)(1) to (3). Pub. L. 114–329, §401(b)(2)(B), inserted "prize" before "competition".

Subsec. (f)(4). Pub. L. 114–329, §401(b)(2)(C), substituted "cash prize purse or non-cash prize award" for "prize".

Subsec. (g). Pub. L. 114–329, §401(b)(3)(A), substituted "cash prize purse" for "prize" in introductory provisions.

Subsec. (g)(1). Pub. L. 114–329, §401(b)(3)(B), inserted "prize" before "competition".

Subsec. (h). Pub. L. 114–329, §401(b)(4), inserted "prize" before "competition" in two places.

Subsec. (i)(1)(B). Pub. L. 114–329, §401(b)(5)(A), inserted "prize" before "competition".

Subsec. (i)(2)(A). Pub. L. 114–329, §401(b)(5)(B), inserted "prize" before "competition" in two places.

Subsec. (i)(3), (4). Pub. L. 114–329, §401(b)(5)(C), (D), added par. (3) and redesignated former par. (3) as (4).

Subsec. (j)(1). Pub. L. 114–329, §401(b)(6)(A), inserted "prize" before "competition".

Subsec. (j)(2). Pub. L. 114–329, §401(b)(6)(B), amended par. (2) generally. Prior to amendment, text read as follows: "The Federal Government may negotiate a license for the use of intellectual property developed by a participant for a competition."

Subsec. (k)(1). Pub. L. 114–329, §401(b)(7)(A), substituted "each prize competition" for "each competition" in two places.

Subsec. (k)(2)(A). Pub. L. 114–329, §401(b)(7)(B), inserted "prize" before "competition".

Subsec. (k)(3). Pub. L. 114–329, §401(b)(7)(C), inserted "prize" before "competitions" in two places.

Subsec. (l). Pub. L. 114–329, §401(b)(8), substituted "a grant, contract, cooperative agreement, or other agreement with a private sector for-profit or nonprofit entity or State or local government agency to administer the prize competition, subject to the provisions of this section." for "an agreement with a private, nonprofit entity to administer a prize competition, subject to the provisions of this section."

Subsec. (m)(1). Pub. L. 114–329, §401(b)(9)(A), amended par. (1) generally. Prior to amendment, text read as follows: "Support for a prize competition under this section, including financial support for the design and administration of a prize or funds for a monetary prize purse, may consist of Federal appropriated funds and funds provided by the private sector for such cash prizes. The head of an agency may accept funds from other Federal agencies to support such competitions. The head of an agency may not give any special consideration to any private sector entity in return for a donation."

Subsec. (m)(2). Pub. L. 114–329, §401(b)(9)(B), substituted "cash prize purses or non-cash prize awards" for "prize awards".

Subsec. (m)(3)(A). Pub. L. 114–329, §401(b)(9)(C)(i), amended subpar. (A) generally. Prior to amendment, text read as follows: "No prize may be announced under subsection (f) until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source."

Subsec. (m)(3)(B). Pub. L. 114–329, §401(b)(9)(C)(ii)(I), substituted "a cash prize purse or non-cash prize award" for "a prize" in introductory provisions.

Subsec. (m)(3)(B)(i). Pub. L. 114–329, §401(b)(9)(C)(ii)(II), inserted "competition" after "prize".

Subsec. (m)(3)(B)(ii). Pub. L. 114–329, §401(b)(9)(C)(ii)(III), inserted "or State, United States territory, local, or tribal government" after "private".

Subsec. (m)(4)(A). Pub. L. 114–329, §401(b)(9)(D)(i), substituted "a cash prize purse or a non-cash prize award" for "a prize" and "Science, Space, and Technology" for "Science and Technology".

Subsec. (m)(4)(B). Pub. L. 114–329, §401(b)(9)(D)(ii), substituted "cash prize purses or non-cash prize awards" for "cash prizes".

Subsec. (n). Pub. L. 114–329, §401(b)(10), in heading, substituted "Services" for "Service" and, in text, substituted "January 6, 2017," for "January 4, 2011," and inserted "for both for-profit and nonprofit entities and State, United States territory, local, and tribal government entities," after "contract vehicle".

Subsec. (o)(1). Pub. L. 114–329, §401(b)(11), substituted "a prize competition or providing a cash prize purse or non-cash prize award" for "or providing a prize".

Subsec. (p). Pub. L. 114–329, §401(b)(12)(A), substituted "Biennial" for "Annual" in heading.

Subsec. (p)(1). Pub. L. 114–329, §401(b)(12)(B), substituted "every other year" for "each year", "Science, Space, and Technology" for "Science and Technology", and "2 fiscal years" for "fiscal year".

Subsec. (p)(2). Pub. L. 114–329, §401(b)(12)(C)(i), substituted "A report" for "The report for a fiscal year" in introductory provisions.

Subsec. (p)(2)(C). Pub. L. 114–329, §401(b)(12)(C)(ii), substituted "cash prize purses or non-cash prize awards" for "cash prizes" in heading and in two places in text.

Subsec. (p)(2)(G). Pub. L. 114–329, §401(b)(12)(C)(iii), added subpar. (G).

§3720. Office of Innovation and Entrepreneurship

(a) In general

The Secretary shall establish an Office of Innovation and Entrepreneurship to foster innovation and the commercialization of new technologies, products, processes, and services with the goal of promoting productivity and economic growth in the United States.

(b) Duties

The Office of Innovation and Entrepreneurship shall be responsible for—

(1) developing policies to accelerate innovation and advance the commercialization of research and development, including federally funded research and development;

(2) identifying existing barriers to innovation and commercialization, including access to capital and other resources, and ways to overcome those barriers, particularly in States participating in the Experimental Program to Stimulate Competitive Research;

(3) providing access to relevant data, research, and technical assistance on innovation and commercialization;

(4) strengthening collaboration on and coordination of policies relating to innovation and commercialization, including those focused on the needs of small businesses and rural communities, within the Department of Commerce, between the Department of Commerce and other Federal agencies, and between the Department of Commerce and appropriate State government agencies and institutions, as appropriate; and

(5) any other duties as determined by the Secretary.

(c) Advisory committee

The Secretary shall establish an Advisory Council on Innovation and Entrepreneurship to provide advice to the Secretary on carrying out subsection (b).

(Pub. L. 96–480, §25, as added Pub. L. 111–358, title VI, §601, Jan. 4, 2011, 124 Stat. 4026.)

§3721. Federal loan guarantees for innovative technologies in manufacturing

(a) Establishment

The Secretary shall establish a program to provide loan guarantees for obligations to small- or medium-sized manufacturers for the use or production of innovative technologies.

(b) Eligible projects

A loan guarantee may be made under the program only for a project that re-equips, expands, or establishes a manufacturing facility in the United States—

(1) to use an innovative technology or an innovative process in manufacturing;

(2) to manufacture an innovative technology product or an integral component of such a product; or

(3) to commercialize an innovative product, process, or idea that was developed by research funded in whole or in part by a grant from the Federal government.

(c) Eligible borrower

A loan guarantee may be made under the program only for a borrower who is a small- or medium-sized manufacturer, as determined by the Secretary under the criteria established pursuant to subsection (l).

(d) Limitation on amount

A loan guarantee shall not exceed an amount equal to 80 percent of the obligation, as estimated at the time at which the loan guarantee is issued.

(e) Limitations on loan guarantee

No loan guarantee shall be made unless the Secretary determines that—

(1) there is a reasonable prospect of repayment of the principal and interest on the obligation by the borrower;

(2) the amount of the obligation (when combined with amounts available to the borrower from other sources) is sufficient to carry out the project;

(3) the obligation is not subordinate to other financing;

(4) the obligation bears interest at a rate that does not exceed a level that the Secretary determines appropriate, taking into account the prevailing rate of interest in the private sector for

similar loans and risks; and

(5) the term of an obligation requires full repayment over a period not to exceed the lesser of—

(A) 30 years; or

(B) 90 percent of the projected useful life, as determined by the Secretary, of the physical asset to be financed by the obligation.

(f) Defaults

(1) Payment by Secretary

(A) In general

If a borrower defaults (as defined in regulations promulgated by the Secretary and specified in the loan guarantee) on the obligation, the holder of the loan guarantee shall have the right to demand payment of the unpaid amount from the Secretary.

(B) Payment required

Within such period as may be specified in the loan guarantee or related agreements, the Secretary shall pay to the holder of the loan guarantee the unpaid interest on and unpaid principal of the obligation as to which the borrower has defaulted, unless the Secretary finds that there was no default by the borrower in the payment of interest or principal or that the default has been remedied.

(C) Forbearance

Nothing in this subsection precludes any forbearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the obligation and approved by the Secretary.

(2) Subrogation

(A) In general

If the Secretary makes a payment under paragraph (1), the Secretary shall be subrogated to the rights, as specified in the loan guarantee, of the recipient of the payment or related agreements including, if appropriate, the authority (notwithstanding any other provision of law)—

(i) to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such loan guarantee or related agreement; or

(ii) to permit the borrower, pursuant to an agreement with the Secretary, to continue to pursue the purposes of the project if the Secretary determines that such an agreement is in the public interest.

(B) Superiority of rights

The rights of the Secretary, with respect to any property acquired pursuant to a loan guarantee or related agreements, shall be superior to the rights of any other person with respect to the property.

(3) Notification

If the borrower defaults on an obligation, the Secretary shall notify the Attorney General of the default.

(g) Terms and conditions

A loan guarantee under this section shall include such detailed terms and conditions as the Secretary determines appropriate—

(1) to protect the interests of the United States in the case of default; and

(2) to have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.

(h) Consultation

In establishing the terms and conditions of a loan guarantee under this section, the Secretary shall

consult with the Secretary of the Treasury.

(i) Fees

(1) In general

The Secretary shall charge and collect fees for loan guarantees in amounts the Secretary determines are sufficient to cover applicable administrative expenses.

(2) Availability

Fees collected under this subsection shall—

(A) be deposited by the Secretary into the Treasury of the United States; and

(B) remain available until expended, subject to such other conditions as are contained in annual appropriations Acts.

(3) Limitation

In charging and collecting fees under paragraph (1), the Secretary shall take into consideration the amount of the obligation.

(j) Records

(1) In general

With respect to a loan guarantee under this section, the borrower, the lender, and any other appropriate party shall keep such records and other pertinent documents as the Secretary shall prescribe by regulation, including such records as the Secretary may require to facilitate an effective audit.

(2) Access

The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access to records and other pertinent documents for the purpose of conducting an audit.

(k) Full faith and credit

The full faith and credit of the United States is pledged to the payment of all loan guarantees issued under this section with respect to principal and interest.

(l) Regulations

The Secretary shall issue final regulations before making any loan guarantees under the program. The regulations shall include—

(1) criteria that the Secretary shall use to determine eligibility for loan guarantees under this section, including—

(A) whether a borrower is a small- or medium-sized manufacturer; and

(B) whether a borrower demonstrates that a market exists for the innovative technology product, or the integral component of such a product, to be manufactured, as evidenced by written statements of interest from potential purchasers;

(2) criteria that the Secretary shall use to determine the amount of any fees charged under subsection (i), including criteria related to the amount of the obligation;

(3) policies and procedures for selecting and monitoring lenders and loan performance; and

(4) any other policies, procedures, or information necessary to implement this section.

(m) Audit

(1) Annual independent audits

The Secretary shall enter into an arrangement with an independent auditor for annual evaluations of the program under this section.

(2) Report

The results of the independent audit under paragraph (1) shall be provided directly to the Committee on Science and Technology of the House of Representatives and the Committee on

Commerce, Science, and Transportation of the Senate.

(n) Report to Congress

Concurrent with the submission to Congress of the President's annual budget request in each year after January 4, 2011, the Secretary shall transmit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing a summary of all activities carried out under this section.

(o) Coordination and nonduplication

To the maximum extent practicable, the Secretary shall ensure that the activities carried out under this section are coordinated with, and do not duplicate the efforts of, other loan guarantee programs within the Federal Government.

(p) MEP centers

The Secretary may use centers established under section 278k of this title to provide information about the program established under this section and to conduct outreach to potential borrowers, as appropriate.

(q) Minimizing risk

The Secretary shall promulgate regulations and policies to carry out this section in accordance with Office of Management and Budget Circular No. A–129, entitled "Policies for Federal Credit Programs and Non-Tax Receivables", as in effect on January 4, 2011.

(r) Sense of Congress

It is the sense of Congress that no loan guarantee shall be made under this section unless the borrower agrees to use a federally-approved electronic employment eligibility verification system to verify the employment eligibility of—

(1) all persons hired during the contract term by the borrower to perform employment duties within the United States; and

(2) all persons assigned by the borrower to perform work within the United States on the project.

(s) Definitions

In this section:

(1) Cost

The term "cost" has the meaning given such term under section 661a of title 2.

(2) Innovative process

The term "innovative process" means a process that is significantly improved as compared to the process in general use in the commercial marketplace in the United States at the time the loan guarantee is issued.

(3) Innovative technology

The term "innovative technology" means a technology that is significantly improved as compared to the technology in general use in the commercial marketplace in the United States at the time the loan guarantee is issued.

(4) Loan guarantee

The term "loan guarantee" has the meaning given such term in section 661a of title 2. The term includes a loan guarantee commitment (as defined in section 661a of title 2).

(5) Obligation

The term "obligation" means the loan or other debt obligation that is guaranteed under this section.

(6) Program

The term "program" means the loan guarantee program established in subsection (a).

(t) Authorization of appropriations

There are authorized to be appropriated $20,000,000 for each of fiscal years 2011 through 2013 to provide the cost of loan guarantees under this section.

(Pub. L. 96–480, §26, as added Pub. L. 111–358, title VI, §602, Jan. 4, 2011, 124 Stat. 4026; amended Pub. L. 117–167, div. B, title II, §10246(b)(2), Aug. 9, 2022, 136 Stat. 1492.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (m)(2), (3). Pub. L. 117–167 redesignated par. (3) as (2), struck out "and the Comptroller General's review under paragraph (2)" before "shall be provided", and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: "The Comptroller General of the United States shall conduct a biennial review of the Secretary's execution of the program under this section."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§3722. Regional innovation program

(a) Definitions

In this section:

(1) Eligible recipient

The term "eligible recipient" means—

(A) a State;

(B) an Indian tribe;

(C) a city or other political subdivision of a State;

(D) an entity that—

(i) is a nonprofit organization, an institution of higher education, a public-private partnership, a science or research park, a Federal laboratory, a venture development organization, or an economic development organization or similar entity that is focused primarily on improving science, technology, innovation, or entrepreneurship; and

(ii) has an application submitted under subsection (c)(4) that is supported by a State or a political subdivision of a State; or

(E) a consortium of any of the entities described in subparagraphs (A) through (D).

(2) Regional innovation initiative

The term "regional innovation initiative" means a geographically-bounded public or nonprofit activity or program to address issues in the local innovation systems in order to—

(A) increase the success of innovation-driven industry;

(B) strengthen the competitiveness of industry through new product innovation and new technology adoption;

(C) improve the pace of market readiness and overall commercialization of innovative research;

(D) enhance the overall innovation capacity and long-term resilience of the region;

(E) leverage the region's unique competitive strengths to stimulate innovation; and

(F) increase the number of full-time equivalent employment opportunities within innovation-based business ventures in the geographic region.

(3) State

The term "State" means one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.

(4) Venture development organization

The term "venture development organization" means a State or nonprofit organization that contributes to regional or sector-based economic prosperity by providing services for the purposes of accelerating the commercialization of research.

(b) Establishment

The Secretary shall establish a regional innovation program to encourage and support the development of regional innovation strategies designed to increase innovation-driven economic opportunity within their respective regions.

(c) Regional innovation grants

(1) Authorization of grants

As part of the program established pursuant to subsection (b), the Secretary may award grants, on a competitive basis, to eligible recipients for activities designed to develop and support a regional innovation initiative.

(2) Permissible activities

A grant awarded under this subsection shall be used for multiple activities determined appropriate by the Secretary, including—

(A) planning, technical assistance, and communication among participants of a regional innovation initiative to improve the connectedness and strategic orientation of the regional innovation initiative;

(B) attracting additional participants to a regional innovation initiative;

(C) increasing the availability and investment of private and philanthropic financing that supports innovation-based business ventures; and

(D) facilitating commercialization of products, processes, and services, including through demonstration, deployment, technology transfer, and entrepreneurial activities.

(3) Restricted activities

Grants awarded under this subsection may not be used to pay for—

(A) costs related to the recruitment, inducement, or associated financial or tangible incentives that might be offered to relocate an existing business from a geographic area to another geographic area; or

(B) costs associated with offsetting revenues forgone by 1 or more taxing authorities through tax incentives, tax increment financing, special improvement districts, tax abatements for private development within designated zones or geographic areas, or other reduction in revenues resulting from tax credits affecting the geographic region of the eligible recipients.

(4) Applications

(A) In general

An eligible recipient shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

(B) Components

Each application submitted under subparagraph (A) shall—

(i) describe the regional innovation initiative;

(ii) indicate whether the regional innovation initiative is supported by the private sector, State and local governments, and other relevant stakeholders;

(iii) identify what activities the regional innovation initiative will undertake;

(iv) describe the expected outcomes of the regional innovation initiative and the metrics the eligible recipient will use to assess progress toward those outcomes;

(v) indicate whether the participants in the regional innovation initiative have access to, or contribute to, a well-trained workforce and other innovation assets that are critical to the successful outcomes specified in the application;

(vi) indicate whether the participants in the regional innovation initiative are capable of attracting additional funds from non-Federal sources; and

(vii) if appropriate for the activities proposed in the application, analyze the likelihood that the participants in the regional innovation initiative will be able to sustain activities after grant funds received under this subsection have been expended.

(C) Feedback

The Secretary shall provide feedback to program applicants that are not awarded grants to help them improve future applications.

(D) Special considerations

The Secretary shall give special consideration to—

(i) applications proposing to include workforce or training related activities in their regional innovation initiative from eligible recipients who agree to collaborate with local workforce investment area boards; and

(ii) applications from regions that contain communities negatively impacted by trade.

(5) Cost share

The Secretary may not provide more than 50 percent of the total cost of any activity funded under this subsection.

(6) Outreach to rural communities

The Secretary shall conduct outreach to public and private sector entities in rural communities to encourage those entities to participate in regional innovation initiatives under this subsection.

(7) Geographic distribution

In conducting a competitive process, the Secretary shall avoid undue geographic concentration among any one category of States based on their predominant rural or urban character as indicated by population density.

(8) Funding

The Secretary may accept funds from other Federal agencies to support grants and activities under this subsection.

(d) Regional innovation research and information program

(1) In general

As part of the program established pursuant to subsection (b), the Secretary shall establish a regional innovation research and information program—

(A) to gather, analyze, and disseminate information on best practices for regional innovation initiatives, including information relating to how innovation, productivity, and economic development can be maximized through such strategies;

(B) to provide technical assistance, including through the development of technical assistance guides, for the development and implementation of regional innovation initiatives;

(C) to support the development of relevant metrics and measurement standards to evaluate regional innovation initiatives, including the extent to which such strategies stimulate innovation, productivity, and economic development; and

(D) to collect and make available data on regional innovation initiatives in the United States, including data on—

(i) the size, specialization, and competitiveness of regional innovation initiatives;

(ii) the regional domestic product contribution, total jobs and earnings by key occupations, establishment size, nature of specialization, patents, Federal research and development

spending, and other relevant information for regional innovation initiatives; and

(iii) supply chain product and service flows within and between regional innovation initiatives.

(2) Research grants

The Secretary may award research grants on a competitive basis to support and further the goals of the program established under this section.

(3) Dissemination of information

Data and analysis compiled by the Secretary under the program established in this subsection shall be made available to other Federal agencies, State and local governments, and nonprofit and for-profit entities.

(4) Regional innovation grant program

The Secretary shall incorporate data and analysis relating to any grant awarded under subsection (c) into the program established under this subsection.

(e) Interagency coordination

(1) In general

To the maximum extent practicable, the Secretary shall ensure that the activities carried out under this section are coordinated with, and do not duplicate the efforts of, other programs at the Department of Commerce or at other Federal agencies.

(2) Collaboration

(A) In general

The Secretary shall explore and pursue collaboration with other Federal agencies, including through multi-agency funding opportunities, on regional innovation strategies.

(B) Small businesses

The Secretary shall ensure that such collaboration with Federal agencies prioritizes the needs and challenges of small businesses.

(f) Evaluation

(1) In general

Not later than 5 years after Congress first appropriates funds to carry out this section, the Secretary shall competitively award a contract with an independent entity to conduct an evaluation of programs established under this section.

(2) Requirements

The evaluation conducted under paragraph (1) shall include—

(A) an assessment of whether the program is achieving its goals;

(B) the program's efficacy in providing awards to geographically diverse entities;

(C) any recommendations for how the program may be improved; and

(D) a recommendation as to whether the program should be continued or terminated.

(g) Reporting requirement

Not later than 5 years after the first grant is awarded under subsection (c), and every 5 years thereafter until 5 years after the last grant recipient completes the regional innovation initiative for which such grant was awarded, the Secretary shall submit a summary report to Congress that describes the outcome of each regional innovation initiative that was completed during the previous 5 years.

(h) Funding

From amounts appropriated by Congress to the Secretary, the Secretary may use up to $50,000,000 in each of the fiscal years 2020 through 2024 to carry out this section.

(Pub. L. 96–480, §27, as added Pub. L. 111–358, title VI, §603, Jan. 4, 2011, 124 Stat. 4030;

amended Pub. L. 113–235, div. B, title VII, §705, Dec. 16, 2014, 128 Stat. 2230; Pub. L. 116–92, div. A, title XVII, §1742, Dec. 20, 2019, 133 Stat. 1837.)

EDITORIAL NOTES

AMENDMENTS

2019—Pub. L. 116–92 amended section generally. Prior to amendment, section related to regional innovation program, consisting of subsecs. (a) to (g).

2014—Pub. L. 113–235 amended section generally. Prior to amendment, text related to regional innovation program and consisted of subsecs. (a) to (i), including provisions relating to establishment of program, cluster grants, science and research park development grants, loan guarantees for science park infrastructure, regional innovation research and information program, interagency coordination, evaluation of program, definitions, and authorization of appropriations.

§3722a. Regional Technology and Innovation Hub Program

(a) Definitions

In this section:

(1) Appropriate committees of Congress

The term "appropriate committees of Congress" means—

(A) the Committee on Commerce, Science, and Transportation, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate; and

(B) the Committee on Science, Space, and Technology and the Committee on Appropriations of the House of Representatives.

(2) Cooperative extension services

The term "cooperative extension services" has the meaning given the term in section 3103 of title 7.

(3) Site connectivity infrastructure

The term "site connectivity infrastructure" means localized driveways and access roads to a facility as well as hookups to the new facility for drinking water, waste water, broadband, and other basic infrastructure services already present in the area.

(4) Venture development organization

The term "venture development organization" has the meaning given such term in section 3722(a) of this title.[1]

(5) Community development financial institution

The term "community development financial institution" has the meaning given in section 4702 of title 12.

(6) Minority depository institution

The term "minority depository institution" means an entity that is—

(A) a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note); or

(B) considered to be a minority depository institution by—

(i) the appropriate Federal banking agency; or

(ii) the National Credit Union Administration, in the case of an insured credit union.

(7) Low population State

The term "low population State" means a State without an urbanized area with a population greater than 250,000 as reported in the decennial census.

(8) Small and rural communities

The term "small and rural community" means a noncore area, a micropolitan area, or a small metropolitan statistical area with a population of not more than 250,000.

(b) Regional Technology and Innovation Hub Program

(1) In general

Subject to the availability of appropriations, the Secretary shall carry out a program—

(A) to encourage new and constructive collaborations among local, State, Tribal, and Federal government entities, institutions of higher education, the private sector, economic development organizations, labor organizations, nonprofit organizations, and community organizations that promote broad-based regional innovation initiatives;

(B) to support eligible consortia in the development and implementation of regional innovation strategies;

(C) to designate eligible consortia as regional technology and innovation hubs and facilitate activities by consortia designated as regional technology and innovation hubs in implementing their regional innovation strategies—

(i) to enable United States leadership in technology and innovation sectors critical to national and economic security;

(ii) to support regional economic development and resilience, including in small cities and rural areas, and promote increased geographic diversity of innovation across the United States;

(iii) to promote the benefits of technology development and innovation for all Americans, including underserved communities and vulnerable communities;

(iv) to support the modernization and expansion of United States manufacturing based on advances in technology and innovation;

(v) to support domestic job creation and broad-based economic growth; and

(vi) to improve the pace of market readiness, industry maturation, and overall commercialization and domestic production of innovative research;

(D) to ensure that the regional technology and innovation hubs address the intersection of emerging technologies and either regional challenges or national challenges; and

(E) to conduct ongoing research, evaluation, analysis, and dissemination of best practices for regional development and competitiveness in technology and innovation.

(2) Awards

The Secretary shall carry out the program required by paragraph (1) through the award of the following:

(A) Strategy development grants or cooperative agreements to eligible consortia under subsection (e).

(B) Strategy implementation grants or cooperative agreements to regional technology and innovation hubs under subsection (f).

(3) Administration

The Secretary shall carry out this section through the Assistant Secretary of Commerce for Economic Development in coordination with the Under Secretary of Commerce for Standards and Technology.

(c) Eligible consortia

For purposes of this section, an eligible consortium is a consortium that—

(1) includes 1 or more of each of the following—

(A) institutions of higher education, which may include Historically Black Colleges and Universities, Tribal Colleges or Universities, and minority-serving institutions;

(B) State, territorial, local, or Tribal governments or other political subdivisions of a State, including State and local agencies, or a consortium thereof;

(C) industry or firms in relevant technology, innovation, or manufacturing sectors;

(D) economic development organizations or similar entities that are focused primarily on improving science, technology, innovation, entrepreneurship, or access to capital; and

(E) labor organizations or workforce training organizations, which may include State and local workforce development boards as established under sections 3111 and 3122 of title 29; [1] and

(2) may include 1 or more—

(A) economic development entities with relevant expertise, including a district organization (as defined in section 300.3 of title 13, Code of Federal Regulations, or successor regulation);

(B) organizations that contribute to increasing the participation of underserved populations in science, technology, innovation, and entrepreneurship;

(C) venture development organizations;

(D) organizations that promote local economic stability, high-wage domestic jobs, and broad-based economic opportunities, such as employee ownership membership associations and State or local employee ownerships and cooperative development centers, financial institutions and investment funds, including community development financial institutions and minority depository institutions;

(E) elementary schools and secondary schools, including area career and technical education schools (as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (29 [2] U.S.C. 2302);

(F) National Laboratories (as defined in section 15801 of title 42);

(G) Federal laboratories;

(H) Manufacturing extension centers;

(I) Manufacturing USA institutes;

(J) transportation planning organizations;

(K) a cooperative extension services;

(L) organizations that represent the perspectives of underserved communities in economic development initiatives; and

(M) institutions receiving an award under section 19108 of title 42.

(d) Designation of regional technology and innovation hubs

(1) In general

In carrying out subsection (b)(1)(C), the Secretary shall use a competitive, merit-review process to designate eligible consortia as regional technology and innovation hubs.

(2) Distribution

In conducting the competitive process under paragraph (1), the Secretary shall ensure geographic and demographic diversity in the designation of regional technology hubs by, subject to available appropriations, designating at least 20 technology hubs, and—

(A) seeking to designate at least three technology hubs in each region covered by a regional office of the Economic Development Administration, while—

(i) ensuring that not fewer than one-third of eligible consortia so designated as regional technology hubs significantly benefit a small and rural community, which may include a State or territory described in clauses (ii) and (iii);

(ii) ensuring that not fewer than one-third of eligible consortia so designated as regional technology hubs include as a member of the eligible consortia at least 1 member that is a State or territory that is eligible to receive funding from the Established Program to Stimulate Competitive Research of the National Science Foundation; and

(iii) ensuring that at least one eligible consortium so designated as a regional technology hub is headquartered in a low population State that is eligible to receive funding from the Established Program to Stimulate Competitive Research of the National Science Foundation;

(B) seeking to designate an additional two regional technology hubs based on selection

factors which shall include likelihood of success and may include regional factors such as the extent to which the regional technology and innovation hub significantly engages and benefits underserved communities in and near metropolitan areas;

(C) encouraging eligible consortia to leverage institutions of higher education serving populations historically underrepresented in STEM, including historically Black Colleges and Universities, Tribal Colleges or Universities, and minority-serving institutions to significantly benefit an area or region; and

(D) encouraging proposals from eligible consortia that would significantly benefit an area or region whose economy significantly relies on or has recently relied on coal, oil, or natural gas production or development.

(3) Relation to certain grant awards

The Secretary shall not require an eligible consortium to receive a grant or cooperative agreement under subsection (e) in order to be designated as a regional technology and innovation hub under paragraph (1) of this subsection.

(e) Strategy development grants and cooperative agreements

(1) In general

The Secretary shall use a competitive, merit-review process to award grants or cooperative agreements to eligible consortia for the development of regional innovation strategies.

(2) Number of recipients

Subject to availability of appropriations, the Secretary shall seek to award a grant or cooperative agreement under paragraph (1) to not fewer than 60 eligible consortia.

(3) Geographic diversity and representation

(A) In general

The Secretary shall carry out paragraph (1) in a manner that ensures geographic diversity and representation from communities of differing populations.

(B) Awards to small and rural communities

In carrying out paragraph (1), the Secretary shall—

(i) award not fewer than one-third of the grants and cooperative agreements under such paragraph to eligible consortia that significantly benefit a small and rural community, which may include a State described in clause (ii); and

(ii) award not fewer than one-third of the grants and cooperative agreements under such paragraph to eligible consortia that include as a member of the eligible consortia at least 1 member that is a State or territory that is eligible to receive funding from the Established Program to Stimulate Competitive Research of the National Science Foundation.

(4) Use of funds

(A) Use of funds under this grant shall include—

(i) coordination of a locally defined planning processes, across jurisdictions and agencies, relating to developing a comprehensive regional technology strategy;

(ii) identification of regional partnerships for developing and implementing a comprehensive regional technology strategy;

(iii) implementation or updating of assessments to determine regional needs and capabilities;

(iv) development or updating of goals and strategies to implement an existing comprehensive regional plan;

(v) identification or implementation of planning and local zoning and other code changes necessary to implement a comprehensive regional technology strategy; and

(vi) development of plans for promoting broad-based economic growth in a region.

(B) Use of funds under this grant may include the formation of a workforce development strategy, according to the needs for a skilled and technical workforce at all skill and degree levels

in the region proposed to be served by the eligible consortia. Any workforce development strategy submitted pursuant to paragraph (1) should include—

(i) how the eligible consortia will develop, offer, or improve educational or career training programs and curriculum for a skilled and technical workforce;

(ii) the extent to which such programs developed and offered by the eligible consortia will meet the educational or career training needs of a skilled and technical workforce in the region to be served;

(iii) how the eligible consortia will provide facilities for students to receive training under such programs developed and offered by the eligible consortia; and

(iv) how the eligible consortia will enhance outreach and recruitment for such programs developed and offered by the eligible consortia to populations underrepresented in STEM.

(5) Federal share

The Federal share of the cost of an effort carried out using a grant or cooperative agreement awarded under this subsection may not exceed 80 percent—

(A) where in-kind contributions may be used for all or part of the non-Federal share, but Federal funding from other government sources may not count towards the non-Federal share;

(B) except in the case of an eligible consortium that represents all or part of a small and rural or other underserved community, the Federal share may be up to 90 percent of the total cost, subject to subparagraph (A); and

(C) except in the case of an eligible consortium that is led by a Tribal government, the Federal share may be up to 100 percent of the total cost of the project.

(f) Strategy implementation grants and cooperative agreements

(1) In general

The Secretary shall use a competitive, merit-review process to award grants or cooperative agreements to regional technology and innovation hubs for the implementation of regional innovation strategies, including regional strategies for infrastructure and site development, in support of the regional innovation and technology and innovation hub's plans and programs. The Secretary should determine the size and number of awards based on appropriations available to ensure the success of regional technology and innovation hubs as outlined in subsection (h).

(2) Use of funds

Grants or cooperative agreements awarded under paragraph (1) to a regional technology and innovation hub may be used by the regional technology and innovation hub to support any of the following activities, consistent with the most current regional innovation strategy of the regional technology and innovation hub, which may have been developed with or without financial assistance received under subsection (e) of this section:

(A) Workforce development activities

Workforce development activities including activities relating to the following:

(i) The creation of partnerships between industry, workforce, nonprofit, and educational institutions, which may include community colleges, to create and align technical training and educational programs, including for a skilled technical workforce.

(ii) The design, development, and updating of educational and training curriculum and programs, including training of trainers, teachers, or instructors tied to demonstrated regional skilled and technical workforce needs.

(iii) The procurement of facilities and equipment, as required to train a skilled and technical workforce.

(iv) The development and execution of programs, including traineeships and apprenticeships, to rapidly provide training and award certificates or credentials recognized by regional industries or other organizations.

(v) The matching of regional employers with a potential new entrant, underemployed, underrepresented, reentering, or incumbent workforce, as well as the securing of

commitments from employers to hire workers who successfully complete training programs, or who are awarded certificates or credentials.

(vi) The expansion of successful training programs at a scale required by the region served by the regional technology and innovation hub, including through the use of online education and mentoring.

(vii) The development and expansion of programs with the goal of increasing the participation of persons historically underrepresented in STEM and manufacturing in the workforce development plans of the regional technology and innovation hub.

(viii) The provision of support services for attendees of training programs developed, updated, or expanded pursuant to this subsection, including career counseling.

(ix) The implementation of outreach and recruitment for training programs developed, updated, or expanded pursuant to this subsection, particularly at local educational institutions, including high schools and community colleges.

(B) Business and entrepreneur development activities

Business and entrepreneur development activities, including activities relating to the following:

(i) The development and growth of local and regional businesses and the training of entrepreneurs, which may include support for the expansion of employee owned businesses and cooperatives.

(ii) The support of technology commercialization, including funding for activities relevant to the protection of intellectual property and for advancing potential ventures such as acceleration, incubation, early-stage production and other relevant programming.

(iii) The development of local and regional capital networks and consortia to attract necessary private funding to businesses and entrepreneurs in the region.

(iv) The development of local and regional networks for business and entrepreneur mentorship.

(C) Technology development and maturation activities

Technology maturation activities, including activities relating to the following:

(i) The development and deployment of technologies in sectors critical to the region served by the regional technology and innovation hub or to national and economic security, including industry-university research cooperation, proof of concept, prototype development, testing, and scale-up for manufacturing.

(ii) The development of programming to support the creation and transfer of intellectual property into private use, such as through startup creation.

(iii) The provision of facilities for technology maturation, including incubators and production testbeds for collaborative development of technologies by private sector, academic, nonprofit, and other entities.

(iv) Activities to provide or ensure access to capital for new business and business expansion, including by attracting new private, public, and philanthropic investment and by establishing local and regional venture and loan funds, community development financial institutions, and minority depository institutions.

(D) Infrastructure-related activities

The building of facilities and site connectivity infrastructure necessary to carry out activities described in subparagraphs (A), (B), and (C), including activities relating to the following:

(i) Establishing a center with required tools and instrumentation for workforce development.

(ii) Establishing a facility for technology development, demonstration, and testing.

(iii) Establishing collaborative incubators to support technology commercialization and entrepreneur training.

(3) Term

(A) Initial performance period

The term of an initial grant or cooperative agreement awarded under this subsection shall be for a period that the Secretary deems appropriate for the proposed activities but not less than 2 years.

(B) Subsequent performance period

The Secretary may renew a grant or cooperative agreement awarded to a regional technology and innovation hub under paragraph (1) for such period as the Secretary considers appropriate, if the Secretary determines that the regional technology and innovation hub has made satisfactory progress towards the metrics agreed to under subsection (j).

(C) Flexible approach

In renewing a grant or cooperative agreement under subparagraph (B), the Secretary and the eligible consortium may agree to new or additional uses of funds in order to meet changes in the needs of the region.

(4) Limitation on amount of awards

(A) Initial performance period

The amount of an initial grant or cooperative agreements awarded to a regional technology and innovation hub under paragraph (3)(A) shall be no more than $150,000,000.

(B) Subsequent performance period

Upon renewal of a grant or cooperative agreement under paragraph (3)(B), the Secretary may award funding in the amount that the Secretary considers appropriate, ensuring that no single regional technology and innovation hub receives more than 10 percent of the aggregate amount of the grants and cooperative agreements awarded under this subsection.

(5) Matching required

(A) Initial performance period

Except in the case of a regional technology and innovation hub described in subparagraph (C), the total amount of all grants awarded to a regional technology and innovation hub under this subsection in phase one shall not exceed 90 percent of the total operating costs of the regional technology and innovation hub during the initial performance period.

(B) Subsequent performance period

Except in the case of a regional technology and innovation hub described in subparagraph (C), the total amount of all grants awarded to a regional technology and innovation hub in subsequent performance periods shall not exceed 75 percent of the total operating costs of the regional technology and innovation hub in each year of the grant or cooperative agreement.

(C) Small and rural communities, underserved communities, and Indian Tribes

(i) In general

The total Federal financial assistance awarded in a given year to a regional technology and innovation hub under this subsection shall not exceed amounts as follows:

(I) In the case of a regional technology and innovation hub that primarily serves a small and rural community or other underserved community, in a fiscal year, 90 percent of the total funding of the regional technology and innovation hub in that fiscal year.

(II) In the case of a regional technology and innovation hub that is led by a Tribal government, in a fiscal year, 100 percent of the total funding of the regional technology and innovation hub in that fiscal year.

(ii) Minimum threshold of rural representation

For purposes of clause (i)(I), the Secretary shall establish a minimum threshold of rural representation in the regional technology and innovation hub.

(D) In-kind contributions

For purposes of this paragraph, in-kind contributions may be used for part of the non-Federal

share of the total funding of a regional technology and innovation hub in a fiscal year.

(6) Grants for infrastructure

Any grant or cooperative agreement awarded under this subsection to support the construction of facilities and site connectivity infrastructure shall be awarded pursuant to section 201 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3141) and subject to the provisions of such Act [42 U.S.C. 3121 et seq.], except that subsection (b) of such section [42 U.S.C. 3141(b)] and sections 204 and 301 of such Act (42 U.S.C. 3144; 3161) shall not apply.

(7) Relation to certain grant awards

The Secretary shall not require a regional technology and innovation hub to receive a grant or cooperative agreement under subsection (e) in order to receive a grant or cooperative agreement under this subsection.

(g) Applications

An eligible consortium seeking designation as a regional technology and innovation hub under subsection (d) or a grant or cooperative agreement under subsection (e) or (f) shall submit to the Secretary an application therefore at such time, in such manner, and containing such information as the Secretary may specify.

(h) Considerations for designation and award of strategy implementation grants and cooperative agreements

In selecting an eligible consortium that submitted an application under subsection (g) for designation under subsection (d) or for a grant or cooperative agreement under subsection (f), the Secretary shall consider the following:

(1) The potential of the eligible consortium to advance the research, development, deployment, and domestic manufacturing of technologies in a key technology focus area, as described in section 19107 of title 42 or other technology or innovation sector critical to national security and economic competitiveness.

(2) The likelihood of positive regional economic effect, including increasing the number of high wage domestic jobs, creating new economic opportunities for economically disadvantaged and underrepresented populations, and building and retaining wealth in the region.

(3) How the eligible consortium plans to integrate with and leverage the resources of 1 or more federally funded research and development centers, National Laboratories, Federal laboratories, Manufacturing USA institutes, Hollings Manufacturing Extension Partnership centers, regional innovation engines or translation accelerators established under sections 19108 and 19109 of title 42, test beds established and operated under section 19110 of title 42, or other Federal entities.

(4) How the eligible consortium will engage with the private sector, including small- and medium-sized businesses and cooperatives, and employee-owned businesses and cooperatives, to commercialize new technologies and improve the resiliency and sustainability of domestic supply chains in a key technology focus area, or other technology or innovation sector critical to national security and economic competitiveness.

(5) How the eligible consortium will carry out workforce development and skills acquisition programming, including through partnerships with entities that include State and local workforce development boards, institutions of higher education, including community colleges, historically Black colleges and universities, Tribal Colleges or Universities, and minority-serving institutions, labor organizations, nonprofit organizations, workforce development programs, and other related activities authorized by the Secretary, to support the development of a skilled technical workforce for the regional technology and innovation hub, including key technology focus area or other technology or innovation sector critical to national security and economic competitiveness.

(6) How the eligible consortium will improve or expand science, technology, engineering, and mathematics education programs and opportunities in the identified region in elementary and secondary school and higher education institutions located in the identified region to support the development of a key technology focus area or other technology or innovation sector critical to national security and economic competitiveness.

(7) How the eligible consortium plans to develop partnerships with venture development organizations, community development financial institutions and minority depository institutions, and sources of private investment in support of private sector activity, including launching new or expanding existing companies in a key technology focus area or other technology or innovation sector critical to national security and economic competitiveness.

(8) How the eligible consortium plans to organize the activities of regional partners across sectors in support of a regional technology and innovation hub.

(9) How the eligible consortium considers opportunities to support local and regional businesses through procurement, including from minority-owned and women-owned businesses.

(10) How the eligible consortium will ensure that growth in technology, innovation, and advanced manufacturing sectors produces opportunity across the identified region and for economically disadvantaged, minority, underrepresented and rural populations, including, as appropriate, consideration of how the eligible consortium takes into account the relevant impact of existing regional status and plans or may affect regional goals for affordable housing availability, local and regional transportation, high-speed internet access, and primary and secondary education.

(11) How well the region's education institutions align their activities, including research, educational programs, training, with the proposed areas of focus.

(12) The likelihood efforts served by the consortium will be sustained once Federal support ends.

(13) How the eligible consortium will, as appropriate—

(A) enhance the economic, environmental, and energy security of the United States by promoting domestic development, manufacture, and deployment of innovative clean technologies and advanced manufacturing practices; and

(B) support translational research, technology development, manufacturing innovation, and commercialization activities relating to clean technology.

(i) Coordination and collaboration

(1) Coordination with regional innovation program

The Secretary shall ensure the activities under this section do not duplicate activities or efforts under section 3722 of this title.

(2) Coordination among hubs

The Secretary shall ensure eligible consortia that receive a grant or cooperative agreement under this section coordinate and share best practices for regional economic development.

(3) Coordination with programs of the National Institute of Standards and Technology

The Secretary shall coordinate the activities of regional technology and innovation hubs designated under this section, the Hollings Manufacturing Extension Partnership, and the Manufacturing USA Program, as the Secretary considers appropriate, to maintain the effectiveness of a manufacturing extension center or a Manufacturing USA institute.

(4) Coordination with Department of Energy programs

The Secretary shall, in collaboration with the Secretary of Energy, coordinate the activities and selection of regional technology and innovation hubs designated under this section, as the Secretaries consider appropriate, to maintain the effectiveness of activities at the Department of Energy and the National Laboratories.

(5) Interagency collaboration

In designating regional technology and innovation hubs under subsection (d) and awarding grants or cooperative agreements under subsection (f), the Secretary—

(A) shall collaborate with Federal departments and agencies whose missions contribute to the goals of the regional technology and innovation hub;

(B) shall consult with the Director of the National Science Foundation for the purpose of ensuring that the regional technology and innovation hubs are aligned with relevant science,

technology, and engineering expertise; and

(C) may accept funds from other Federal agencies to support grants, cooperative agreements, and activities under this section.

(j) Performance measurement, transparency, and accountability

(1) Metrics, standards, and assessment

For each grant and cooperative agreement awarded under subsection (f) for a regional technology and innovation hub, the Secretary shall—

(A) in consultation with the regional technology and innovation hub, develop metrics, which may include metrics relating to domestic job creation, patent awards, increases in research funding, business formation and expansion, and participation of individuals or communities historically underrepresented in STEM, to assess the effectiveness of the activities funded in making progress toward the purposes set forth under subsection (b)(1);

(B) establish standards for the performance of the regional technology and innovation hub that are based on the metrics developed under subparagraph (A); and

(C) prior to any award made under a subsequent performance period in subsection (f) and every 2 years thereafter until Federal financial assistance under this section for the regional technology and innovation hub is discontinued, conduct an assessment of the regional technology and innovation hub to confirm whether the performance of the regional technology and innovation hub is meeting the standards for performance established under subparagraph (B) of this paragraph.

(2) Final reports by recipients of strategy implementation grants and cooperative agreements

(A) In general

The Secretary shall require each eligible consortium that receives a grant or cooperative agreement under subsection (f) for activities of a regional technology and innovation hub, as a condition of receipt of such grant or cooperative agreement, to submit to the Secretary, not later than 120 days after the last day of the term of the grant or cooperative agreement, a report on the activities of the regional technology and innovation hub supported by the grant or cooperative agreement.

(B) Contents of report

Each report submitted by an eligible consortium under subparagraph (A) shall include the following:

(i) A detailed description of the activities carried out by the regional technology and innovation hub using the grant or cooperative agreement described in subparagraph (A), including the following:

(I) A description of each project the regional technology and innovation hub completed using such grant or cooperative agreement.

(II) An explanation of how each project described in subclause (I) achieves a specific goal under this section in the region of the regional technology and innovation hub with respect to—

(aa) the resiliency and sustainability of a supply chain;

(bb) research, development, and deployment of a critical technology;

(cc) workforce training and development;

(dd) domestic job creation;

(ee) entrepreneurship and company formation;

(ff) commercialization;

(gg) access to private capital; or

(hh) participation of individuals or communities historically underrepresented in STEM.

(ii) A discussion of any obstacles encountered by the regional technology and innovation

hub in the implementation of the regional technology and innovation hub and how the regional technology and innovation hub overcame those obstacles.

(iii) An evaluation of the success of the projects of the regional technology and innovation hub using the performance standards and measures established under paragraph (1), including an evaluation of the planning process and how the project contributes to carrying out the regional innovation strategy of the regional technology and innovation hub.

(iv) The effectiveness of the regional technology and innovation hub in ensuring that, in the region of the regional technology and innovation hub, growth in technology and innovation sectors produces broadly shared opportunity across the region, including for economic disadvantaged and underrepresented populations and rural areas.

(v) Information regarding such other matters as the Secretary may require.

(3) Interim reports by recipients of grants and cooperative agreements

In addition to requiring submittal of final reports under paragraph (2)(A), the Secretary may require a regional technology and innovation hub described in such paragraph to submit to the Secretary such interim reports as the Secretary considers appropriate.

(4) Annual reports to Congress

Not less frequently than once each year, the Secretary shall submit to the appropriate committees of Congress an annual report on the results of the assessments conducted by the Secretary under paragraph (1)(C) during the period covered by the report.

(k) Authorization of appropriations

There is authorized to be appropriated to the Secretary—

(1) $50,000,000 to award grants and cooperative agreements under subsection (e) for the period of fiscal years 2023 through 2027;

(2) $2,950,000,000 to award grants and cooperative agreements under subsection (f) for the period of fiscal years 2023 and 2024; and

(3) $7,000,000,000 to award grants and cooperative agreements under subsection (f) for the period of fiscal years 2025 through 2027.

(l) Administration

The Secretary may use funds made available to carry out this section for administrative costs under this section.

(Pub. L. 96–480, §28, as added Pub. L. 117–167, div. B, title VI, §10621(a)(2), Aug. 9, 2022, 136 Stat. 1642.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3722(a) of this title, referred to in subsec. (a)(4), was in the original "section 27(a) of the Stevenson-Wydler Act of 1980" and was translated as reading "section 27(a) of the Stevenson-Wydler Technology Innovation Act of 1980", to reflect the probable intent of Congress.

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (a)(6)(A), is section 308 of Pub. L. 101–73, which is set out as a note under section 1463 of Title 12, Banks and Banking.

Sections 3111 and 3122 of title 29, referred to in subsec. (c)(1)(E), was in the original "sections 101 and 107 of the Workforce Investment and Opportunity Act" and was translated as reading "sections 101 and 107 of the Workforce Innovation and Opportunity Act", to reflect the probable intent of Congress.

Such Act, referred to in subsec. (f)(6), is the Public Works and Economic Development Act of 1965, Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, which is classified generally to chapter 38 (§3121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 28 of Pub. L. 96–480 was renumbered section 30 and is classified to section 3723 of this

title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

INITIAL DESIGNATIONS AND AWARDS

Pub. L. 117–167, div. B, title VI, §10621(b), Aug. 9, 2022, 136 Stat. 1659, provided that:

"(1) COMPETITION REQUIRED.—Not later than 1 year after the date of the enactment of this Act [Aug. 9, 2022], subject to the availability of appropriations, the Secretary of Commerce shall commence a competition under subsection (d)(1) of section 28 of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3722a(d)(1)] (as added by this section).

"(2) DESIGNATION AND AWARD.—Not later than 18 months after the date of the enactment of this Act, if the Secretary has received at least 1 application under subsection (g) of section 28 of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3722a(g)] (as added by this section) from an eligible consortium which the Secretary considers suitable for designation under subsection (d)(1) of such section 28, the Secretary shall—

"(A) designate at least 1 regional technology and innovation hub under subsection (d)(1) of such section 28; and

"(B) award a grant or cooperative agreement under subsection (f)(1) of such section 28 [15 U.S.C. 3722a(f)(1)] to each regional technology and innovation hub designated pursuant to subparagraph (A) of this paragraph."

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

[2] *So in original. Probably should be "20".*

§3722b. Distressed area Recompete Pilot Program

(a) In general

Within the program authorized under section 3722a of this title, the Secretary is authorized to establish a pilot program, to be known as the "Recompete Pilot Program", to provide grants to eligible recipients representing eligible areas or Tribal lands to alleviate persistent economic distress and support long-term comprehensive economic development and job creation in eligible areas.

(b) Strategy development grants and cooperative agreements

Subject to available appropriations, the Secretary is authorized, on the application of an eligible recipient, to award up to one half of the number of grants under subsection (e) of section 3722a of this title to eligible recipients to develop a recompete plan and carry out related predevelopment activities.

(c) Strategy implementation grants and cooperative agreements

Subject to available appropriations and subsection (f), the Secretary shall award, on the application of an eligible recipient, at least ten strategy implementation grants, in accordance with a recompete plan review and approved by the Secretary, to carry out coordinated and comprehensive economic development programs and activities in an eligible area, consistent with a recompete plan approved by the Secretary. Such activities may include—

(1) workforce development activities of the kind described in section 3722a(f) of this title or other job training and workforce outreach programs oriented to local employer needs, such as—

(A) customized job training programs carried out by local community colleges and other training or educational organizations in partnership with local businesses;

(B) workforce outreach programs located in, and targeted to, lower-income and underemployed neighborhoods; and

(C) programs to embed job placement and training services in neighborhood institutions such as churches, housing projects, and community advocacy programs; and

(D) job retention programs and activities, such as the provision of career coaches;

(2) business and entrepreneur development activities of the kind described in section 3722a(f) of this title, technology development and maturation activities of the kind described in such section, or the provision of business advice and assistance to small and medium-sized local businesses and entrepreneurs. Such advice and assistance may include—

(A) manufacturing extension services;

(B) small business development centers;

(C) centers to help businesses bid for Federal procurement contracts;

(D) entrepreneurial assistance programs that link entrepreneurs with available public and private resources;

(E) legal advice and resources; and

(F) assistance in accessing capital;

(3) infrastructure related activities of the kind described in section 3722a(f) of this title or other land and site development programs, such as brownfield redevelopment, research and technology parks, business incubators, business corridor development, and other infrastructure activities related to supporting job creation and employment for residents, subject to the requirements of section 3722a(f)(6) of this title; and

(4) additional planning, predevelopment, technical assistance, and other administrative activities as may be necessary for the ongoing implementation, administration, and operation of the programs and activities carried out with a grant or cooperative agreement under this section, including but not limited to economic development planning and evaluation.

(d) Term

(1) Initial performance period

The term of an initial grant or cooperative agreement awarded under subsection (c) shall be for a period that the Secretary deems appropriate for the proposed activities but not less than 2 years.

(2) Subsequent performance period

The Secretary may renew a grant or cooperative agreement awarded under subsection (c) for such period, such amount, and such terms as the Secretary considers appropriate, if the Secretary determines that the recipient of an award under subsection (c) has made satisfactory progress towards metrics or benchmarking requirements established by the Secretary at time of award.

(3) Flexible approach

In renewing a grant or cooperative agreement under subsection (c), the Secretary may approve new or additional uses of funds, consistent with the uses described in subsection (c), to meet changes in the needs of the region.

(e) Limitations

(1) Limitation on eligible areas

An eligible area may not benefit from more than 1 grant or cooperative agreement described in subsection (b) and 1 grant or cooperative agreement described in subsection (c), provided that a renewal described in subsection (d)(2) shall not constitute an additional grant.

(2) Limitation on recipients

For purposes of the program under this section, an eligible recipient may not receive multiple grants described in subsection (c) on behalf of more than 1 eligible area.

(f) Award amount

(1) In general

In determining the amount of a grant that an eligible recipient may be awarded under subsection (c), the Secretary shall—

(A) take into consideration the proposed activities and projected expenditures outlined in an

approved recompete plan; and

(B) award not more than the product obtained by multiplying—

(i) the prime-age employment gap of the eligible area;

(ii) the prime-age population of the eligible area; and

(iii) either—

(I) $70,585 for local labor markets; or

(II) $53,600 for local communities.

(2) Minimum amount

The Secretary may not make an award that is less than $20,000,000 to an eligible recipient.

(g) Applications

To be considered for a grant or cooperative agreement under—

(1) subsection (b) of this section, an eligible recipient shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary determines to be appropriate; and

(2) subsection (c) of this section, an eligible recipient shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary determines to be appropriate, including a recompete plan approved by the Secretary.

(h) Relation to certain grant awards

The Secretary shall not require an eligible recipient to receive a grant or cooperative agreement under subsection (b) in order to receive a grant or cooperative agreement under subsection (c).

(i) Authorization of appropriations

There is authorized to be appropriated to the Secretary $1,000,000,000 to award grants and cooperative agreements under subsection (c) of this section, for the period of fiscal years 2022 through 2026.

(j) Definitions

In this section:

(1) Eligible area

The term "eligible area" means either of the following:

(A) A local labor market that—

(i) has a prime-age employment gap equal to not less than 2.5 percent; and

(ii) meets additional criteria as the Secretary may establish.

(B) A local community that—

(i) has a prime-age employment gap equal to not less than 5 percent;

(ii) is not located within an eligible local labor market that meets the criteria described in subparagraph (A);

(iii) has a median annual household income of not more than $75,000; and

(iv) meets additional criteria as the Secretary may establish.

(2) Eligible recipient

The term "eligible recipient" means a specified entity that has been authorized in a manner as determined by the Secretary to represent and act on behalf of an eligible area for the purposes of this section.

(3) Local labor market

The term "local labor market" means any of the following areas that contains 1 or more specified entities described in subparagraphs (A) through (D) of paragraph (6) [1]:

(A) A metropolitan statistical area or micropolitan statistical area, excluding any area described in subparagraph (C).

(B) A commuting zone, excluding any areas described in subparagraphs (A) and (C).

(C) The Tribal land with a Tribal prime-age population represented by a Tribal government.

(4) Local community

The term "local community" means the area served by a general-purpose unit of local government that is located within, but does not cover the entire area of, a local labor market that does not meet the criteria described in paragraph (1)(A).

(5) Prime-age employment gap

(A) In general

The term "prime-age employment gap" means the difference (expressed as a percentage) between—

(i) the national 5-year average prime-age employment rate; and

(ii) the 5-year average prime-age employment rate of the eligible area.

(B) Calculation

For the purposes of subparagraph (A), an individual is prime-age if such individual between the ages of 25 years and 54 years.

(6) Recompete plan

The term "recompete plan" means a comprehensive multiyear economic development plan that—

(A) includes—

(i) proposed programs and activities to be carried out with a grant awarded under subsection (c) to address the economic challenges of the eligible area in a comprehensive manner that promotes long-term, sustained economic growth, lasting job creation, per capita wage increases, and reduction in the prime-age employment gap of the eligible area;

(ii) projected costs and annual expenditures and proposed disbursement schedule;

(iii) the roles and responsibilities of specified entities that may receive grant funds awarded under subsection (c); and

(iv) other information as the Secretary determines appropriate;

(B) is submitted to the Secretary for approval for an eligible recipient to be considered for a grant described in subsection (c); and

(C) may be modified over the term of the grant by the eligible recipient, subject to the approval of the Secretary or at the direction of the Secretary, if the Secretary determines benchmarking requirements are repeatedly not met or if other circumstances necessitate a modification.

(7) Specified entity

The term "specified entity" means—

(A) a unit of local government;

(B) the District of Columbia;

(C) a territory of the United States;

(D) a Tribal government;

(E) political subdivision of a State or other entity, including a special-purpose entity engaged in economic development activities;

(F) a public entity or nonprofit organization, acting in cooperation with the officials of a political subdivision of a State or other entity described in subparagraph (E);

(G) an economic development district (as defined in section 3122 of title 42); and

(H) a consortium of any of the specified entities described in this paragraph which serve or are contained within the same eligible area.

(8) Tribal land

The term "Tribal land" means any land—

(A) located within the boundaries of an Indian reservation, pueblo, or rancheria; or

(B) not located within the boundaries of an Indian reservation, pueblo, or rancheria, the title to which is held—

(i) in trust by the United States for the benefit of an Indian Tribe or an individual Indian;

(ii) by an Indian Tribe or an individual Indian, subject to restriction against alienation under laws of the United States; or

(iii) by a dependent Indian community.

(9) Tribal prime-age population

(A) In general

The term "Tribal prime-age population" shall be equal to the sum obtained by adding—

(i) the product obtained by multiplying—

(I) the total number of individuals ages 25 through 54 residing on the Tribal land of the Tribal government; and

(II) 0.65; and

(ii) the product obtained by multiplying—

(I) the total number of individuals ages 25 through 54 included on the membership roll of the Tribal government; and

(II) 0.35 [2]

(B) Use of data

A calculation under subparagraph (A) shall be determined based on data provided by the applicable Tribal government to the Department of the Treasury under the Coronavirus State and Local Fiscal Recovery Fund programs under title VI of the Social Security Act (42 U.S.C. 801 et seq.).

(Pub. L. 96–480, §29, as added Pub. L. 117–167, div. B, title VI, §10621(a)(2), Aug. 9, 2022, 136 Stat. 1655.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (j)(9)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title VI of the Act is classified generally to subchapter VI (§801 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DISTRESSED AREA DESIGNATION AND AWARD

Pub. L. 117–167, div. B, title VI, §10621(c), Aug. 9, 2022, 136 Stat. 1660, provided that: "Not later than 18 months after the date of the enactment of this section [Aug. 9, 2022], subject to the availability of appropriations, if the Secretary [of Commerce] has received applications under section 29 of the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3722b] (as added by this section) from an eligible recipient which the Secretary considers suitable for award under such section 29, the Secretary shall award grants or cooperative agreement under subsections (b) and (c) of such section 29 to one or more eligible recipients."

[For definition of "recipient" as used in section 10621(c) of Pub. L. 117–167, set out above, see section 18901 of Title 42, The Public Health and Welfare.]

[1] So in original. Probably should be paragraph "(7)".

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

§3723. STEM apprenticeship programs

(a) In general

The Secretary of Commerce may carry out a grant program to identify the need for skilled science, technology, engineering, and mathematics (referred to in this section as "STEM") workers and to expand STEM apprenticeship programs.

(b) Eligible recipient defined

In this section, the term "eligible recipient" means—

(1) a State;

(2) an Indian tribe;

(3) a city or other political subdivision of a State;

(4) an entity that—

(A) is a nonprofit organization, an institution of higher education, a public-private partnership, a science or research park, a Federal laboratory, or an economic development organization or similar entity; and

(B) has an application that is supported by a State, a political subdivision of a State, or a native organization; or

(5) a consortium of any of the entities described in paragraphs (1) through (5).

(c) Needs assessment grants

The Secretary of Commerce may provide a grant to an eligible recipient to conduct a needs assessment to identify—

(1) the unmet need of a region's employer base for skilled STEM workers;

(2) the potential of STEM apprenticeships to address the unmet need described in paragraph (1); and

(3) any barriers to addressing the unmet need described in paragraph (1).

(d) Apprenticeship expansion grants

The Secretary of Commerce may provide a grant to an eligible recipient that has conducted a needs assessment as described in subsection (c)(1) to develop infrastructure to expand STEM apprenticeship programs.

(Pub. L. 96–480, §30, formerly §28, as added Pub. L. 114–329, title III, §312(e), Jan. 6, 2017, 130 Stat. 3014; renumbered §30, Pub. L. 117–167, div. B, title VI, §10621(a)(1), Aug. 9, 2022, 136 Stat. 1642.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEVELOPING STEM APPRENTICESHIPS

Pub. L. 114–329, title III, §312(a)–(d), Jan. 6, 2017, 130 Stat. 3013, 3014, provided that:

"(a) FINDINGS.—Congress makes the following findings:

"(1) The lack of data on the return on investment for United States employers using registered apprenticeships makes it difficult—

"(A) to communicate the value of these programs to businesses; and

"(B) to expand registered apprenticeships.

"(2) The lack of data on the value and impact of employer-provided worker training, which is likely substantial, hinders the ability of the Federal Government to formulate policy related to workforce training.

"(3) The Secretary of Commerce has initiated—

"(A) the first study on the return on investment for United States employers using registered apprenticeships through case studies of firms in various sectors, occupations, and geographic locations to provide the business community with data on employer benefits and costs; and

"(B) discussions with officials at relevant Federal agencies about the need to collect comprehensive data on—

"(i) employer-provided worker training; and

"(ii) existing tools that could be used to collect such data.

"(b) DEVELOPMENT OF APPRENTICESHIP INFORMATION.—The Secretary of Commerce shall continue to research the value to businesses of utilizing apprenticeship programs, including—

"(1) evidence of return on investment of apprenticeships, including estimates for the average time it takes a business to recover the costs associated with training apprentices; and

"(2) data from the United States Census Bureau and other statistical surveys on employer-provided training, including apprenticeships and other on-the-job training and industry-recognized certification programs.

"(c) DISSEMINATION OF APPRENTICESHIP INFORMATION.—The Secretary of Commerce shall disseminate findings from research on apprenticeships to businesses and other relevant stakeholders, including—

"(1) institutions of higher education;

"(2) State and local chambers of commerce; and

"(3) workforce training organizations.

"(d) NEW APPRENTICESHIP PROGRAM STUDY.—The Secretary of Commerce may collaborate with the Secretary of Labor to study approaches for reducing the cost of creating new apprenticeship programs and hosting apprentices for businesses, particularly small businesses, including—

"(1) training sharing agreements;

"(2) group training models; and

"(3) pooling resources and best practices."

[For definitions of "STEM" and "institution of higher education" as used in section 312(a)–(d) of Pub. L. 114–329, set out above, see section 2 of Pub. L. 114–329, set out as a note under section 1862s of Title 42, The Public Health and Welfare.]

§3724. Crowdsourcing and citizen science

(a) Short title

This section may be cited as the "Crowdsourcing and Citizen Science Act".

(b) Sense of Congress

It is the sense of Congress that—

(1) the authority granted to Federal agencies under the America COMPETES Reauthorization Act of 2010 (Public Law 111–358; 124 Stat. 3982) to pursue the use of incentive prizes and challenges has yielded numerous benefits;

(2) crowdsourcing and citizen science projects have a number of additional unique benefits, including accelerating scientific research, increasing cost effectiveness to maximize the return on taxpayer dollars, addressing societal needs, providing hands-on learning in STEM, and connecting members of the public directly to Federal science agency missions and to each other; and

(3) granting Federal science agencies the direct, explicit authority to use crowdsourcing and citizen science will encourage its appropriate use to advance Federal science agency missions and stimulate and facilitate broader public participation in the innovation process, yielding numerous benefits to the Federal Government and citizens who participate in such projects.

(c) Definitions

In this section:

(1) Citizen science

The term "citizen science" means a form of open collaboration in which individuals or organizations participate voluntarily in the scientific process in various ways, including—

(A) enabling the formulation of research questions;

(B) creating and refining project design;

(C) conducting scientific experiments;

(D) collecting and analyzing data;

(E) interpreting the results of data;

(F) developing technologies and applications;

(G) making discoveries; and

(H) solving problems.

(2) Crowdsourcing

The term "crowdsourcing" means a method to obtain needed services, ideas, or content by soliciting voluntary contributions from a group of individuals or organizations, especially from an online community.

(3) Participant

The term "participant" means any individual or other entity that has volunteered in a crowdsourcing or citizen science project under this section.

(d) Crowdsourcing and citizen science

(1) In general

The head of each Federal science agency, or the heads of multiple Federal science agencies working cooperatively, may utilize crowdsourcing and citizen science to conduct projects designed to advance the mission of the respective Federal science agency or the joint mission of Federal science agencies, as applicable.

(2) Voluntary services

Notwithstanding section 1342 of title 31, the head of a Federal science agency may accept, subject to regulations issued by the Director of the Office of Personnel Management, in coordination with the Director of the Office of Science and Technology Policy, services from participants under this section if such services—

(A) are performed voluntarily as a part of a crowdsourcing or citizen science project authorized under paragraph (1);

(B) are not financially compensated for their time; and

(C) will not be used to displace any employee of the Federal Government.

(3) Outreach

The head of each Federal science agency engaged in a crowdsourcing or citizen science project under this section shall make public and promote such project to encourage broad participation.

(4) Consent, registration, and terms of use

(A) In general

Each Federal science agency shall determine the appropriate level of consent, registration, or acknowledgment of the terms of use that are required from participants in crowdsourcing or citizen science projects under this section on a per-project basis.

(B) Disclosures

In seeking consent, conducting registration, or developing terms of use for a project under this subsection, a Federal science agency shall disclose the privacy, intellectual property, data ownership, compensation, service, program, and other terms of use to the participant in a clear and reasonable manner.

(C) Mode of consent

A Federal agency or Federal science agencies, as applicable, may obtain consent electronically or in written form from participants under this section.

(5) Protections for human subjects

Any crowdsourcing or citizen science project under this section that involves research involving human subjects shall be subject to part 46 of title 28, Code of Federal Regulations (or any successor regulation).

(6) Data

(A) In general

A Federal science agency shall, where appropriate and to the extent practicable, make data

collected through a crowdsourcing or citizen science project under this section available to the public, in a machine readable format, unless prohibited by law.

(B) Notice

As part of the consent process, the Federal science agency shall notify all participants—

(i) of the expected uses of the data compiled through the project;

(ii) if the Federal science agency will retain ownership of such data;

(iii) if and how the data and results from the project would be made available for public or third party use; and

(iv) if participants are authorized to publish such data.

(7) Technologies and applications

Federal science agencies shall endeavor to make technologies, applications, code, and derivations of such intellectual property developed through a crowdsourcing or citizen science project under this section available to the public.

(8) Liability

Each participant in a crowdsourcing or citizen science project under this section shall agree—

(A) to assume any and all risks associated with such participation; and

(B) to waive all claims against the Federal Government and its related entities, except for claims based on willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits (whether direct, indirect, or consequential) arising from participation in the project.

(9) Research misconduct

Federal science agencies coordinating crowdsourcing or citizen science projects under this section shall make all practicable efforts to ensure that participants adhere to all relevant Federal research misconduct policies and other applicable ethics policies.

(10) Multi-sector partnerships

The head of each Federal science agency engaged in crowdsourcing or citizen science under this section, or the heads of multiple Federal science agencies working cooperatively, may enter into a contract or other agreement to share administrative duties for such projects with—

(A) a for profit or nonprofit private sector entity, including a private institution of higher education;

(B) a State, tribal, local, or foreign government agency, including a public institution of higher education; or

(C) a public-private partnership.

(11) Funding

In carrying out crowdsourcing and citizen science projects under this section, the head of a Federal science agency, or the heads of multiple Federal science agencies working cooperatively—

(A) may use funds appropriated by Congress;

(B) may publicize projects and solicit and accept funds or in-kind support for such projects, to be available to the extent provided by appropriations Acts, from—

(i) other Federal agencies;

(ii) for profit or nonprofit private sector entities, including private institutions of higher education; or

(iii) State, tribal, local, or foreign government agencies, including public institutions of higher education; and

(C) may not give any special consideration to any entity described in subparagraph (B) in return for such funds or in-kind support.

(12) Facilitation

(A) General Services Administration assistance

The Administrator of the General Services Administration, in coordination with the Director of the Office of Personnel Management and the Director of the Office of Science and Technology Policy, shall, at no cost to Federal science agencies, identify and develop relevant products, training, and services to facilitate the use of crowdsourcing and citizen science projects under this section, including by specifying the appropriate contract vehicles and technology and organizational platforms to enhance the ability of Federal science agencies to carry out the projects under this section.

(B) Additional guidance

The head of each Federal science agency engaged in crowdsourcing or citizen science under this section may—

(i) consult any guidance provided by the Director of the Office of Science and Technology Policy, including the Federal Crowdsourcing and Citizen Science Toolkit;

(ii) designate a coordinator for that Federal science agency's crowdsourcing and citizen science projects; and

(iii) share best practices with other Federal agencies, including participation of staff in the Federal Community of Practice for Crowdsourcing and Citizen Science.

(e) Report

(1) In general

Not later than 2 years after January 6, 2017, the Director of the Office of Science and Technology Policy shall include, as a component of an annual [1] report required under section 3719(p) of this title, a report on the projects and activities carried out under this section.

(2) Information included

The report required under paragraph (1) shall include—

(A) a summary of each crowdsourcing and citizen science project conducted by a Federal science agency during the most recently completed 2 fiscal years, including a description of the proposed goals of each crowdsourcing and citizen science project;

(B) an analysis of why the utilization of a crowdsourcing or citizen science project summarized in subparagraph (A) was the preferable method of achieving the goals described in subparagraph (A) as opposed to other authorities available to the Federal science agency, such as contracts, grants, cooperative agreements, and prize competitions;

(C) the participation rates, submission levels, number of consents, and any other statistic that might be considered relevant in each crowdsourcing and citizen science project;

(D) a detailed description of—

(i) the resources, including personnel and funding, that were used in the execution of each crowdsourcing and citizen science project;

(ii) the project activities for which such resources were used; and

(iii) how the obligations and expenditures relating to the project's execution were allocated among the accounts of the Federal science agency, including a description of the amount and source of all funds, private, public, and in-kind, contributed to each crowdsourcing and citizen science project;

(E) a summary of the use of crowdsourcing and citizen science by all Federal science agencies, including interagency and multi-sector partnerships;

(F) a description of how each crowdsourcing and citizen science project advanced the mission of each participating Federal science agency;

(G) an identification of each crowdsourcing or citizen science project where data collected through such project was not made available to the public, including the reasons for such action; and

(H) any other information that the Director of the Office of Science and Technology Policy considers relevant.

(f) Savings provision

Nothing in this section may be construed—

(1) to affect the authority to conduct crowdsourcing and citizen science authorized by any other provision of law; or

(2) to displace Federal Government resources allocated to the Federal science agencies that use crowdsourcing or citizen science authorized under this section to carry out a project.

(Pub. L. 114–329, title IV, §402, Jan. 6, 2017, 130 Stat. 3019.)

EDITORIAL NOTES

REFERENCES IN TEXT

The America COMPETES Reauthorization Act of 2010, referred to in subsec. (b)(1), is Pub. L. 111–358, Jan. 4, 2011, 124 Stat. 3982, also known as the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010. For complete classification of this Act to the Code, see Short Title of 2011 Amendment note set out under section 1861 of Title 42, The Public Health and Welfare, and Tables.

CODIFICATION

Section was enacted as part of the American Innovation and Competitiveness Act, and not as part of the Stevenson-Wydler Technology Innovation Act of 1980 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 2 of Pub. L. 114–329, set out as a note under section 1862s of Title 42, The Public Health and Welfare.

[1] So in original. As amended by Pub. L. 114–329, section 3719(p) of this title requires biennial reports.

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.

§3801. Congressional statement of findings and declaration of policy

(a) The Congress finds and declares that—

(1) gasoline and diesel fuel for vehicular use are in short supply and constitute a sizable portion of domestic petroleum consumption;

(2) methane use in fleet-operated vehicles would result in substantial reduction in oil imports;

(3) methane is in more abundant domestic supply than petroleum products, is the primary

component of natural gas and can be derived in increased quantities from coal, biomass, waste products, and other renewable resources;

(4) recoverable methane presently available in the United States is not fully utilized;

(5) test results to date indicate that methane use as a substitute for gasoline as a motor fuel can result in emission reductions;

(6) experience to date has shown methane to be a safe motor fuel in properly modified vehicles and is therefore particularly suitable as fuel for fleet vehicles; and

(7) the introduction into commerce of methane-fueled vehicles would be expedited and facilitated by the establishment of a Federal program of research, development, and demonstration to explore and refine technologies related to methane use as a vehicular fuel.

(b) It is therefore declared to be the policy of the Congress in this chapter to—

(1) provide for and support advanced and accelerated research into, and development of, methane vehicle design, and related technologies;

(2) demonstrate the economic and technological practicalities of methane-fueled vehicles for fleet use and of methane-fueled farm equipment;

(3) facilitate, and remove barriers to, the use of methane-fueled vehicles in lieu of gasoline- or diesel-powered motor vehicles where practicable;

(4) promote the substitution of methane-fueled vehicles for gasoline- and diesel-powered vehicles currently used on farms and in fleet operations, particularly in areas where such substitution would facilitate plans to meet air quality standards set under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; and

(5) supplement, but neither supplant nor duplicate, the automotive propulsion system research and development efforts of private industry.

(Pub. L. 96–512, §2, Dec. 12, 1980, 94 Stat. 2827.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clean Air Act, as amended, referred to in subsec. (b)(4), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 96–512, §1, Dec. 12, 1980, 94 Stat. 2827, provided: "That this Act [enacting this chapter] may be cited as the 'Methane Transportation Research, Development, and Demonstration Act of 1980'."

§3802. Definitions

For purposes of this chapter—

(a) the term "methane" means either natural gas (as defined in section 3301(1) of this title), gas derived from coal, liquefied natural gas, or any gaseous transportation fuel produced from biomass, waste products, and other renewable resources;

(b) the term "Secretary" means the Secretary of Energy;

(c) the term "public entities" means any unit or units of State and/or local governments;

(d) the term "private entities" means any person, such as any organization incorporated under State law, for profit or not-for-profit, or a consortium of such organizations, but does not include public entities;

(e) the term "vehicle" means any truck, van, station wagon, bus, or car used on public roads or highways as well as off-road agricultural equipment, such as tractors, harvesters, and so forth,

which presently burn gasoline or diesel fuel; and

(f) the terms "facilities for the transmission and storage of methane", "methane transmission, storage and dispensing facilities", and any variant thereof means such facilities which are (1) directly necessary for the conduct of a demonstration, (2) for the exclusive use of a demonstration and (3) reasonably incidental to a demonstration.

(Pub. L. 96–512, §3, Dec. 12, 1980, 94 Stat. 2828.)

§3803. Duties of Secretary of Energy

(a) Designation of management entity for program

The Secretary shall designate prior to February 1, 1981, an appropriate organizational entity within the Department of Energy to manage the methane vehicle research, development, and demonstration program.

(b) Monitoring and management of program; agreements with other Federal departments and agencies

The Secretary shall have the responsibility for monitoring and assuring proper management of the program. The Secretary may enter into agreements or arrangements with the National Aeronautics and Space Administration, the Department of Transportation, the Environmental Protection Agency, or any other Federal department or agency, pursuant to which such department or agency shall conduct specified parts or aspects of the program as the Secretary deems necessary or appropriate and within the particular competence of such agency, to the extent that such agency has capabilities which would enable it to contribute to the success of the program and attainment of the purposes of this chapter.

(c) Assurances respecting scope of program activities

In assuring the effective management of this program, the Secretary shall have specific responsibility to ascertain that the program includes activities to—

(1) promote basic and applied research on methane-fueled vehicle construction, modification, and safety;

(2) conduct research and development on optimum overall specifications for methane-fueled vehicles;

(3) determine appropriate means and facilities for safely and economically storing, transporting, and dispensing methane for use as a vehicular fuel;

(4) conduct demonstration projects with respect to the feasibility of methane-fueled vehicles and methane transmission, storage and dispensing facilities (A) by providing necessary financial or technical assistance for the construction, modification, or operation of motor vehicles to be methane-fueled for practical use or of methane transmission, storage and dispensing facilities, and (B) by entering into agreements or arrangements with other entities, governmental and nongovernmental, for the demonstration of such vehicles and facilities;

(5) gather performance data, including but not limited to emissions data, on methane-fueled vehicles and related transmission and storage facilities;

(6) determine that the participants in each demonstration assisted under this chapter have made satisfactory arrangements to obtain an adequate supply of methane for vehicular use in the project;

(7) ascertain the need for modifications in available methane-fueled vehicles to improve their efficiency and performance and to facilitate their widespread use by fleet owners; and

(8) ascertain any changes in fuel supply patterns, tax policies, and standards governing the manufacture of vehicles which are needed to facilitate the manufacture and use of methane-fueled vehicles.

(d) Implementation of program; administrative procedures, etc., applicable

(1) The Secretary of Energy shall insure that the conduct of the research and development program of this chapter—

(A) supplements the automotive propulsion system research and development efforts of industry;

(B) is not formulated in a manner that will supplant private industry research and development or displace or lessen industry's research and development; and

(C) avoids duplication of private research and development.

(2) To that end, the Secretary of Energy shall issue administrative regulations, within 60 days after December 12, 1980, which shall specify procedures, standards, and criteria for the timely review for compliance of each new contract, grant, Department of Energy project, or other agency project funded or to be funded under the authority of this chapter. Such regulations shall require that the Secretary of Energy or his designee shall certify that each such contract, grant, or project satisfies the requirement of this subsection, and shall include in such certification a discussion of the relationship of any related or comparable industry research and development, in terms of this subsection, to the proposed research and development under the authority of this chapter. The discussion shall also address related issues, such as cost sharing and patent rights.

(3) Such certifications shall be available to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The provisions of chapter 5 of title 5 shall not apply to such certifications and no court shall have any jurisdiction to review the preparation or adequacy of such certifications; but section 553 of title 5 and section 5916 of title 42 shall apply to public disclosure of such certifications.

(4) The Secretary of Energy also shall include in the report required by section 3808 [1] of this title a detailed discussion of how each research and development contract, grant, or project funded under the authority of this chapter satisfies the requirement of this subsection.

(5) Further, the Secretary of Energy in each annual budget submission to the Congress, or amendment thereto, for the programs authorized by this chapter shall describe how each identified research and development effort in such submission satisfies the requirements of this subsection.

(6) The provisions and requirements of this subsection shall not apply with respect to any contract, grant, or project which was entered into, made, or formally approved and initiated prior to the enactment of this chapter, or with respect to any renewal or extension thereof.

(Pub. L. 96–512, §4, Dec. 12, 1980, 94 Stat. 2828; Pub. L. 97–375, title I, §106(c), Dec. 21, 1982, 96 Stat. 1820; Pub. L. 103–437, §5(b)(5), Nov. 2, 1994, 108 Stat. 4582.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3808 of this title, referred to in subsec. (d)(4), was repealed by Pub. L. 104–66, title I, §1051(p), Dec. 21, 1995, 109 Stat. 717.

AMENDMENTS

1994—Subsec. (d)(3). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

1982—Subsec. (c)(8). Pub. L. 97–375 struck out "and report to the Congress on" after "ascertain".

[1] See References in Text note below.

§3804. Coordination with other Federal departments and agencies

(a) Related responsibilities and regulatory activities

In carrying out the programs established under sections 3803 and 3806 of this title, the Secretary shall assure, to the maximum extent practicable, that the functions of this program are coordinated with related regulatory activities and other responsibilities of the Department of Energy and any other Federal departments or agencies.

(b) Scope of assistance

Each department, agency, and instrumentality of the executive branch of the Federal Government shall carefully consider any written request from the Secretary, the head of any organizational entity designated by the Secretary pursuant to section 3803(a) of this title, or the head of any agency which is party to an agreement or arrangement pursuant to section 3803(b) of this title, to furnish such assistance, on a reimbursable basis, as the Secretary or such head deems necessary to carry out the program and to achieve the purposes of this chapter. Such assistance may include transfer of personnel with their consent and without prejudice to their position and rating.

(Pub. L. 96–512, §5, Dec. 12, 1980, 94 Stat. 2830.)

§3805. Research and development activities

The Secretary, acting through appropriate agencies and contractors, shall initiate and provide for the conduct of research and development in areas relating to methane-fueled vehicles, including but not limited to—

(1) flammability and combustibility of methane under conditions likely to develop in storage or during vehicular use;

(2) handling, storage, and distribution of methane for vehicular propulsion purposes;

(3) comprehensive assessment of the relative hazards under identical circumstances of methane, propane, gasoline, and diesel fuel;

(4) feasibility, economy, and efficiency of technologies for the production and recovery of methane from unconventional and supplemental sources, as provided for in other authorization Acts;

(5) engine and fuel tank design including, but not limited to, optimum design for dual fuel capacity vehicles;

(6) total vehicle construction and design;

(7) the nature and quantities of emissions, and alterations in or alternatives to emission control systems presently in use; and

(8) overcoming institutional barriers to widespread use including but not limited to restrictions on the transportation of methane for vehicular use through tunnels, and the potential expansion of the distribution of methane for vehicular purposes.

(Pub. L. 96–512, §6, Dec. 12, 1980, 94 Stat. 2830.)

§3806. Demonstrations

(a) Development of data assessing current state-of-the-art

Not later than January 1, 1982, the Secretary shall develop data assessing the current state-of-the-art with respect to vehicles fueled by methane to serve as baseline data to be utilized in evaluating improvements in methane-fueled vehicle technologies.

(b) Guidelines; promulgation, criteria, scope, etc.

Not later than April 1, 1982, the Secretary shall have promulgated necessary and appropriate guidelines for demonstrations and issued an initial request for proposals for technical and financial assistance to support public and private entities in developing and implementing demonstration projects to gather data on the operation of methane-fueled vehicles and methane transmission, storage, and dispensing facilities, under differing climatic, atmospheric, and operating conditions and on design and technical modifications of those vehicles and facilities:

(1) In the case of public entities, the Secretary is authorized to provide—

(A) technical assistance reasonably associated with the modification or acquisition of vehicles to be fueled by methane or with dual fuel capacity, the installation of methane transmission, storage and dispensing facilities, and compliance with data acquisition and

reporting requirements under this chapter; and

(B) grants to cover up to 50 per centum of reasonable and necessary costs associated with the installation of methane transmission, storage and dispensing facilities: *Provided*, That the Secretary shall be authorized to direct and require recipients of assistance under this section to enter into cooperative agreements for the planning and use of such facilities with other recipients of assistance under this section, under a cost-sharing agreement where appropriate and economical.

(2)(A) In the case of private entities, the Secretary is authorized to provide—

(i) technical assistance reasonably associated with the modification or acquisition of vehicles to be fueled by methane or with dual fuel capacity, the installation of methane transmission, storage and dispensing facilities, and compliance with data acquisition and reporting requirements under this chapter; and

(ii) loans to cover up to 50 per centum of reasonable and necessary costs associated with the installation of methane transmission, storage and dispensing facilities: *Provided*, That the Secretary shall be authorized to direct and require recipients of assistance under this section to enter into cooperative agreements for the planning and use of such facilities with other recipients of assistance under this section, under a cost-sharing agreement where appropriate and economical.

(B) Loans issued under this section shall bear interest at such rate as the Secretary may determine, giving consideration to the needs and capacities of the recipient and the prevailing rates of interest (public and private), except that such rate shall not be less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such loans. No loan shall be made unless the Secretary shall have determined that there is reasonable prospect of repayment.

(C) The terms and conditions of loans issued under this section shall take into account the scope of the particular demonstration and any particular conditions which might reasonably be expected to result in additional costs to the recipient, and shall reflect the relative costs of gasoline and diesel fuel and methane and the projected savings in fuel costs to the recipient as a result of participating in the demonstration. In no instance shall a loan issued under this section be for a period in excess of five years.

(3) The Secretary shall provide for appropriate assistance to defray costs associated with complying with data acquisition and reporting requirements under this chapter.

(4) In the case of an organization comprised of both public and private entities, a package of technical and financial assistance shall be designed to the maximum extent feasible, in such a manner as to assist its public components as provided for in paragraph (1) and to assist its private components as provided for in paragraph (2) of this section.

(c) Fiscal year limitations

Not fewer than fifty demonstrations shall be assisted under this section with not fewer than ten being initiated in the fiscal year ending September 30, 1982, and not fewer than twenty being initiated in each of the fiscal years ending September 30, 1983, and September 30, 1984. In the case of demonstrations initiated under this chapter after the first fiscal year in which demonstrations are funded, the Secretary shall ascertain that plans for such demonstrations take into consideration information and findings included in reports filed on other demonstrations assisted under this chapter.

(d) Duration; recordkeeping requirements

Each demonstration shall have a duration of at least three years during which time records including, but not limited to, fuel efficiency indicators, emissions data, repair statistics, and detailed

reports of any accidents, shall be maintained and reports made to the Secretary in accordance with guidelines promulgated by the Secretary prior to issuance of the first loan or grant under this section and amended no more often than twice annually.

(e) Selection of proposed demonstrations; discretionary and mandatory criteria

In selecting proposed demonstrations to be supported under this section, the Secretary shall, to the maximum extent practicable, assure representation of diverse operating conditions and vehicle types including, but not limited to—

(1) altitude and topography,
(2) climatic conditions,
(3) air quality conditions,
(4) industrial, commercial, and agricultural uses,
(5) varying vehicular structures, and
(6) average trip lengths:

Provided, however, That not fewer than two demonstrations initiated in each year shall be located in a county or standard metropolitan statistical area designated by the Secretary upon recommendation of the Administrator of the Environmental Protection Agency based on severity or uniqueness of air quality conditions: *And provided further*, That the fleet or portions of fleets participating in each demonstration with funding under this chapter shall consist of not fewer than fifty vehicles except in the case of one demonstration each year involving methane-fueled off-road agricultural equipment.

(Pub. L. 96–512, §7, Dec. 12, 1980, 94 Stat. 2830.)

§3807. Use of methane-fueled vehicles by Federal agencies and departments

The Secretary shall consult with the Postmaster General of the United States Postal Service, the Administrator of the General Services Administration, the Secretary of Defense, and the heads of other Federal agencies where appropriate to—

(a) determine the practicability of using methane vehicles in the performance of certain or all of the functions of their agencies based in counties and standard metropolitan statistical areas in which demonstrations under section 3806 of this title are being conducted; and

(b) arrange for appropriate use of methane-fueled vehicles at the earliest practicable date.

(Pub. L. 96–512, §8, Dec. 12, 1980, 94 Stat. 2832.)

§3808. Repealed. Pub. L. 104–66, title I, §1051(p), Dec. 21, 1995, 109 Stat. 717

Section, Pub. L. 96–512, §9, Dec. 12, 1980, 94 Stat. 2833, directed Secretary of Energy to submit such reports to Congress as Secretary deemed appropriate, including annual report on all activities under this chapter.

§3809. Authorization of appropriations; required funding

There are authorized to be appropriated to the Secretary for purposes of carrying out this chapter, not to exceed $3,000,000 for the fiscal year ending September 30, 1982, not less than one-half of which shall be for the purpose of making loans under section 3806(b) of this title; not to exceed $5,000,000 for the fiscal year ending September 30, 1983, not less than one-half of which shall be for the purpose of making loans under section 3806(b) of this title; not to exceed $5,000,000 for the fiscal year ending September 30, 1984, not less than one-half of which shall be for the purpose of making loans under section 3806(b) of this title; and such sums as may be necessary for the fiscal years ending September 30, 1985, and September 30, 1986. Any amount appropriated pursuant to this section shall remain available until expended.

(Pub. L. 96–512, §10, Dec. 12, 1980, 94 Stat. 2833.)

§3810. Relationship to other laws

(a) Modification or waiver

Nothing in this chapter shall be construed as authorizing the Secretary or any other official with respect to any activity pursuant to this chapter to modify or waive the application of any Federal, State or local laws dealing with the production, transportation, storage, safety, use or pricing of methane.

(b) Promulgation of rules

Nothing in this chapter shall be construed as granting the Secretary or any other Federal official any authority to promulgate rules of general application to regulate the production, transportation, storage, safety, use or pricing of methane as a transportation fuel or vehicles which use methane as a transportation fuel.

(Pub. L. 96–512, §11, Dec. 12, 1980, 94 Stat. 2833.)

CHAPTER 65—LIABILITY RISK RETENTION

Sec.

§3901. Definitions

(a) As used in this chapter—

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"—

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association—

(A) whose primary activity consists of assuming, and spreading all, or any portion, of the

liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before October 27, 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which—

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as—

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than—

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".[1]

(5) "purchasing group" means any group which—

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State;

(6) "State" means any State of the United States or the District of Columbia; and

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

(Pub. L. 97–45, §2, Sept. 25, 1981, 95 Stat. 949; Pub. L. 98–193, Dec. 1, 1983, 97 Stat. 1344; Pub. L. 99–563, §§3, 4, 12(b), Oct. 27, 1986, 100 Stat. 3170, 3171, 3177.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Employers' Liability Act (45 U.S.C. 51 et seq.), referred to in subsec. (a)(2)(B), is act Apr. 22, 1908, ch. 149, 35 Stat. 65, which is classified generally to chapter 2 (§51 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 51 of Title 45 and Tables.

CODIFICATION

October 27, 1986, referred to in subsec. (a)(4)(C)(ii), was in the original "the date of the enactment of the Risk Retention Act of 1986", which was translated as meaning the date of enactment of the Risk Retention Amendments of 1986 to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (a)(1) to (3). Pub. L. 99–563, §3(a), redesignated par. (2) as (1), added pars. (2) and (3), and struck out former par. (1) defining completed operations liability, and former par. (3) defining product liability.

Subsec. (a)(4). Pub. L. 99–563, §4(a)(1), struck out "taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands" after "association" in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 99–563, §4(a)(2), substituted "liability exposure" for "product liability or completed operations liability risk exposure".

Subsec. (a)(4)(C). Pub. L. 99–563, §4(a)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State, or which is so chartered or licensed and authorized before January 1, 1985, under the laws of Bermuda or the Cayman Islands, except that any group so chartered or licensed and authorized under the laws of Bermuda or the Cayman Islands shall be considered to be a risk retention group only after it has certified to the insurance commissioner of at least one State that it satisfies the capitalization requirements of such State;".

Subsec. (a)(4)(E) to (H). Pub. L. 99–563, §4(a)(4), added subpars. (E) to (H), and struck out former subpar. (E) which read as follows: "which is composed of member each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or products;".

Subsec. (a)(5). Pub. L. 99–563, §4(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows: " 'purchasing group' means any group of persons which has as one of its purposes the purchase of product liability or completed operations liability insurance on a group basis;".

Subsec. (a)(7). Pub. L. 99–563, §3(b), added par. (7).

Subsec. (b). Pub. L. 99–563, §12(b), substituted "liability, personal risk liability, and insurance" for "product liability and product liability insurance".

1983—Subsec. (b). Pub. L. 98–193 substituted provision that nothing in this chapter would be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and that the definitions of product liability and product liability insurance under any State law would not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups for provision that the definition of product liability in this section would not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1986 AMENDMENT; APPLICABILITY

Pub. L. 99–563, §11(a), (b), and (c)(2), Oct. 27, 1986, 100 Stat. 3177, provided that:

"(a) GENERAL RULE.—Subject to subsection (b), this Act [see Short Title of 1986 Amendment note below] shall take effect on the date of its enactment [Oct. 27, 1986].

"(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 (as added by section 5(b) of this Act) [15 U.S.C. 3902(d)], relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

"(1) was defined in the Product Liability Risk Retention Act of 1981 [Pub. L. 97–45, which enacted this chapter] before the date of the enactment of this Act [Oct. 27, 1986]; and

"(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment.

"(c) RULE REGARDING POLLUTION LIABILITY.—

"(2) Nothing in this Act shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. 9601 et seq.] and the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.]."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–563, §1, Oct. 27, 1986, 100 Stat. 3170, provided that: "This Act [enacting sections 3905 and 3906 of this title, amending this section, sections 3902 and 3903 of this title, and sections 9671 to 9675 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and section 9671 of Title 42, and amending provisions set out as a note under this section] may be cited as the 'Risk Retention Amendments of 1986'."

SHORT TITLE

Pub. L. 97–45, §1, Sept. 25, 1981, 95 Stat. 949, as amended by Pub. L. 99–563, §12(a), Oct. 27, 1986, 100 Stat. 3177, provided that: "This Act [enacting this chapter] may be cited as the 'Liability Risk Retention Act of 1986'."

OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS

Pub. L. 99–563, §10, Oct. 27, 1986, 100 Stat. 3176, provided that:

"(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act [see Short Title of 1986 Amendment note above].

"(2) Such report shall be based on—

"(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

"(B) the Secretary's analysis of other information available to the Secretary.

"(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

"(1) the contribution of this Act [see Short Title of 1986 Amendment note above] toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

"(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

"(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

"(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

"(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act and the Product Liability Risk Retention Act (as amended by this Act) [Pub. L. 97–45, which enacted this chapter]; and

"(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act."

[1] *So in original. The period probably should be a semicolon.*

§3902. Risk retention groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioners in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued—

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise, discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) Scope of exemptions

The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

(1) liability insurance coverage provided by a risk retention group for—
(A) such group; or
(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and
(3) the provision of—
(A) insurance related services;
(B) management, operations, and investment activities; or
(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

(c) Licensing of agents or brokers for risk retention groups

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Documents for submission to State insurance commissioners

Each risk retention group shall submit—
(1) to the insurance commissioner of the State in which it is chartered—
(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and
(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—
(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and
(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—
(A) a member of the American Academy of Actuaries, or
(B) a qualified loss reserve specialist.

(e) Power of courts to enjoin conduct

Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—
(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or
(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) State powers to enforce State laws

(1) Subject to the provisions of subsection (a)(1)(G) (relating to injunctions) and paragraph (2), nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(h) State authority to regulate or prohibit ownership interests in risk retention groups

Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

(Pub. L. 97–45, §3, Sept. 25, 1981, 95 Stat. 950; Pub. L. 99–563, §§5, 7, 8(a), 12(c), Oct. 27, 1986, 100 Stat. 3172, 3175, 3178.)

EDITORIAL NOTES

AMENDMENTS

1986—Subsec. (a)(1)(C). Pub. L. 99–563, §12(c), struck out "product liability or completed operations" before "liability insurance losses".

Subsec. (a)(1)(D). Pub. L. 99–563, §5(b)(1), redesignated subpar. (E) as (D), substituted a semicolon for ", and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the commissioners of the chartering or licensing jurisdiction;", and struck out former subpar. (D) which read as follows: "submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to product liability or completed operations liability insurance losses and expenses;".

Subsec. (a)(1)(E). Pub. L. 99–563, §5(b)(1)(A), (c), redesignated subpar. (F) as (E), further redesignated cl. (ii) as (i), added cl. (ii), and struck out former cl. (i) which read as follows: "the commissioner has reason to believe the risk retention group is in a financially impaired condition; and". Former subpar. (E) redesignated (D).

Subsec. (a)(1)(F). Pub. L. 99–563, §5(b)(1)(A), (d), redesignated subpar. (G) as (F) and amended it generally. Prior to amendment, subpar. (F) read as follows: "comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F) of this paragraph;". Former subpar. (F) redesignated (E).

Subsec. (a)(1)(G) to (I). Pub. L. 99–563, §5(b)(1)(A), (e), added subpars. (G) to (I). Former subpar. (G) redesignated (F).

Subsec. (b). Pub. L. 99–563, §5(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The exemptions specified in subsection (a) of this section apply to—

"(1) product liability or completed operations liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of product liability or completed operations liability insurance coverage for a risk retention group; and

"(3) the provision of insurance related services or management services for a risk retention group or any member of such group."

Subsecs. (d) to (h). Pub. L. 99–563, §§5(b)(2), 7, 8(a), added subsecs. (d) to (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SPECIAL RULE REGARDING FEASIBILITY STUDY

The provisions of subsec. (d) of this section, relating to the submission of a feasibility study, not applicable with respect to any line or classification of liability insurance which was defined in this chapter before Oct.

27, 1986, and was offered before such date by any risk retention group chartered and operating for not less than 3 years before such date, see section 11(b) of Pub. L. 99–563, set out as an Effective Date of 1986 Amendment; Applicability note under section 3901 of this title.

§3903. Purchasing groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section and section 3905 of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

(b) Scope of exemptions

The exemptions specified in subsection (a) apply to—

(1) liability insurance provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) liability coverage;

(B) insurance related services; or

(C) management services;

to a purchasing group or member of the group.

(c) Licensing of agents or brokers for purchasing groups

A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Notice to State insurance commissioners of intent to do business

(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

(A) shall identify the State in which such group is domiciled;

(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

(D) shall identify the principal place of business of the group.

(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) Designation of agent for service of documents and process

A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

(1) which—

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after October 27, 1986; [1]

in any State of the United States;

(2) which—

(A) before September 25, 1981, purchased insurance from an insurance carrier licensed in any State; and

(B) since September 25, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this chapter as in effect before October 27, 1986.

(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.

(g) State powers to enforce State laws

Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter.

(h) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(Pub. L. 97–45, §4, Sept. 25, 1981, 95 Stat. 951; Pub. L. 99–563, §§6, 8(b), 12(d), Oct. 27, 1986, 100 Stat. 3174, 3175, 3178.)

EDITORIAL NOTES

CODIFICATION

October 27, 1986, referred to in subsec. (e)(1)(B), was in the original "the date of the enactment of this Act" which was translated as meaning the date of the enactment of Pub. L. 99–563, which enacted subsec. (e), to reflect the probable intent of Congress.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–563, §8(b)(1), inserted reference to section 3905 of this title.

Subsec. (b)(1). Pub. L. 99–563, §12(d)(1), substituted "liability insurance" for "product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages,".

Subsec. (b)(2)(A). Pub. L. 99–563, §12(d)(2), struck out "product liability or completed operations

insurance, and comprehensive general" before "liability coverage".

Subsecs. (d) to (h). Pub. L. 99–563, §§6, 8(b)(2), added subsecs. (d) to (h).

[1] *See Codification note below.*

§3904. Securities laws

(a) Ownership interest of members in risk retention groups

The ownership interests of members in a risk retention group shall be—

(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] and for purposes of section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l]; and

(2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 [15 U.S.C. 77q] and the provisions of section 10 of the Securities Exchange Act of 1934 [15 U.S.C. 78j].

(b) Investment companies

A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(c) State blue sky laws

The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub. L. 97–45, §5, Sept. 25, 1981, 95 Stat. 952.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

§3905. Clarification concerning permissible State authority

(a) No exemption from State motor vehicle no-fault and motor vehicle financial responsibility laws

Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) Applicability of exemptions

The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) Prohibited insurance policy coverage

The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of demonstrating financial responsibility

Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in

this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

(Pub. L. 97–45, §6, as added Pub. L. 99–563, §8(c), Oct. 27, 1986, 100 Stat. 3175.)

§3906. Injunctive orders issued by United States district courts

Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.

(Pub. L. 97–45, §7, as added Pub. L. 99–563, §9, Oct. 27, 1986, 100 Stat. 3176.)

CHAPTER 66—PROMOTION OF EXPORT TRADE

SUBCHAPTER I—EXPORT TRADING COMPANIES AND TRADE ASSOCIATIONS

Sec.

SUBCHAPTER I—EXPORT TRADING COMPANIES AND TRADE ASSOCIATIONS

§4001. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) United States exports are responsible for creating and maintaining one out of every nine manufacturing jobs in the United States and for generating one out of every seven dollars of total United States goods produced;

(2) the rapidly growing service-related industries are vital to the well-being of the United States economy inasmuch as they create jobs for seven out of every ten Americans, provide 65 per centum of the Nation's gross national product, and offer the greatest potential for significantly increased industrial trade involving finished products;

(3) trade deficits contribute to the decline of the dollar on international currency markets and have an inflationary impact on the United States economy;

(4) tens of thousands of small- and medium-sized United States businesses produce exportable goods or services but do not engage in exporting;

(5) although the United States is the world's leading agricultural exporting nation, many farm products are not marketed as widely and effectively abroad as they could be through export trading companies;

(6) export trade services in the United States are fragmented into a multitude of separate functions, and companies attempting to offer export trade services lack financial leverage to reach a significant number of potential United States exporters;

(7) the United States needs well-developed export trade intermediaries which can achieve economies of scale and acquire expertise enabling them to export goods and services profitably, at low per unit cost to producers;

(8) the development of export trading companies in the United States has been hampered by business attitudes and by Government regulations;

(9) those activities of State and local governmental authorities which initiate, facilitate, or expand exports of goods and services can be an important source for expansion of total United States exports, as well as for experimentation in the development of innovative export programs keyed to local, State, and regional economic needs;

(10) if United States trading companies are to be successful in promoting United States exports and in competing with foreign trading companies, they should be able to draw on the resources, expertise, and knowledge of the United States banking system, both in the United States and abroad; and

(11) the Department of Commerce is responsible for the development and promotion of United States exports, and especially for facilitating the export of finished products by United States manufacturers.

(b) It is the purpose of this chapter to increase United States exports of products and services by encouraging more efficient provision of export trade services to United States producers and suppliers, in particular by establishing an office within the Department of Commerce to promote the formation of export trade associations and export trading companies, by permitting bank holding companies, bankers' banks, and Edge Act corporations and agreement corporations that are subsidiaries of bank holding companies to invest in export trading companies, by reducing restrictions on trade financing provided by financial institutions, and by modifying the application of the antitrust laws to certain export trade.

(Pub. L. 97–290, title I, §102, Oct. 8, 1982, 96 Stat. 1233.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in original "this Act", meaning Pub. L. 97–290, Oct. 8, 1982, 96 Stat. 1233, which enacted this chapter and section 6a of this title and section 635a–4 of Title 12, Banks and Banking, amended section 45 of this title and sections 372 and 1843 of Title 12, and enacted provisions set out as notes under sections 1, 4001, and 4011 of this title and sections 1841 and 1843 of Title 12. For complete classification of this Act to the Code, see Tables.

Edge Act corporation, referred to in subsec. (b), is a corporation organized under section 25A of the Federal

Reserve Act, as added by act Dec. 24, 1919, ch. 18, 41 Stat. 378, and amended, popularly known as the Edge Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–64, §1, July 12, 1985, 99 Stat. 120, provided that: "Titles I and II of this Act [enacting sections 4051 to 4053 of this title, section 1864 of Title 19, Customs Duties, and section 466c of Title 46, Appendix, Shipping, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 2304 and 2778 of Title 22, Foreign Relations and Intercourse, section 185 of Title 30, Mineral Lands and Mining, and former sections 4601 to 4606, 4609, 4610, 4614, 4615 to 4620, and 4622 of Title 50, War and National Defense, and enacting provisions set out as notes under section 5314 of Title 5 and former sections 4604, 4605, and 4617 of Title 50] may be cited as the 'Export Administration Amendments Act of 1985'."

SHORT TITLE

Pub. L. 97–290, title I, §101, Oct. 8, 1982, 96 Stat. 1233, provided that: "This title [enacting this subchapter] may be cited as the 'Export Trading Company Act of 1982'."

§4002. Definitions

(a) For purposes of this subchapter—

(1) the term "export trade" means trade or commerce in goods or services produced in the United States which are exported, or in the course of being exported, from the United States to any other country;

(2) the term "services" includes, but is not limited to, accounting, amusement, architectural, automatic data processing, business, communications, construction franchising and licensing, consulting, engineering, financial, insurance, legal, management, repair, tourism, training, and transportation services;

(3) the term "export trade services" includes, but is not limited to, consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation, including trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, warehousing, foreign exchange, financing, and taking title to goods, when provided in order to facilitate the export of goods or services produced in the United States;

(4) the term "export trading company" means a person, partnership, association, or similar organization, whether operated for profit or as a nonprofit organization, which does business under the laws of the United States or any State and which is organized and operated principally for purposes of—

(A) exporting goods or services produced in the United States; or

(B) facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services;

(5) the term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the term "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(7) the term "antitrust laws" means the antitrust laws as defined in section 12(a) of this title, section 45 of this title to the extent that section 45 of this title applies to unfair methods of competition, and any State antitrust or unfair competition law.

(b) The Secretary of Commerce may by regulation further define any term defined in subsection (a), in order to carry out this subchapter.

(Pub. L. 97–290, title I, §103, Oct. 8, 1982, 96 Stat. 1234.)

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§4003. Office of Export Trade in Department of Commerce

The Secretary of Commerce shall establish within the Department of Commerce an office to promote and encourage to the greatest extent feasible the formation of export trade associations and export trading companies. Such office shall provide information and advice to interested persons and shall provide a referral service to facilitate contact between producers of exportable goods and services and firms offering export trade services. The office shall establish a program to encourage and assist the operation of other export intermediaries, including existing and newly formed export management companies.

(Pub. L. 97–290, title I, §104, Oct. 8, 1982, 96 Stat. 1235; Pub. L. 100–418, title II, §2310, Aug. 23, 1988, 102 Stat. 1346.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–418 inserted requirement that the office establish a program to encourage and assist operation of other export intermediaries, including existing and newly formed export management companies.

SUBCHAPTER II—EXPORT TRADE CERTIFICATES OF REVIEW

§4011. Export trade promotion duties of Secretary of Commerce

To promote and encourage export trade, the Secretary may issue certificates of review and advise and assist any person with respect to applying for certificates of review.

(Pub. L. 97–290, title III, §301, Oct. 8, 1982, 96 Stat. 1240.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 97–290, title III, §312, Oct. 8, 1982, 96 Stat. 1245, provided that:

"(a) Except as provided in subsection (b), this title [enacting this subchapter] shall take effect on the date of the enactment of this Act [Oct. 8, 1982].

"(b) Section 302 and section 303 [enacting sections 4012 and 4013 of this title] shall take effect 90 days after the effective date of the rules and regulations first promulgated under section 310 [enacting section 4020 of this title]."

REPORT ON EXPORT TRADING COMPANIES

Pub. L. 100–418, title II, §2311, Aug. 23, 1988, 102 Stat. 1346, directed Secretary of Commerce to submit a report, not later than 18 months after Aug. 23, 1988, to Committee on Banking, Housing, and Urban Affairs of Senate, and to Committee on Banking, Finance and Urban Affairs, Committee on Foreign Affairs, and

Committee on the Judiciary of House of Representatives, on activities of Department of Commerce to promote and encourage formation of new and operation of existing and new export promotion intermediaries, including export management companies, export trade associations, bank export trading companies, and export trading companies, with report to include a survey of activities of export management companies, export trade associations, and those bank export trading companies and export trading companies established pursuant to amendments made by title II of the Export Trading Company Act of 1982 and pursuant to title III of that Act, but not to contain any information subject to the protections from disclosure provided in that Act.

FEDERAL COAL EXPORT COMMISSION

Pub. L. 99–83, title XIII, §1304, Aug. 8, 1985, 99 Stat. 282, provided for establishment, membership, etc., of Federal Coal Export Commission, required Commission to convene at least four times a year for consultation on activities leading to increased cooperation among entities involved in United States coal exports, with goal of expanding the United States share of international market, specified activities of Commission, including examination of potential for small- and medium-sized companies to enter export coal trade through exporting trading companies, directed Commission to report its finding and recommendations to President and Congress within two years after its first meeting, and terminated Commission upon submission of its report.

§4012. Application for issuance of certificate of review

(a) Written form; limitation to export trade; compliance with regulations

To apply for a certificate of review, a person shall submit to the Secretary a written application which—

(1) specifies conduct limited to export trade, and

(2) is in a form and contains any information, including information pertaining to the overall market in which the applicant operates, required by rule or regulation promulgated under section 4020 of this title.

(b) Publication of notice of application; transmittal to Attorney General

(1) Within ten days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall publish in the Federal Register a notice that announces that an application for a certificate of review has been submitted, identifies each person submitting the application, and describes the conduct for which the application is submitted.

(2) Not later than seven days after an application submitted under subsection (a) is received by the Secretary, the Secretary shall transmit to the Attorney General—

(A) a copy of the application,

(B) any information submitted to the Secretary in connection with the application, and

(C) any other relevant information (as determined by the Secretary) in the possession of the Secretary, including information regarding the market share of the applicant in the line of commerce to which the conduct specified in the application relates.

(Pub. L. 97–290, title III, §302, Oct. 8, 1982, 96 Stat. 1240.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after effective date of rules and regulations first promulgated under section 4020 of this title, see section 312(b) of Pub. L. 97–290 set out as a note under section 4011 of this title.

§4013. Issuance of certificate

(a) Requirements

A certificate of review shall be issued to any applicant that establishes that its specified export trade, export trade activities, and methods of operation will—

(1) result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(b) Time for determination; specification in certificate

Within ninety days after the Secretary receives an application for a certificate of review, the Secretary shall determine whether the applicant's export trade, export trade activities, and methods of operation meet the standards of subsection (a). If the Secretary, with the concurrence of the Attorney General, determines that such standards are met, the Secretary shall issue to the applicant a certificate of review. The certificate of review shall specify—

(1) the export trade, export trade activities, and methods of operation to which the certificate applies,

(2) the person to whom the certificate of review is issued, and

(3) any terms and conditions the Secretary or the Attorney General deems necessary to assure compliance with the standards of subsection (a).

(c) Expedited action

If the applicant indicates a special need for prompt disposition, the Secretary and the Attorney General may expedite action on the application, except that no certificate of review may be issued within thirty days of publication of notice in the Federal Register under section 4012(b)(1) of this title.

(d) Notification of denial; request for reconsideration

(1) If the Secretary denies in whole or in part an application for a certificate, he shall notify the applicant of his determination and the reasons for it.

(2) An applicant may, within thirty days of receipt of notification that the application has been denied in whole or in part, request the Secretary to reconsider the determination. The Secretary, with the concurrence of the Attorney General, shall notify the applicant of the determination upon reconsideration within thirty days of receipt of the request.

(e) Return of documents upon request after denial

If the Secretary denies an application for the issuance of a certificate of review and thereafter receives from the applicant a request for the return of documents submitted by the applicant in connection with the application for the certificate, the Secretary and the Attorney General shall return to the applicant, not later than thirty days after receipt of the request, the documents and all copies of the documents available to the Secretary and the Attorney General, except to the extent that the information contained in a document has been made available to the public.

(f) Fraudulent procurement of certificate

A certificate shall be void ab initio with respect to any export trade, export trade activities, or methods of operation for which a certificate was procured by fraud.

(Pub. L. 97–290, title III, §303, Oct. 8, 1982, 96 Stat. 1241.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after effective date of rules and regulations first promulgated under section 4020 of this title, see section 312(b) of Pub. L. 97–290 set out as a note under section 4011 of this title.

§4014. Reporting requirement; amendment of certificate; revocation

(a) Report of changes in matters specified; application to amend; treatment as application for issuance

(1) Any applicant who receives a certificate of review—

(A) shall promptly report to the Secretary any change relevant to the matters specified in the certificate, and

(B) may submit to the Secretary an application to amend the certificate to reflect the effect of the change on the conduct specified in the certificate.

(2) An application for an amendment to a certificate of review shall be treated as an application for the issuance of a certificate. The effective date of an amendment shall be the date on which the application for the amendment is submitted to the Secretary.

(b) Request for compliance information; failure to provide; notice of noncompliance; revocation or modification; antitrust investigation; no civil investigative demand

(1) If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person holding a certificate of review no longer comply with the standards of section 4013(a) of this title, the Secretary shall request such information from such person as the Secretary or the Attorney General deems necessary to resolve the matter of compliance. Failure to comply with such request shall be grounds for revocation of the certificate under paragraph (2).

(2) If the Secretary or the Attorney General determines that the export trade, export trade activities, or methods of operation of a person holding a certificate no longer comply with the standards of section 4013(a) of this title, or that such person has failed to comply with a request made under paragraph (1), the Secretary shall give written notice of the determination to such person. The notice shall include a statement of the circumstances underlying, and the reasons in support of, the determination. In the 60-day period beginning 30 days after the notice is given, the Secretary shall revoke the certificate or modify it as the Secretary or the Attorney General deems necessary to cause the certificate to apply only to the export trade, export trade activities, or methods of operation which are in compliance with the standards of section 4013(a) of this title.

(3) For purposes of carrying out this subsection, the Attorney General, and the Assistant Attorney General in charge of the antitrust division of the Department of Justice, may conduct investigations in the same manner as the Attorney General and the Assistant Attorney General conduct investigations under section 1312 of this title, except that no civil investigative demand may be issued to a person to whom a certificate of review is issued if such person is the target of such investigation.

(Pub. L. 97–290, title III, §304, Oct. 8, 1982, 96 Stat. 1242.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4015. Judicial review; admissibility

(a) District court review of grants or denials; erroneous determination

If the Secretary grants or denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or modifies a certificate pursuant to section 4014(b) of

this title, any person aggrieved by such determination may, within 30 days of the determination, bring an action in any appropriate district court of the United States to set aside the determination on the ground that such determination is erroneous.

(b) Exclusive provision for review

Except as provided in subsection (a), no action by the Secretary or the Attorney General pursuant to this subchapter shall be subject to judicial review.

(c) Inadmissibility in antitrust proceedings

If the Secretary denies, in whole or in part, an application for a certificate of review or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence, in any administrative or judicial proceeding, in support of any claim under the antitrust laws.

(Pub. L. 97–290, title III, §305, Oct. 8, 1982, 96 Stat. 1243.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4016. Protection conferred by certificate of review

(a) Protection from civil or criminal antitrust actions

Except as provided in subsection (b), no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 4013 of this title which certificate was in effect when the conduct occurred.

(b) Special restraint of trade civil actions; time limitations; certificate governed conduct presumed in compliance; award of costs to successful defendant; suit by Attorney General

(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 4013(a) of this title. Any action commenced under this subchapter shall proceed as if it were an action commenced under section 15 or section 26 of this title, except that the standards of section 4013(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 4013(a) of this title but in any event within four years after the cause of action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 4013(a) of this title.

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 4013(a) of this title, the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 25 of this title to enjoin conduct threatening clear and irreparable harm to the national interest.

(Pub. L. 97–290, title III, §306, Oct. 8, 1982, 96 Stat. 1243.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4017. Guidelines

(a) Issuance; content

To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or would make, determinations under sections 4013 and 4014 of this title, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Administrative rulemaking requirements not applicable

Section 553 of title 5 shall not apply to the issuance of guidelines under subsection (a).

(Pub. L. 97–290, title III, §307, Oct. 8, 1982, 96 Stat. 1244.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4018. Annual reports

Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 4012(a) of this title.

(Pub. L. 97–290, title III, §308, Oct. 8, 1982, 96 Stat. 1244.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4019. Disclosure of information

(a) Exemption

Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5.

(b) Protection of potentially harmful confidential information; exceptions: Congress; judicial or administrative proceedings; consent; necessity for determination; Federal law; regulations

(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 4020 of this title permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

(Pub. L. 97–290, title III, §309, Oct. 8, 1982, 96 Stat. 1244.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4020. Rules and regulations

The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this chapter.

(Pub. L. 97–290, title III, §310, Oct. 8, 1982, 96 Stat. 1245.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in original "this Act", meaning Pub. L. 97–290, Oct. 8, 1982, 96 Stat. 1233, which enacted this chapter and section 6a of this title and section 635a–4 of Title 12, Banks and Banking, amended section 45 of this title and sections 372 and 1843 of Title 12, and enacted provisions set out as notes under sections 1, 4001, and 4011 of this title and sections 1841 and 1843 of Title 12. For complete classification of this Act to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

§4021. Definitions

As used in this subchapter—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in section 12 of this title, and section 45 of this title (to the extent that section 45 of this title prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

(Pub. L. 97–290, title III, §311, Oct. 8, 1982, 96 Stat. 1245.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

SUBCHAPTER III—EXPORT PROMOTION PROGRAMS

§4051. Requirement of prior authorization

(a) General rule

Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out any export promotion program may be obligated or expended only if—

(1) the appropriation thereof has been previously authorized by law enacted on or after July 12, 1985; or

(2) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(b) Exception for later legislation authorizing obligations or expenditures

To the extent that legislation enacted after the making of an appropriation to carry out any export promotion program authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

(c) Provisions must be specifically superseded

The provisions of this section shall not be superseded except by a provision of law enacted after July 12, 1985, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) "Export promotion program" defined

For purposes of this subchapter, the term "export promotion program" means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including, but not limited to—

(1) trade development (except for the trade adjustment assistance program) and dissemination of

foreign marketing opportunities and other marketing information to United States producers of goods and services, including the expansion of foreign markets for United States textiles and apparel and any other United States products;

(2) the development of regional and multilateral economic policies which enhance United States trade and investment interests, and the provision of marketing services with respect to foreign countries and regions;

(3) the exhibition of United States goods in other countries;

(4) the operations of the United States and Foreign Commercial Service, or any successor agency; and

(5) the Market Development Cooperator Program established under section 4723 of this title, and assistance for trade shows provided under section 4724 of this title.

(e) Printing outside United States

(1) Notwithstanding the provisions of section 501 of title 44, and consistent with other applicable law, the Secretary of Commerce, in carrying out any export promotion program, may authorize—

(A) the printing, distribution, and sale of documents outside the contiguous United States, if the Secretary finds that the implementation of such export promotion program would be more efficient, and if such documents will be distributed primarily and sold exclusively outside the United States; and

(B) the acceptance of private notices and advertisements in connection with the printing and distribution of such documents.

(2) Any fees received by the Secretary pursuant to paragraph (1) shall be deposited in a separate account or accounts which may be used to defray directly the costs incurred in conducting activities authorized by paragraph (1) or to repay or make advances to appropriations or other funds available for such activities.

(Pub. L. 99–64, title II, §201, July 12, 1985, 99 Stat. 157; Pub. L. 100–418, title II, §§2305(a), 2308(a), Aug. 23, 1988, 102 Stat. 1344, 1346.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97–290 which enacted this chapter.

AMENDMENTS

1988—Subsec. (d)(5). Pub. L. 100–418, §2305(a), added par. (5).
Subsec. (e). Pub. L. 100–418, §2308(a), added subsec. (e).

§4052. Authorization of appropriations

There are authorized to be appropriated to the Department of Commerce to carry out export promotion programs such sums as are necessary for fiscal years 1995 and 1996.

(Pub. L. 99–64, title II, §202, July 12, 1985, 99 Stat. 158; Pub. L. 99–633, §2, Nov. 7, 1986, 100 Stat. 3522; Pub. L. 100–418, title II, §2305(b)(1), Aug. 23, 1988, 102 Stat. 1344; Pub. L. 102–429, title II, §208, Oct. 21, 1992, 106 Stat. 2205; Pub. L. 103–392, title III, §301, Oct. 22, 1994, 108 Stat. 4099.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97–290 which enacted this chapter.

AMENDMENTS

1994—Pub. L. 103–392 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to the Department of Commerce—

"(1) to carry out export promotion programs—

"(A) $190,000,000 for fiscal year 1993; and

"(B) $200,000,000 for fiscal year 1994; and

"(2) to carry out section 4723 of this title, $5,500,000 for each of fiscal years 1993 and 1994."

1992—Pub. L. 102–429 amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to the Department of Commerce to carry out export promotion programs $123,922,000 for the fiscal year 1988, and $146,400,000 for each of the fiscal years 1989 and 1990."

1988—Pub. L. 100–418 amended section generally. Prior to amendment, section read as follows: "There is authorized to be appropriated $123,922,000 for each of the fiscal years 1987 and 1988 to the Department of Commerce to carry out export promotion programs."

1986—Pub. L. 99–633 substituted provisions authorizing appropriations of $123,922,000 for each of the fiscal years 1987 and 1988 for provisions authorizing appropriations of $113,273,000 for each of the fiscal years 1985 and 1986.

§4053. Barter arrangements

(a) Report on status of Federal barter programs

The Secretary of Agriculture and the Secretary of Energy shall, not later than 90 days after July 12, 1985, submit to the Congress a report on the status of Federal programs relating to the barter or exchange of commodities owned by the Commodity Credit Corporation for materials and products produced in foreign countries. Such report shall include details of any changes necessary in existing law to allow the Department of Agriculture and, in the case of petroleum resources, the Department of Energy, to implement fully any barter program.

(b) Authorities of President

The President is authorized—

(1) to barter stocks of agricultural commodities acquired by the Government for petroleum and petroleum products, and for other materials vital to the national interest, which are produced abroad, in situations in which sales would otherwise not occur; and

(2) to purchase petroleum and petroleum products, and other materials vital to the national interest, which are produced abroad and acquired by persons in the United States through barter for agricultural commodities produced in and exported from the United States through normal commercial trade channels.

(c) Other provisions of law not affected

In the case of any petroleum, petroleum products, or other materials vital to the national interest, which are acquired under subsection (b), nothing in this section shall be construed to render inapplicable the provisions of any law then in effect which apply to the storage, distribution, or use of such petroleum, petroleum products, or other materials vital to the national interest.

(d) Conventional markets not to be displaced by barters

The President shall take steps to ensure that, in making any barter described in subsection (a) or (b)(1) or any purchase authorized by subsection (b)(2), existing export markets for agricultural commodities operating on conventional business terms are safeguarded from displacement by the barter described in subsection (a), (b)(1), or (b)(2), as the case may be. In addition, the President shall ensure that any such barter is consistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

(e) Report to Congress

The Secretary of Energy shall report to the Congress on the effect on energy security and on domestic energy supplies of any action taken under this section which results in the acquisition by the Government of petroleum or petroleum products. Such report shall be submitted to the Congress

not later than 90 days after such acquisition.

(Pub. L. 99–64, title II, §203, July 12, 1985, 99 Stat. 158.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97–290 which enacted this chapter.

CHAPTER 67—ARCTIC RESEARCH AND POLICY

Sec.

§4101. Congressional findings and declaration of purposes

(a) The Congress finds and declares that—

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce the Nation's dependence on foreign oil and improve the national balance of payments;

(2) the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is a natural laboratory for research into human health and adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic make the Arctic a unique testing ground for research into high latitude communications, which is likely to be crucial for future defense needs;

(8) Arctic marine technology is critical to cost-effective recovery and transportation of energy resources and to the national defense;

(9) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of the Arctic;

(10) most Arctic-rim countries possess Arctic technologies far more advanced than those currently available in the United States;

(11) Federal Arctic research is fragmented and uncoordinated at the present time, leading to the

neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) improved logistical coordination and support for Arctic research and better dissemination of research data and information is necessary to increase the efficiency and utility of national Arctic research efforts;

(13) a comprehensive national policy and program plan to organize and fund currently neglected scientific research with respect to the Arctic is necessary to fulfill national objectives in Arctic research;

(14) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological, materials, geophysical, social, and behavioral phenomena in the Arctic;

(15) research into the long-range health, environmental, and social effects of development in the Arctic is necessary to mitigate the adverse consequences of that development to the land and its residents;

(16) Arctic research expands knowledge of the Arctic, which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries, and facilitate the formulation of national policy for the Arctic; and

(17) the Alaskan Arctic provides an essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this chapter are—

(1) to establish national policy, priorities, and goals and to provide a Federal program plan for basic and applied scientific research with respect to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences;

(2) to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy;

(3) to designate the National Science Foundation as the lead agency responsible for implementing Arctic research policy; and

(4) to establish an Interagency Arctic Research Policy Committee to develop a national Arctic research policy and a five year plan to implement that policy.

(Pub. L. 98–373, title I, §102, July 31, 1984, 98 Stat. 1242; Pub. L. 103–199, title VI, §601, Dec. 17, 1993, 107 Stat. 2327.)

EDITORIAL NOTES

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–199, §601(1), struck out "as the Nation's only common border with the Soviet Union," before "the Arctic".

Subsec. (a)(10). Pub. L. 103–199, §601(2), struck out ", particularly the Soviet Union," after "countries".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 98–373, title I, §102, July 31, 1984, 98 Stat. 1242, provided that: "This title [enacting this chapter] may be cited as the 'Arctic Research and Policy Act of 1984'."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12501. ARCTIC RESEARCH

Ex. Ord. No. 12501, Jan. 28, 1985, 50 F.R. 4191, as amended by Ex. Ord. No. 13286, §45, Feb. 28, 2003, 68 F.R. 10627, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America,

including the Arctic Research and Policy Act of 1984 (Title I of Public Law 98–373) ("the Act") [15 U.S.C. 4101 et seq.], it is hereby ordered as follows:

SECTION 1. *Establishment of Arctic Research Commission*. There is established the Arctic Research Commission.

SEC. 2. *Membership of the Commission*. (a) The Commission shall be composed of five members appointed by the President, as follows:

(1) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(2) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resources development; and

(3) one member appointed from individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

The Director of the National Science Foundation shall serve as a nonvoting *ex officio* member of the Commission. The President shall designate a Chairperson from among the five voting members of the Commission.

(b) In making initial appointments to the Commission, the President shall designate one member to serve for a term of two years, two members to serve for terms of three years, and two members to serve for terms of four years as provided by Section 103(c) of the Act [15 U.S.C. 4102(c)]. Upon the expiration of these initial terms of office, the term of office of each member of the Commission shall be four years.

(c) Each of the Federal agencies represented on the Interagency Committee established by Section 7 of this Order may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities of their agencies relating to Arctic research.

SEC. 3. *Meetings of the Commission*. The Commission shall meet at the call of the Chairman or a majority of its members. The Commission annually shall conduct at least one public meeting in the State of Alaska.

SEC. 4. *Functions of the Commission*. (a) The Commission shall:

(1) develop and recommend an integrated national Arctic research policy;

(2) assist, in cooperation with the Interagency Arctic Research Policy Committee established by Section 7 of this Order, in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Arctic Research Policy Committee as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska, and with agencies and organizations of that State which the Governor may designate, with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall:

(1) submit to the President and Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year; and

(2) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Arctic Research Policy Committee in the performance of its duties.

SEC. 5. *Responsibilities of Federal Agencies*. (a) The heads of Executive agencies shall, to the extent permitted by law, and in accordance with Section 105 of the Act [15 U.S.C. 4104], provide the Commission such information as it may require for purposes of carrying out its functions.

(b) The heads of Executive agencies shall, upon reimbursement to be agreed upon by the Commission and the agency head, permit the Commission to utilize their facilities and services to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy. The Commission shall take every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

SEC. 6. *Administration of the Commission*. Members of the Commission who are otherwise employed for compensation shall serve without compensation for their work on the Commission, but may be allowed travel

expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service. Members of the Commission who are not otherwise employed for compensation shall be compensated for each day the member is engaged in actual performance of duties as a member, not to exceed 90 days of service each calendar year, at a rate equal to the daily equivalent of the rate for GS–16 of the General Schedule.

SEC. 7. *Establishment of Interagency Arctic Research Policy Committee*. There is established the Interagency Arctic Research Policy Committee (the "Interagency Committee"). The National Science Foundation shall serve as lead agency on the Interagency Committee and shall be responsible for implementing Arctic research policy.

SEC. 8. *Membership of the Interagency Committee*. The Interagency Committee shall be composed of representatives of the following Federal agencies or their designees:

(a) National Science Foundation;
(b) Department of Commerce;
(c) Department of Defense;
(d) Department of Energy;
(e) Department of the Interior;
(f) Department of State;
(g) Department of Transportation;
(h) Department of Health and Human Services;
(i) Department of Homeland Security;
(j) National Aeronautics and Space Administration;
(k) Environmental Protection Agency;
(l) Office of Science and Technology Policy; and
(m) any other Executive agency that the Director of the National Science Foundation shall deem appropriate. The Director of the National Science Foundation or his designee shall serve as Chairperson of the Interagency Committee.

SEC. 9. *Functions of the Interagency Committee*. (a) The Interagency Committee shall:

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on:

(a) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(b) Arctic research programs of Federal agencies;

(c) recommendations of the Commission on future Arctic research; and

(d) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided in section 109 of the Act [15 U.S.C. 4108];

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multi-agency budget request for Arctic research, as provided in section 110 of the Act [15 U.S.C. 4109];

(6) facilitate cooperation between the Federal government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under the Act; and

(9) promote Federal interagency coordination of all Arctic research activities, including:

(a) logistical planning and coordination; and

(b) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President a report concerning:

(1) its activities and accomplishments since its last report; and

(2) the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

SEC. 10. *Public Participation*. The Interagency Committee will provide public notice of its meetings and

an opportunity for the public to participate in the development and implementation of national Arctic research policy.

SEC. 11. *Administration of Interagency Committee*. Each agency represented on the Committee shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, facilities, staff, and other support services as may be necessary for effective performance of its functions.

EX. ORD. NO. 13689. ENHANCING COORDINATION OF NATIONAL EFFORTS IN THE ARCTIC

Ex. Ord. No. 13689, Jan. 21, 2015, 80 F.R. 4191, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to prepare the Nation for a changing Arctic and enhance coordination of national efforts in the Arctic, it is hereby ordered as follows:

SECTION 1. *Policy*. The Arctic has critical long-term strategic, ecological, cultural, and economic value, and it is imperative that we continue to protect our national interests in the region, which include: national defense; sovereign rights and responsibilities; maritime safety; energy and economic benefits; environmental stewardship; promotion of science and research; and preservation of the rights, freedoms, and uses of the sea as reflected in international law.

Over the past 60 years, climate change has caused the Alaskan Arctic to warm twice as rapidly as the rest of the United States, and will continue to transform the Arctic as its consequences grow more severe. Over the past several decades, higher atmospheric temperatures have led to a steady and dramatic reduction in Arctic sea ice, widespread glacier retreat, increasing coastal erosion, more acidic oceans, earlier spring snowmelt, thawing permafrost, drier landscapes, and more extensive insect outbreaks and wildfires, thus changing the accessibility and natural features of this remote region. As a global leader, the United States has the responsibility to strengthen international cooperation to mitigate the greenhouse gas emissions driving climate change, understand more fully and manage more effectively the adverse effects of climate change, protect life and property, develop and manage resources responsibly, enhance the quality of life of Arctic inhabitants, and serve as stewards for valuable and vulnerable ecosystems. In doing so, we must rely on science-based decisionmaking and respect the value and utility of the traditional knowledge of Alaska Native peoples. As the United States assumes the Chairmanship of the Arctic Council, it is more important than ever that we have a coordinated national effort that takes advantage of our combined expertise and efforts in the Arctic region to promote our shared values and priorities.

As the Arctic has changed, the number of Federal working groups created to address the growing strategic importance and accessibility of this critical region has increased. Although these groups have made significant progress and achieved important milestones, managing the broad range of interagency activity in the Arctic requires coordinated planning by the Federal Government, with input by partners and stakeholders, to facilitate Federal, State, local, and Alaska Native tribal government and similar Alaska Native organization, as well as private and nonprofit sector, efforts in the Arctic.

SEC. 2. *Arctic Executive Steering Committee*. (a) Establishment. There is established an Arctic Executive Steering Committee (Steering Committee), which shall provide guidance to executive departments and agencies (agencies) and enhance coordination of Federal Arctic policies across agencies and offices, and, where applicable, with State, local, and Alaska Native tribal governments and similar Alaska Native organizations, academic and research institutions, and the private and nonprofit sectors.

(b) *Membership*. The Steering Committee shall consist of:

(i) the heads, or their designees, of the Office of Science and Technology Policy, the Council on Environmental Quality, the Domestic Policy Council, and the National Security Council;

(ii) the Executive Officer of the Steering Committee, who shall be designated by the Chair of the Steering Committee (Chair); and

(iii) the Deputy Secretary or equivalent officer from the Departments of State, Defense, Justice, the Interior, Agriculture, Commerce, Labor, Health and Human Services, Transportation, Energy, and Homeland Security; the Office of the Director of National Intelligence; the Environmental Protection Agency; the National Aeronautics and Space Administration; the National Science Foundation; the Arctic Research Commission; and the Office of Management and Budget; the Assistant to the President for Public Engagement and Intergovernmental Affairs, or his or her designee; and other agencies or offices as determined appropriate by the Chair.

(c) *Administration.*

(i) The Director of the Office of Science and Technology Policy, or his or her designee, shall be the Chair of the Executive Steering Committee. The Assistant to the President for National Security Affairs, or his or her designee, shall be the Vice Chair. Under the leadership of the Chair, the Steering Committee will meet

quarterly, or as appropriate, to shape priorities, establish strategic direction, oversee implementation, and ensure coordination of Federal activities in the Arctic.

(ii) The Steering Committee shall coordinate with existing working groups established by Executive Order or statute.

(iii) As appropriate, the Chair of the Steering Committee may establish subcommittees and working groups, consisting of representatives from relevant agencies, to focus on specific key issues and assist in carrying out its responsibilities.

(iv) Agencies shall provide administrative support and additional resources, as appropriate, to support their participation in the Steering Committee to the extent permitted by law and within existing appropriations. Each agency shall bear its own expenses for supporting its participation in the Steering Committee and associated working groups.

(v) Each member of the Steering Committee shall provide the Executive Officer with a single point of contact for coordinating efforts with interagency partners, collaborating with State, local, and Alaska Native tribal governments and similar Alaska Native organizations, and assisting in carrying out the functions and duties assigned by the Steering Committee.

SEC. 3. *Responsibilities of the Arctic Executive Steering Committee*. The Steering Committee, in coordination with the heads of relevant agencies and under the direction of the Chair, shall:

(a) provide guidance and coordinate efforts to implement the priorities, objectives, activities, and responsibilities identified in National Security Presidential Directive 66/Homeland Security Presidential Directive 25, Arctic Region Policy, the National Strategy for the Arctic Region and its Implementation Plan, and related agency plans;

(b) provide guidance on prioritizing Federal activities, consistent with agency authorities, while the United States is Chair of the Arctic Council, including, where appropriate, recommendations for resources to use in carrying out those activities; and

(c) establish a working group to provide a report to the Steering Committee by May 1, 2015, that:

(i) identifies potential areas of overlap between and within agencies with respect to implementation of Arctic policy and strategic priorities and provides recommendations to increase coordination and reduce any duplication of effort, which may include ways to increase the effectiveness of existing groups; and

(ii) provides recommendations to address any potential gaps in implementation.

SEC. 4. *Duties of the Executive Officer*. The Executive Officer shall be responsible for facilitating interagency coordination efforts related to implementing the guidance and strategic priorities developed by the Steering Committee. The Executive Officer shall coordinate with the Chair and the Special Advisor on Arctic Science and Policy at the Department of State to provide regular reports to the Steering Committee on agency implementation and planning efforts for the Arctic region.

SEC. 5. *Engagement with the State of Alaska, Alaska Native Tribal Governments, as well as other United States Stakeholders*. It is in the best interest of the Nation for the Federal Government to maximize transparency and promote collaboration where possible with the State of Alaska, Alaska Native tribal governments and similar Alaska Native organizations, and local, private-sector, and nonprofit-sector stakeholders. To facilitate consultation and partnerships with the State of Alaska and Alaska Native tribal governments and similar Alaska Native organizations, the Steering Committee shall:

(a) develop a process to improve coordination and the sharing of information and knowledge among Federal, State, local, and Alaska Native tribal governments and similar Alaska Native organizations, and private-sector and nonprofit-sector groups on Arctic issues;

(b) establish a process to ensure tribal consultation and collaboration, consistent with my memorandum of November 5, 2009 (Tribal Consultation). This process shall ensure meaningful consultation and collaboration with Alaska Native tribal governments and similar Alaska Native organizations in the development of Federal policies that have Alaska Native implications, as applicable, and provide feedback and recommendations to the Steering Committee;

(c) identify an appropriate Federal entity to be the point of contact for Arctic matters with the State of Alaska and with Alaska Native tribal governments and similar Alaska Native organizations to support collaboration and communication; and

(d) invite members of State, local, and Alaska Native tribal governments and similar Alaska Native organizations, and academic and research institutions to consult on issues or participate in discussions, as appropriate and consistent with applicable law.

SEC. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13754. NORTHERN BERING SEA CLIMATE RESILIENCE

Ex. Ord. No. 13754, Dec. 9, 2016, 81 F.R. 90669, revoked by Ex. Ord. No. 13795, §4(c), Apr. 28, 2017, 82 F.R. 20816, reinstated by Ex. Ord. No. 13990, §4(b), Jan. 20, 2021, 86 F.R. 7039, provided:

By the authority vested in me as the President by the Constitution and the laws of the United States of America, including the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq*., it is hereby ordered as follows:

SECTION 1. *Purpose*. As recognized in Executive Order 13689 of January 21, 2015, (Enhancing Coordination of National Efforts in the Arctic) [set out above], Arctic environmental stewardship is in the national interest. In furtherance of this principle, and as articulated in the March 10, 2016, U.S.-Canada Joint Statement on Climate, Energy, and Arctic Leadership, the United States has resolved to confront the challenges of a changing Arctic by working to conserve Arctic biodiversity; support and engage Alaska Native tribes; incorporate traditional knowledge into decisionmaking; and build a sustainable Arctic economy that relies on the highest safety and environmental standards, including adherence to national climate goals. The United States is committed to achieving these goals in partnership with indigenous communities and through science-based decisionmaking. This order carries forth that vision in the northern Bering Sea region.

The Bering Sea and Bering Strait are home to numerous subsistence communities, rich indigenous cultures, and unique marine ecosystems, each of which plays an important role in maintaining regional resilience. The changing climate and rising average temperatures are reducing the occurrence of sea ice; changing the conditions for fishing, hunting, and subsistence whaling; and opening new navigable routes to increased ship traffic. The preservation of a healthy and resilient Bering ecosystem, including its migratory pathways, habitat, and breeding grounds, is essential for the survival of marine mammals, fish, seabirds, other wildlife, and the subsistence communities that depend on them. These communities possess a unique understanding of the Arctic ecosystem, and their traditional knowledge should serve as an important resource to inform Federal decisionmaking.

SEC. 2. *Policy*. It shall be the policy of the United States to enhance the resilience of the northern Bering Sea region by conserving the region's ecosystem, including those natural resources that provide important cultural and subsistence value and services to the people of the region. For the purpose of carrying out the specific directives provided herein, this order delineates an area hereafter referred to as the "Northern Bering Sea Climate Resilience Area," in which the exercise of relevant authorities shall be coordinated among all executive departments and agencies (agencies). All agencies charged with regulating, overseeing, or conducting activities in the Northern Bering Sea Climate Resilience Area shall do so with attention to the rights, needs, and knowledge of Alaska Native tribes; the delicate and unique ecosystem; the protection of marine mammals, fish, seabirds, and other wildlife; and with appropriate coordination with the State of Alaska.

The boundary of the Northern Bering Sea Climate Resilience Area includes waters within the U.S. Exclusive Economic Zone bounded to the north by the seaward boundary of the Bering Straits Native Corporation established pursuant to the Alaska Native Claims Settlement Act; to the south by the southern boundaries of the Northern Bering Sea Research Area, the St. Matthew Habitat Conservation Area, and the Nunivak-Kuskokwim Habitat Conservation Area; and to the west by the maritime boundary delimited by the Agreement Between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed at Washington, June 1, 1990.

SEC. 3. *Withdrawal*. Under the authority granted to me in section 12(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1341(a), I hereby withdraw from disposition by leasing for a time period without specific expiration the following areas of the Outer Continental Shelf: (1) the area currently designated by the Bureau of Ocean Energy Management as the Norton Basin Planning Area; and (2) the Outer Continental Shelf lease blocks within the Bureau of Ocean Energy Management's St. Matthew-Hall Planning Area lying within 25 nautical miles of St. Lawrence Island. The boundaries of the withdrawn areas are more specifically delineated in the attached map and, with respect to the St. Matthew-Hall Planning Area, the accompanying table of withdrawn Outer Continental Shelf lease blocks. Both the map and table form a part of this order, with the table governing the withdrawal and withdrawal boundaries within the St. Matthew-Hall Planning Area. This withdrawal prevents consideration of these areas for future oil or gas leasing for purposes of

exploration, development, or production. This withdrawal furthers the principles of responsible public stewardship entrusted to this office and takes due consideration of the importance of the withdrawn area to Alaska Native tribes, wildlife, and wildlife habitat, and the need for regional resiliency in the face of climate change. Nothing in this withdrawal affects rights under existing leases in the withdrawn areas.

SEC. 4. *Task Force on the Northern Bering Sea Climate Resilience Area*. (a) There is established a Task Force on the Northern Bering Sea Climate Resilience Area (Bering Task Force), under the Arctic Executive Steering Committee (AESC) established in Executive Order 13689, to be co-chaired by an office of the Department of the Interior, the National Oceanic and Atmospheric Administration, and the U.S. Coast Guard.

(b) The membership of the Bering Task Force (member agencies) shall include, in addition to the Co-Chairs, designated senior-level representatives from:

(i) the Department of State;

(ii) the Department of Defense;

(iii) the Department of Transportation;

(iv) the Environmental Protection Agency;

(v) the U.S. Army Corps of Engineers;

(vi) the U.S. Arctic Research Commission;

(vii) the National Science Foundation; and

(viii) such agencies and offices as the Co-Chairs may designate.

(c) Consistent with the authorities and responsibilities of its member agencies, the Bering Task Force, with the purpose of advancing the United States policy in the Northern Bering Sea Climate Resilience Area as set forth in section 2 of this order, shall:

(i) Establish and provide regular opportunities to consult with the Bering Intergovernmental Tribal Advisory Council as described in section 5 of this order;

(ii) Coordinate activities of member agencies, including regulatory, policy, and research activities, affecting the Northern Bering Sea Climate Resilience Area and its value for subsistence and cultural purposes;

(iii) Consider the need for additional actions or strategies to advance the policies established in section 2 of this order and provide recommendations as appropriate to the President through the AESC;

(iv) Consider and make recommendations with respect to the impacts of shipping on the Northern Bering Sea Climate Resilience Area including those described in sections 7 and 8 of this order; and

(v) In developing and implementing recommendations, coordinate or consult as appropriate with existing AESC working groups, the State of Alaska, regional and local governments, Alaska Native tribal governments, Alaska Native corporations and organizations, the private sector, other relevant organizations, and academia.

SEC. 5. *The Bering Intergovernmental Tribal Advisory Council*. (a) The Bering Task Force, within 6 months of the date of this order [Dec. 9, 2016], and after considering recommendations from Alaska Native tribal governments, shall, in accordance with existing law, establish a Bering Intergovernmental Tribal Advisory Council, for the purpose of providing input to the Bering Task Force and facilitating effective consultation with Alaska Native tribal governments.

(b) The Bering Intergovernmental Tribal Advisory Council shall be charged with providing input and recommendations on activities, regulations, guidance, or policy that may affect actions or conditions in the Northern Bering Sea Climate Resilience Area, with attention given to climate resilience; the rights, needs, and knowledge of Alaska Native tribes; the delicate and unique ecosystem; and the protection of marine mammals and other wildlife.

(c) The Bering Intergovernmental Tribal Advisory Council should include between 9 and 11 elected officials or their designees representing Alaska Native tribal governments with a breadth of interests in the Northern Bering Sea Climate Resilience Area, and may include such additional Federal officials and State and local government elected officials as the Bering Task Force deems appropriate. The Bering Intergovernmental Tribal Advisory Council will adopt such procedures as it deems necessary to govern its activities.

SEC. 6. *Traditional Knowledge in Decisionmaking*. It shall be the policy of the United States to recognize and value the participation of Alaska Native tribal governments in decisions affecting the Northern Bering Sea Climate Resilience Area and for all agencies to consider traditional knowledge in decisions affecting the Northern Bering Sea Climate Resilience Area. Specifically, all agencies shall consider applicable information from the Bering Intergovernmental Tribal Advisory Council in the exercise of existing agency authorities. Such input may be received through existing agency procedures and consultation processes.

SEC. 7. *Pollution from Vessels*. The Bering Task Force, within 9 months of the date of this order and after coordination as needed with existing working groups within the AESC, shall provide the AESC with recommendations on:

(a) Actions to ensure or support implementation of the International Code for Ships Operating in Polar

Waters, as adopted by the International Maritime Organization, especially with respect to limitations on discharges from vessels in the Northern Bering Sea Climate Resilience Area; and

(b) Any additional measures necessary to achieve the policies established in section 2 of this order, such as the potential identification of zero-discharge zones, assessments of the pollution risks posed by increased vessel traffic, or noise reduction measures associated with sensitive ecological and cultural areas within the Northern Bering Sea Climate Resilience Area.

SEC. 8. *Shipping Routing Measures*. (a) In recognition of the United States commitment to reduce the impact of shipping within the Bering Sea and the Bering Strait and the many environmental factors in the Northern Bering Sea Climate Resilience Area that inform the best routes for navigation, safety, and the marine environment, the U.S. Coast Guard should conclude its ongoing port access route study for the Chukchi Sea, Bering Strait, and Bering Sea (Bering Sea PARS) pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq*.

(b) In designation of routes and any areas to be avoided, and consistent with existing authorities, consideration should be given to the Northern Bering Sea Climate Resilience Area, including the effects of shipping and vessel pollution on the marine environment, fishery resources, the seabed and subsoil of the Outer Continental Shelf, marine mammal migratory pathways and other biologically important areas, and subsistence whaling, hunting, and fishing.

(c) In recognition of the value of participation of Alaska Native tribal governments in decisions affecting the Northern Bering Sea Climate Resilience Area, the U.S. Coast Guard should consider traditional knowledge, including with respect to marine mammal, waterfowl, and seabird migratory pathways and feeding and breeding grounds, in the development of the Bering Sea PARS, establishment of routing measures and any areas to be avoided, and subsequent rulemaking and management decisions.

(d) No later than December 30, 2016, the U.S. Coast Guard shall publish preliminary findings for the Bering Sea PARS in the *Federal Register*, including information related to its status, potential routing measures, and its projected schedule. The U.S. Coast Guard should also consider using this opportunity to provide notice of any new information or proposed measures resulting from its ongoing consultation process.

(e) Upon completion of the Bering Sea PARS, the U.S. Coast Guard shall promptly issue a notice of proposed rulemaking for any designation contemplated on the basis of the study. The U.S. Coast Guard shall coordinate as appropriate with the Department of State and other coastal nations and submit any proposed routing measures to the International Maritime Organization by 2018 for the purpose of their adoption and implementation.

SEC. 9. *Oil Spill Preparedness*. The U.S. Coast Guard, in coordination with all relevant agencies and the State of Alaska, shall update the Area Contingency plans, the Subarea Response Plans, and the Geographic Response Strategies relevant to the Northern Bering Sea Climate Resilience Area. These plans and strategies shall be consistent with the National Contingency Plan, and shall include appropriate measures to improve local response capacity and preparedness such as spill response training opportunities for local communities, including Hazardous Waste Operations and Emergency Response training for Village Public Safety Officers and other first responders.

SEC. 10. *Continuity of Existing Habitat Protection*. The area included in the Northern Bering Sea Climate Resilience Area is currently closed to commercial non-pelagic trawl gear under rules implementing the Fishery Management Plans of the Bering Sea and Aleutian Islands Management Area and the Arctic Management Area. Consistent with existing law, the National Oceanic and Atmospheric Administration, in coordination with the North Pacific Fishery Management Council, shall take such actions as are necessary to support the policy set forth in section 2 of this order, including actions to maintain the existing prohibitions on the use of commercial non-pelagic trawl gear.

SEC. 11. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to a department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistently with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The policies set forth in this order are consistent with existing U.S. obligations under international law and nothing in this order shall be construed to derogate from obligations under applicable international law.

[BARACK OBAMA.]

§4102. Arctic Research Commission

(a) Establishment

The President shall establish an Arctic Research Commission (hereafter referred to as the "Commission").

(b) Membership

(1) The Commission shall be composed of seven members appointed by the President, with the Director of the National Science Foundation serving as a nonvoting, ex officio member. The members appointed by the President shall include—

(A) four members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(B) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resource development; and

(C) two members appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(2) The President shall designate one of the appointed members of the Commission to be chairperson of the Commission.

(c) Terms of office; vacancies; hold-over status

(1) Except as provided in paragraph (2) of this subsection, the term of office of each member of the Commission appointed under subsection (b)(1) shall be four years.

(2) Of the members of the Commission originally appointed under subsection (b)(1)—

(A) one shall be appointed for a term of two years;

(B) two shall be appointed for a term of three years; and

(C) two shall be appointed for a term of four years.

(3) Any vacancy occurring in the membership of the Commission shall be filled, after notice of the vacancy is published in the Federal Register, in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment.

(d) Compensation and travel expenses; Federal employee status; meetings; observer-designees

(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule under section 5332 of title 5 for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose.

(2) The Commission shall meet at the call of its Chairman or a majority of its members.

(3) Each Federal agency referred to in section 4106(b) of this title may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities relating to Arctic research of their agencies.

(4) The Commission shall conduct at least one public meeting in the State of Alaska annually.

(Pub. L. 98–373, title I, §103, July 31, 1984, 98 Stat. 1243; Pub. L. 101–609, §§2, 3, Nov. 16, 1990, 104 Stat. 3125.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–609, §2, in introductory provisions, substituted "seven" for "five", in subpar. (A), substituted "four" for "three", and in subpar. (C), substituted "two members" for "one member".

Subsec. (d)(1). Pub. L. 101–609, §3, substituted "GS–18" for "GS–16".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§4103. Duties of Commission; publication of guidelines; report to Congress

(a) The Commission shall—

(1) develop and recommend an integrated national Arctic research policy;

(2) in cooperation with the Interagency Arctic Research Policy Committee established under section 4106 of this title, assist in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and recommend improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate and in accordance with the findings and purposes of this chapter;

(6) recommend methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Committee established under section 4106 of this title as it may find appropriate;

(8) cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy;

(9) recommend to the Interagency Committee the means for developing international scientific cooperation in the Arctic; and

(10) not later than January 31, 1991, and every 2 years thereafter, publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 4106 of this title in the performance of its duties.

(b) Not later than January 31 of each year, the Commission shall submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

(Pub. L. 98–373, title I, §104, July 31, 1984, 98 Stat. 1244; Pub. L. 101–609, §4, Nov. 16, 1990, 104 Stat. 3125.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a)(4), (6). Pub. L. 101–609, §4(a)(1), (2), substituted "recommend" for "suggest".

Subsec. (a)(9), (10). Pub. L. 101–609, §4(a)(3)–(5), added pars. (9) and (10).

Subsec. (b). Pub. L. 101–609, §4(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Not later than January 31 of each year, the Commission shall—

"(1) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 4106 of this title in the performance of its duties; and

"(2) submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 155 of House Document No. 103–7.

§4104. Cooperation with Commission

(a) Acquisition of information from Federal agencies; withholding authorization

(1) The Commission may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research in the possession of the agency which the Commission considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 552 of title 5.

(b) Utilization of facilities and services; reimbursement; avoidance of duplication

With the consent of the appropriate agency head, the Commission may utilize the facilities and services of any Federal agency to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy, upon reimbursement to be agreed upon by the Commission and the agency head and taking every feasible step to avoid duplication of effort.

(c) Consultations with Commission prior to major Federal actions

All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

(Pub. L. 98–373, title I, §105, July 31, 1984, 98 Stat. 1245.)

§4105. Administration

The Commission may—

(1) in accordance with the civil service laws and subchapter III of chapter 53 of title 5, appoint and fix the compensation of an Executive Director and necessary additional staff personnel, but not to exceed a total of seven compensated personnel;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5;

(3) enter into contracts and procure supplies, services, and personal property;

(4) enter into agreements with the General Services Administration for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in amounts to be agreed upon by the Commission and the Administrator of the General Services Administration; and

(5) appoint, and accept without compensation the services of, scientists and engineering specialists to be advisors to the Commission. Each advisor may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), an advisor appointed under this paragraph shall not be considered an employee of the United States for any purpose.

(Pub. L. 98–373, title I, §106, July 31, 1984, 98 Stat. 1245; Pub. L. 101–609, §5, Nov. 16, 1990, 104 Stat. 3125.)

EDITORIAL NOTES

AMENDMENTS

1990—Par. (5). Pub. L. 101–609 added par. (5).

§4106. Implementation of Arctic research policy

(a) National Science Foundation and Director; functions

The National Science Foundation is designated as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall insure that the requirements of section 4107 of this title are fulfilled.

(b) Interagency Arctic Research Policy Committee; establishment; represented agencies; Chairperson

(1) The President shall establish an Interagency Arctic Research Policy Committee (hereinafter referred to as the "Interagency Committee").

(2) The Interagency Committee shall be composed of representatives of the following Federal agencies or offices:

(A) the National Science Foundation;
(B) the Department of Commerce;
(C) the Department of Defense;
(D) the Department of Energy;
(E) the Department of the Interior;
(F) the Department of State;
(G) the Department of Transportation;
(H) the Department of Health and Human Services;
(I) the Department of Homeland Security;
(J) the National Aeronautics and Space Administration;
(K) the Environmental Protection Agency; and
(L) any other agency or office deemed appropriate.

(3) The representative of the National Science Foundation shall serve as the Chairperson of the Interagency Committee.

(Pub. L. 98–373, title I, §107, July 31, 1984, 98 Stat. 1246; Pub. L. 109–241, title IX, §902(g), July 11, 2006, 120 Stat. 567.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (b)(2)(I) to (L). Pub. L. 109–241 added subpar. (I) and redesignated former subpars. (I) to (K) as (J) to (L), respectively.

EXECUTIVE DOCUMENTS

DESIGNATION OF THE NATIONAL SCIENCE AND TECHNOLOGY COUNCIL TO COORDINATE CERTAIN ACTIVITIES UNDER THE ARCTIC RESEARCH AND POLICY ACT OF 1984

Memorandum of President of the United States, July 22, 2010, 75 F.R. 44063, provided:
Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President by the Constitution and the laws of the United States, including the Arctic Research and Policy Act of 1984 (Title I of Public Law 98–373) (the "Act"), I hereby assign to the National Science and Technology Council (NSTC) responsibility to coordinate activities assigned in sections 107 and 108 of the Act to the Interagency Arctic Research Policy Committee, including through committees of the NSTC.

The Director of the Office of Science and Technology Policy is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§4107. Duties of Interagency Committee; report to Congress

(a) The Interagency Committee shall—

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on—

(A) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(B) Arctic research programs of Federal agencies;

(C) recommendations of the Commission on future Arctic research; and

(D) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided for in section 4108 of this title;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research as provided for in section 4109 of this title;

(6) facilitate cooperation between the Federal Government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research in accordance with the findings and purposes of this chapter;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under this chapter;

(9) promote Federal interagency coordination of all Arctic research activities, including—

(A) logistical planning and coordination; and

(B) the sharing of data and information associated with Arctic research, subject to section 552 of title 5; and

(10) provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President, a brief, concise report containing—

(1) a statement of the activities and accomplishments of the Interagency Committee since its last report; and

(2) a statement detailing with particularity the recommendations of the Commission with respect to Federal interagency activities in Arctic research and the disposition and responses to those recommendations.

(Pub. L. 98–373, title I, §108, July 31, 1984, 98 Stat. 1246; Pub. L. 101–609, §6, Nov. 16, 1990, 104 Stat. 3126.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (b)(2). Pub. L. 101–609 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "a description of the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the requirement, under subsec. (b) of this section, to submit a biennial report to Congress is listed on page 174), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to the National Science and Technology Council, see Memorandum of President of the United States, July 22, 2010, 75 F.R. 44063, set out as a note under section 4106 of this title.

DELEGATION OF REPORTING AUTHORITY

Memorandum of President of the United States, Feb. 17, 2005, 70 F.R. 9841, provided:

Memorandum for the Director of the National Science Foundation

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by Public Law 98–373 (15 U.S.C. 4107(b) and 4108(a)), to provide the specified report and plan to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§4108. Arctic research plan

(a) The Interagency Committee, in consultation with the Commission, the Governor of the State of Alaska, the residents of the Arctic, the private sector, and public interest groups, shall prepare a comprehensive 5-year program plan (hereinafter referred to as the "Plan") for the overall Federal effort in Arctic research. The Plan shall be prepared and submitted to the President for transmittal to the Congress within one year after July 31, 1984, and shall be revised biennially thereafter.

(b) The Plan shall contain but need not be limited to the following elements:

(1) an assessment of national needs and problems regarding the Arctic and the research necessary to address those needs or problems;

(2) a statement of the goals and objectives of the Interagency Committee for national Arctic research;

(3) a detailed listing of all existing Federal programs relating to Arctic research, including the existing goals, funding levels for each of the 5 following fiscal years, and the funds currently being expended to conduct the programs;

(4) recommendations for necessary program changes and other proposals to meet the requirements of the policy and goals as set forth by the Commission and in the Plan as currently in effect; and

(5) a description of the actions taken by the Interagency Committee to coordinate the budget review process in order to ensure interagency coordination and cooperation in (A) carrying out Federal Arctic research programs, and (B) eliminating unnecessary duplication of effort among these programs.

(Pub. L. 98–373, title I, §109, July 31, 1984, 98 Stat. 1247.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the biennial revision required under subsec. (a) of this section is listed on page 174), see section 3003 of Pub. L. 104–66, as amended, and section 1(a)(4) [div. A, §1402] of Pub. L. 106–554, set out as notes under section 1113 of Title 31, Money and Finance.

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) delegated to Director of the National Science Foundation, see Memorandum of President of the United States, Feb. 17, 2005, 70 F.R. 9841, set out as a note under section 4107 of this title.

§4109. Coordination and review of budget requests; Office of Science and Technology Policy; Office of Management and Budget

(a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 4107(a)(5) of this title, in accordance with the national Arctic research policy and the 5-year program under section 4107(a)(2) and section 4108 of this title, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget request for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

(Pub. L. 98–373, title I, §110, July 31, 1984, 98 Stat. 1248.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the review of the President's annual budget request and report to Congress under subsec. (b)(1) of this section is listed on page 155), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§4110. Authorization of appropriations; new spending authority

(a) There are authorized to be appropriated such sums as may be necessary for carrying out this chapter.

(b) Any new spending authority (within the meaning of section 651 of title 2) which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as may be provided in appropriation Acts.

(Pub. L. 98–373, title I, §111, July 31, 1984, 98 Stat. 1248.)

§4111. "Arctic" defined

As used in this chapter, the term "Arctic" means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.

(Pub. L. 98–373, title I, §112, July 31, 1984, 98 Stat. 1248.)

§4112. Annual agency budget and spending report

(1) Annual agency budgets

Each agency represented on the Interagency Arctic Research Policy Committee shall each include in their agency's annual budget request to Congress a description of their agency's projected Arctic research activities and associated budget for the fiscal year covered by the budget request.

(2) Report to Congress

Beginning with fiscal year 2025 and annually thereafter until fiscal year 2034, not later than 60 days after the President's budget request for such fiscal year is submitted to Congress, the Office of Science and Technology Policy shall submit an annual report to Congress summarizing each agency's budget request related to Arctic research activities per the information submitted in accordance with paragraph (1).

(Pub. L. 117–263, div. E, title LIX, §5912(b), Dec. 23, 2022, 136 Stat. 3442.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Arctic Research and Policy Act of 1984 which comprises this chapter.

CHAPTER 68—LAND REMOTE-SENSING COMMERCIALIZATION

SUBCHAPTER I—DECLARATION OF FINDINGS, PURPOSES, AND POLICIES

§§4201 to 4204. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4201, Pub. L. 98–365, title I, §101, July 17, 1984, 98 Stat. 451, related to Congressional findings for chapter.

Section 4202, Pub. L. 98–365, title I, §102, July 17, 1984, 98 Stat. 452, related to Congressional declaration of purpose of chapter.

Section 4203, Pub. L. 98–365, title I, §103, July 17, 1984, 98 Stat. 452, related to Federal policy concerning acquisition and dissemination of remote-sensing data, availability of civilian unenhanced remote-sensing data, and commercialization of remote-sensing space systems with governmental retention of essentially public service functions.

Section 4204, Pub. L. 98–365, title I, §104, July 17, 1984, 98 Stat. 452, related to definitions for chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 98–365, §1, July 17, 1984, 98 Stat. 451, which provided that such Act was to be cited as the "Land Remote-Sensing Commercialization Act of 1984", was repealed by Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166.

SUBCHAPTER II—OPERATION AND DATA MARKETING OF LANDSAT SYSTEM

§§4211 to 4215. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4211, Pub. L. 98–365, title II, §201, July 17, 1984, 98 Stat. 453, related to operation and data marketing of Landsat system by Secretary of Commerce and provided for Secretary's authority to contract.

Section 4212, Pub. L. 98–365, title II, §202, July 17, 1984, 98 Stat. 454; Pub. L. 100–147, title III, §304, Oct. 30, 1987, 101 Stat. 876, related to Secretary's authority to contract for marketing of unenhanced data.

Section 4213, Pub. L. 98–365, title II, §203, July 17, 1984, 98 Stat. 454, related to conditions of competition for contract to market unenhanced data.

Section 4214, Pub. L. 98–365, title II, §204, July 17, 1984, 98 Stat. 455, related to sale of unenhanced data, entitlement to revenues from such sales, and the permissibility of marketing such data after end of Landsat system space segment.

Section 4215, Pub. L. 98–365, title II, §205, July 17, 1984, 98 Stat. 455, related to supply of unenhanced data to foreign ground stations and contract provisions relating thereto.

SUBCHAPTER III—PROVISION OF DATA CONTINUITY AFTER THE LANDSAT SYSTEM

§§4221 to 4228. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4221, Pub. L. 98–365, title III, §301, July 17, 1984, 98 Stat. 456, related to purposes and definition for subchapter.

Section 4222, Pub. L. 98–365, title III, §302, July 17, 1984, 98 Stat. 456, related to data continuity and availability.

Section 4223, Pub. L. 98–365, title III, §303, July 17, 1984, 98 Stat. 456, related to awarding of contract for

provision of data continuity.

Section 4224, Pub. L. 98–365, title III, §304, July 17, 1984, 98 Stat. 458, related to terms of data continuity contract and determination by Secretary of Commerce as to whether contract meets purposes of subchapter.

Section 4225, Pub. L. 98–365, title III, §305, July 17, 1984, 98 Stat. 458, related to marketing of land remote-sensing data, incentive provisions for such activity, and continuation by contractor of data sales or operation of civil remote-sensing systems.

Section 4226, Pub. L. 98–365, title III, §306, July 17, 1984, 98 Stat. 459, related to Secretary's report on progress towards privitization of remote-sensing space systems.

Section 4227, Pub. L. 98–365, title III, §307, July 17, 1984, 98 Stat. 459, related to termination of chapter.

Section 4228, Pub. L. 98–365, title III, §308, as added Pub. L. 100–147, title III, §305, Oct. 30, 1987, 101 Stat. 876, related to disposition of government assets following completion of contract made pursuant to subchapter.

SUBCHAPTER IV—LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

§§4241 to 4246. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4241, Pub. L. 98–365, title IV, §401, July 17, 1984, 98 Stat. 459, related to authority of Secretary of Commerce to license private sector parties, conditions for grant of license, review of applications by Secretary, and provisions relating to denial of licenses.

Section 4242, Pub. L. 98–365, title IV, §402, July 17, 1984, 98 Stat. 459; Pub. L. 102–567, title I, §114(b), Oct. 29, 1992, 106 Stat. 4279, provided licensing requirements for operation of private remote-sensing space system.

Section 4243, Pub. L. 98–365, title IV, §403, July 17, 1984, 98 Stat. 460, related to administrative authority of Secretary of Commerce, review of adverse action on license application, and judicial review of final actions.

Section 4244, Pub. L. 98–365, title IV, §404, July 17, 1984, 98 Stat. 461, related to regulatory authority of Secretary of Commerce.

Section 4245, Pub. L. 98–365, title IV, §405, July 17, 1984, 98 Stat. 461, related to licensing of private remote-sensing space systems which utilize civilian government satellites or vehicles, assistance by Secretary of Commerce in finding opportunities for such utilization, utilization agreements by Federal agencies, research and development, and subchapter's effect on authority of Federal Communications Commission.

Section 4246, Pub. L. 98–365, title IV, §406, July 17, 1984, 98 Stat. 461, related to termination of subchapter.

SUBCHAPTER V—RESEARCH AND DEVELOPMENT

§§4261 to 4264. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4261, Pub. L. 98–365, title V, §501, July 17, 1984, 98 Stat. 461, related to continued Federal remote-sensing research and development.

Section 4262, Pub. L. 98–365, title V, §502, July 17, 1984, 98 Stat. 462; Pub. L. 100–147, title III, §306, Oct. 30, 1987, 101 Stat. 876, related to remote-sensing research and development activities of Federal agencies.

Section 4263, Pub. L. 98–365, title V, §503, July 17, 1984, 98 Stat. 463, related to sale of experimental data.

Section 4264, Pub. L. 98–365, title V, §504, as added Pub. L. 100–147, title III, §307, Oct. 30, 1987, 101 Stat. 877, related to remote-sensing research and development activities of system operators.

SUBCHAPTER VI—GENERAL PROVISIONS

§§4271 to 4278. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4271, Pub. L. 98–365, title VI, §601, July 17, 1984, 98 Stat. 463, related to nondiscriminatory availability of unenhanced data and public availability of terms and conditions for data sales.

Section 4272, Pub. L. 98–365, title VI, §602, July 17, 1984, 98 Stat. 463; Pub. L. 102–567, title I, §114(c), Oct. 29, 1992, 106 Stat. 4279, provided for archiving of land remote-sensing data.

Section 4273, Pub. L. 98–365, title VI, §603, July 17, 1984, 98 Stat. 464; Pub. L. 100–147, title III, §308, Oct. 30, 1987, 101 Stat. 877, related to nonreproduction of unenhanced data.

Section 4274, Pub. L. 98–365, title VI, §604, July 17, 1984, 98 Stat. 464, related to reimbursement of Federal agencies for assistance to remote-sensing system operators.

Section 4275, Pub. L. 98–365, title VI, §605, July 17, 1984, 98 Stat. 464, related to acquisition of equipment from Landsat system.

Section 4276, Pub. L. 98–365, title VI, §606, July 17, 1984, 98 Stat. 465, related to radio frequency allocation.

Section 4277, Pub. L. 98–365, title VI, §607, July 17, 1984, 98 Stat. 465, directed Secretary of Commerce to consult with Secretary of Defense on chapter's effect on national security matters, with Secretary of State on chapter's effect on international obligations, and provided for reimbursement of system operators for certain costs.

Section 4278, Pub. L. 98–365, title VI, §609, July 17, 1984, 98 Stat. 466; Pub. L. 99–62, July 11, 1985, 99 Stat. 118, authorized appropriations for chapter.

SUBCHAPTER VII—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

§§4291, 4292. Repealed. Pub. L. 102–555, §4, Oct. 28, 1992, 106 Stat. 4166

Section 4291, Pub. L. 98–365, title VII, §701, July 17, 1984, 98 Stat. 466, related to prohibition of commercialization of weather satellites.

Section 4292, Pub. L. 98–365, title VII, §702, July 17, 1984, 98 Stat. 467, required repeal of chapter prior to any action with respect to the commercialization of weather satellites.

CHAPTER 69—COOPERATIVE RESEARCH

Sec.

§4301. Definitions

(a) For purposes of this chapter:

(1) The term "antitrust laws" has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 of this title applies to unfair methods of competition.

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "person" has the meaning given it in subsection (a) of section 12 of this title.

(5) The term "State" has the meaning given it in section 15g(2) of this title.

(6) The term "joint venture" means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts,

(B) the development or testing of basic engineering techniques,

(C) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes,

(D) the production of a product, process, or service,

(E) the testing in connection with the production of a product, process, or service by such venture,

(F) the collection, exchange, and analysis of research or production information, or

(G) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), (E), and (F),

and may include the establishment and operation of facilities for the conducting of such venture, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in subsection (b).

(7) The term "standards development activity" means any action taken by a standards development organization for the purpose of developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard, or using such standard in conformity assessment activities, including actions relating to the intellectual property policies of the standards development organization.

(8) The term "standards development organization" means a domestic or international organization that plans, develops, establishes, or coordinates voluntary consensus standards using procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus in a manner consistent with the Office of Management and Budget Circular Number A–119, as revised February 10, 1998. The term "standards development organization" shall not, for purposes of this chapter, include the parties participating in the standards development organization.

(9) The term "technical standard" has the meaning given such term in section 12(d)(4) [1] of the National Technology Transfer and Advancement Act of 1995.

(10) The term "voluntary consensus standard" has the meaning given such term in Office of Management and Budget Circular Number A–119, as revised February 10, 1998.

(b) The term "joint venture" excludes the following activities involving two or more persons:

(1) exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service if such information is not reasonably required to carry out the purpose of such venture,

(2) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the marketing, distribution, or provision by any person who is a party to such venture of any product, process, or service, other than—

(A) the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture,

(B) the marketing of proprietary information, such as patents and trade secrets, developed through such venture formed under a written agreement entered into before June 10, 1993, or

(C) the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture formed under a written agreement entered into on or after June 10, 1993,

(3) entering into any agreement or engaging in any other conduct—

(A) to restrict or require the sale, licensing, or sharing of inventions, developments, products, processes, or services not developed through, or produced by, such venture, or

(B) to restrict or require participation by any person who is a party to such venture in other research and development activities,

that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture,

(4) entering into any agreement or engaging in any other conduct allocating a market with a competitor,

(5) exchanging information among competitors relating to production (other than production by such venture) of a product, process, or service if such information is not reasonably required to carry out the purpose of such venture,

(6) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production (other than the production by such venture) of a product, process, or service,

(7) using existing facilities for the production of a product, process, or service by such venture unless such use involves the production of a new product or technology, and

(8) except as provided in paragraphs (2), (3), and (6), entering into any agreement or engaging in any other conduct to restrict or require participation by any person who is a party to such venture, in any unilateral or joint activity that is not reasonably required to carry out the purpose of such venture.

(c) The term "standards development activity" excludes the following activities:

(1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.

(2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.

(3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.

(Pub. L. 98–462, §2, Oct. 11, 1984, 98 Stat. 1815; Pub. L. 103–42, §3(b), (c), June 10, 1993, 107 Stat. 117, 118; Pub. L. 108–237, title I, §103, June 22, 2004, 118 Stat. 663.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 12(d) of the National Technology Transfer and Advancement Act of 1995, referred to in subsec. (a)(9), is section 12(d) of Pub. L. 104–113, which is set out as a note under section 272 of this title.

AMENDMENTS

2004—Subsec. (a)(7) to (10). Pub. L. 108–237, §103(1), added pars. (7) to (10).

Subsec. (c). Pub. L. 108–237, §103(2), added subsec. (c).

1993—Subsec. (a)(6). Pub. L. 103–42, §3(b), struck out "research and development" after "joint" in introductory provisions, inserted subpars. (D) and (E), redesignated former subpars. (D) and (E) as (F) and (G), respectively, inserted "or production" after "research" in subpar. (F), substituted "(D), (E), and (F)" for "and (D)" in subpar. (G), and substituted "such venture" for "research" after "facilities for the conducting of" in concluding provisions.

Subsec. (b). Pub. L. 103–42, §3(c)(1), struck out "research and development" before "venture" in introductory provisions.

Subsec. (b)(1). Pub. L. 103–42, §3(c)(2), substituted "if such information is not reasonably required to carry out" for "that is not reasonably required to conduct the research and development that is".

Subsec. (b)(2). Pub. L. 103–42, §3(c)(3), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets, and".

Subsec. (b)(3). Pub. L. 103–42, §3(c)(4), in subpar. (A) substituted ", developments, products, processes, or services not developed through, or produced by," for "or developments not developed through", in subpar. (B) substituted "any person who is a party to such venture" for "such party", and at end of concluding provisions substituted comma for period.

Subsec. (b)(4) to (8). Pub. L. 103–42, §3(c)(5), added pars. (4) to (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–237, title I, §101, June 22, 2004, 118 Stat. 661, provided that: "This title [amending this section and sections 4302 to 4305 of this title and enacting provisions set out as notes under this section] may be cited as the 'Standards Development Organization Advancement Act of 2004'."

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–42, §1, June 10, 1993, 107 Stat. 117, provided that: "This Act [enacting section 4306 of this title, amending this section and sections 4302 to 4305 of this title, enacting provisions set out as notes under this section and section 4305 of this title, and amending a provision set out as a note under this section] may be cited as the 'National Cooperative Production Amendments of 1993'."

SHORT TITLE

Pub. L. 98–462, §1, Oct. 11, 1984, 98 Stat. 1815, as amended by Pub. L. 103–42, §3(a), June 10, 1993, 107 Stat. 117, provided that: "This Act [enacting this chapter] may be cited as the 'National Cooperative Research and Production Act of 1993'."

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108–237, title I, §108, June 22, 2004, 118 Stat. 665, provided that: "Nothing in this title [amending this section and sections 4302 to 4305 of this title and enacting provisions set out as notes under this section] shall be construed to alter or modify the antitrust treatment under existing law of—

"(1) parties participating in standards development activity of standards development organizations within the scope of this title, including the existing standard under which the conduct of the parties is reviewed, regardless of the standard under which the conduct of the standards development organizations in which they participate are reviewed, or

"(2) other organizations and parties engaged in standard-setting processes not within the scope of this amendment to the title."

FINDINGS AND PURPOSE

Pub. L. 108–237, title I, §102, June 22, 2004, 118 Stat. 661, provided that: "The Congress finds the following:

"(1) In 1993, the Congress amended and renamed the National Cooperative Research Act of 1984 (now known as the National Cooperative Research and Production Act of 1993 (15 U.S.C. 4301 et seq.)) by enacting the National Cooperative Production Amendments of 1993 (Public Law 103–42 [see Short Title of 1993 Amendment note set out above]) to encourage the use of collaborative, procompetitive activity in the form of research and production joint ventures that provide adequate disclosure to the antitrust enforcement agencies about the nature and scope of the activity involved.

"(2) Subsequently, in 1995, the Congress in enacting the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) [Pub. L. 104–113; see Short Title of 1996 Amendment note set out under section 3701 of this title] recognized the importance of technical standards developed by voluntary consensus standards bodies to our national economy by requiring the use of such standards to the extent practicable by Federal agencies and by encouraging Federal agency representatives to participate in ongoing standards development activities. The Office of Management and Budget on February 18, 1998, revised Circular A–119 to reflect these changes made in law.

"(3) Following enactment of the National Technology Transfer and Advancement Act of 1995, technical standards developed or adopted by voluntary consensus standards bodies have replaced thousands

of unique Government standards and specifications allowing the national economy to operate in a more unified fashion.

"(4) Having the same technical standards used by Federal agencies and by the private sector permits the Government to avoid the cost of developing duplicative Government standards and to more readily use products and components designed for the commercial marketplace, thereby enhancing quality and safety and reducing costs.

"(5) Technical standards are written by hundreds of nonprofit voluntary consensus standards bodies in a nonexclusionary fashion, using thousands of volunteers from the private and public sectors, and are developed under the standards development principles set out in Circular Number A–119, as revised February 18, 1998, of the Office of Management and Budget, including principles that require openness, balance, transparency, consensus, and due process. Such principles provide for—

"(A) notice to all parties known to be affected by the particular standards development activity,

"(B) the opportunity to participate in standards development or modification,

"(C) balancing interests so that standards development activities are not dominated by any single group of interested persons,

"(D) readily available access to essential information regarding proposed and final standards,

"(E) the requirement that substantial agreement be reached on all material points after the consideration of all views and objections, and

"(F) the right to express a position, to have it considered, and to appeal an adverse decision.

"(6) There are tens of thousands of voluntary consensus standards available for government use. Most of these standards are kept current through interim amendments and interpretations, issuance of addenda, and periodic reaffirmation, revision, or reissuance every 3 to 5 years.

"(7) Standards developed by government entities generally are not subject to challenge under the antitrust laws.

"(8) Private developers of the technical standards that are used as Government standards are often not similarly protected, leaving such developers vulnerable to being named as codefendants in lawsuits even though the likelihood of their being held liable is remote in most cases, and they generally have limited resources to defend themselves in such lawsuits.

"(9) Standards development organizations do not stand to benefit from any antitrust violations that might occur in the voluntary consensus standards development process.

"(10) As was the case with respect to research and production joint ventures before the passage of the National Cooperative Research and Production Act of 1993, if relief from the threat of liability under the antitrust laws is not granted to voluntary consensus standards bodies, both regarding the development of new standards and efforts to keep existing standards current, such bodies could be forced to cut back on standards development activities at great financial cost both to the Government and to the national economy."

Pub. L. 103–42, §2, June 10, 1993, 107 Stat. 117, provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) technological innovation and its profitable commercialization are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

"(2) cooperative arrangements among nonaffiliated businesses in the private sector are often essential for successful technological innovation; and

"(3) the antitrust laws may have been mistakenly perceived to inhibit procompetitive cooperative innovation arrangements, and so clarification serves a useful purpose in helping to promote such arrangements.

"(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1993 Amendment note above] to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which businesses may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damages limitation on civil antitrust liability."

[1] *So in original. Probably should be section "12(d)(5)".*

§4302. Rule of reason standard

In any action under the antitrust laws, or under any State law similar to the antitrust laws, the conduct of—

(1) any person in making or performing a contract to carry out a joint venture, or
(2) a standards development organization while engaged in a standards development activity,

shall not be deemed illegal per se; such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including, but not limited to, effects on competition in properly defined, relevant research, development, product, process, and service markets. For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances.

(Pub. L. 98–462, §3, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103–42, §3(d), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §104, June 22, 2004, 118 Stat. 663.)

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–237 substituted "of—
"(1) any person in making or performing a contract to carry out a joint venture, or
"(2) a standards development organization while engaged in a standards development activity,
shall" for "of any person in making or performing a contract to carry out a joint venture shall".

1993—Pub. L. 103–42 substituted "joint venture" for "joint research and development venture" and ", development, product, process, and service" for "and development" and inserted at end "For the purpose of determining a properly defined, relevant market, worldwide capacity shall be considered to the extent that it may be appropriate in the circumstances."

§4303. Limitation on recovery

(a) Amount recoverable

Notwithstanding section 15 of this title and in lieu of the relief specified in such section, any person who is entitled to recovery on a claim under such section shall recover the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(b) Recovery by States

Notwithstanding section 15c of this title, and in lieu of the relief specified in such section, any State that is entitled to monetary relief on a claim under such section shall recover the total damage sustained as described in subsection (a)(1) of such section, interest calculated at the rate specified in section 1961 of title 28 on such total damage as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 15c of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(c) Conduct similar under State law

Notwithstanding any provision of any State law providing damages for conduct similar to that forbidden by the antitrust laws, any person who is entitled to recovery on a claim under such provision shall not recover in excess of the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in

subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint venture, or for a standards development activity engaged in by a standards development organization against which such claim is made, and

(2) is filed after notification has become effective pursuant to section 4305(c) of this title.

(d) Interest

Interest shall be awarded on the damages involved for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances.

(e) Rule of construction

Subsections (a), (b), and (c) shall not be construed to modify the liability under the antitrust laws of any person (other than a standards development organization) who—

(1) directly (or through an employee or agent) participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(f) Applicability

This section shall be applicable only if the challenged conduct of a person defending against a claim is not in violation of any decree or order, entered or issued after October 11, 1984, in any case or proceeding under the antitrust laws or any State law similar to the antitrust laws challenging such conduct as part of a joint venture, or of a standards development activity engaged in by a standards development organization.

(Pub. L. 98–462, §4, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103–42, §3(e)(1), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §105, June 22, 2004, 118 Stat. 663.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsecs. (a)(1), (b)(1), (c)(1). Pub. L. 108–237, §105(1), inserted ", or for a standards development activity engaged in by a standards development organization against which such claim is made" after "joint venture".

Subsec. (e). Pub. L. 108–237, §105(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 108–237, §105(2)(A), inserted ", or of a standards development activity engaged in by a standards development organization" before period at end.

Subsec. (f). Pub. L. 108–237, §105(2)(B), redesignated subsec. (e) as (f).

1993—Subsecs. (a) to (c). Pub. L. 103–42, §3(e)(1)(A), (B), in introductory provisions inserted "of this section" after "subsection (d)" and in par. (1) substituted "joint venture" for "joint research and development venture".

Subsec. (e). Pub. L. 103–42, §3(e)(1)(A), (C), substituted "October 11, 1984," for "the effective date of this Act" and substituted "joint venture" for "joint research and development venture".

§4304. Award of costs, including attorney's fees, to substantially prevailing party; offset

(a) Notwithstanding sections 15 and 26 of this title, in any claim under the antitrust laws, or any State law similar to the antitrust laws, based on the conducting of a joint venture, or of a standards development activity engaged in by a standards development organization, the court shall, at the

conclusion of the action—

(1) award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney's fee, or

(2) award to a substantially prevailing party defending against any such claim the cost of suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) The award made under subsection (a) may be offset in whole or in part by an award in favor of any other party for any part of the cost of suit, including a reasonable attorney's fee, attributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

(c) Subsections (a) and (b) shall not apply with respect to any person who—

(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(Pub. L. 98–462, §5, Oct. 11, 1984, 98 Stat. 1817; Pub. L. 103–42, §3(e)(2), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §106, June 22, 2004, 118 Stat. 664.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–237, §106(1), inserted ", or of a standards development activity engaged in by a standards development organization" after "joint venture" in introductory provisions.

Subsec. (c). Pub. L. 108–237, §106(2), added subsec. (c).

1993—Subsec. (a). Pub. L. 103–42 substituted "joint venture" for "joint research and development venture" in introductory provisions.

§4305. Disclosure of joint venture

(a) Written notifications; filing

(1) Any party to a joint venture, acting on such venture's behalf, may, not later than 90 days after entering into a written agreement to form such venture or not later than 90 days after October 11, 1984, whichever is later, file simultaneously with the Attorney General and the Commission a written notification disclosing—

(A) the identities of the parties to such venture,

(B) the nature and objectives of such venture, and

(C) if a purpose of such venture is the production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, the identity and nationality of any person who is a party to such venture, or who controls any party to such venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.

Any party to such venture, acting on such venture's behalf, may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title. In order to maintain the protections of section 4303 of this title, such venture shall, not later than 90 days after a change in its membership, file simultaneously with the Attorney General and the Commission a written notification disclosing such change.

(2) A standards development organization may, not later than 90 days after commencing a

standards development activity engaged in for the purpose of developing or promulgating a [1] voluntary consensus standards or not later than 90 days after June 22, 2004, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

(A) the name and principal place of business of the standards development organization, and

(B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.

(b) Publication; Federal Register; notice

Except as provided in subsection (e), not later than 30 days after receiving a notification filed under subsection (a), the Attorney General or the Commission shall publish in the Federal Register a notice with respect to such venture that identifies the parties to such venture and that describes in general terms the area of planned activity of such venture, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms. Prior to its publication, the contents of such notice shall be made available to the parties to such venture or available to such organization, as the case may be.

(c) Effect of notice

If with respect to a notification filed under subsection (a), notice is published in the Federal Register, then such notification shall operate to convey the protections of section 4303 of this title as of the earlier of—

(1) the date of publication of notice under subsection (b), or

(2) if such notice is not so published within the time required by subsection (b), after the expiration of the 30-day period beginning on the date the Attorney General or the Commission receives the applicable information described in subsection (a).

(d) Exemption; disclosure; information

Except with respect to the information published pursuant to subsection (b)—

(1) all information and documentary material submitted as part of a notification filed pursuant to this section, and

(2) all other information obtained by the Attorney General or the Commission in the course of any investigation, administrative proceeding, or case, with respect to a potential violation of the antitrust laws by the joint venture, or the standards development activity, with respect to which such notification was filed,

shall be exempt from disclosure under section 552 of title 5, and shall not be made publicly available by any agency of the United States to which such section applies except in a judicial or administrative proceeding in which such information and material is subject to any protective order.

(e) Withdrawal of notification

Any person or standards development organization that files a notification pursuant to this section may withdraw such notification before notice of the joint venture involved is published under subsection (b). Any notification so withdrawn shall not be subject to subsection (b) and shall not confer the protections of section 4303 of this title on any person or any standards development organization with respect to whom such notification was filed.

(f) Judicial review; inapplicable with respect to notifications

Any action taken or not taken by the Attorney General or the Commission with respect to notifications filed pursuant to this section shall not be subject to judicial review.

(g) Admissibility into evidence; disclosure of conduct; publication of notice; supporting or answering claims under antitrust laws

(1) Except as provided in paragraph (2), for the sole purpose of establishing that a person or standards development organization is entitled to the protections of section 4303 of this title, the fact of disclosure of conduct under subsection (a) and the fact of publication of a notice under subsection (b) shall be admissible into evidence in any judicial or administrative proceeding.

(2) No action by the Attorney General or the Commission taken pursuant to this section shall be admissible into evidence in any such proceeding for the purpose of supporting or answering any claim under the antitrust laws or under any State law similar to the antitrust laws.

(Pub. L. 98–462, §6, Oct. 11, 1984, 98 Stat. 1818; Pub. L. 103–42, §3(f), June 10, 1993, 107 Stat. 119; Pub. L. 108–237, title I, §107, June 22, 2004, 118 Stat. 664.)

EDITORIAL NOTES

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–237, §107(1), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), and added par. (2).

Subsec. (b). Pub. L. 108–237, §107(2), inserted ", or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms" before period at end of first sentence and "or available to such organization, as the case may be" before period at end of last sentence.

Subsec. (d)(2). Pub. L. 108–237, §107(3), inserted ", or the standards development activity," after "venture".

Subsec. (e). Pub. L. 108–237, §107(4), substituted "person or standards development organization that" for "person who" and inserted "or any standards development organization" after "on any person".

Subsec. (g)(1). Pub. L. 108–237, §107(5), inserted "or standards development organization" after "person".

1993—Pub. L. 103–42, §3(f)(1), substituted "joint venture" for "joint research and development venture" in section catchline.

Subsec. (a). Pub. L. 103–42, §3(f)(2), (3), substituted "joint venture" for "joint research and development venture" and "October 11, 1984" for "the date of the enactment of this Act" and added par. (3).

Subsecs. (d)(2), (e). Pub. L. 103–42, §3(f)(3), substituted "joint venture" for "joint research and development venture".

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPORTS ON JOINT VENTURES AND UNITED STATES COMPETITIVENESS

Pub. L. 103–42, §4, June 10, 1993, 107 Stat. 120, provided that:

"(a) PURPOSE.—The purpose of the reports required by this section is to inform Congress and the American people of the effect of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4301 et seq.] on the competitiveness of the United States in key technological areas of research, development, and production.

"(b) ANNUAL REPORT BY THE ATTORNEY GENERAL.—In the 30-day period beginning at each 1-year interval in the 6-year period beginning on the date of the enactment of this Act [June 10, 1993], the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

"(1) a list of joint ventures for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)] during the 12-month period for which such report is made, including—

"(A) the purpose of each joint venture;

"(B) the identity of each party described in section 6(a)(1) of such Act; and

"(C) the identity and nationality of each person described in section 6(a)(3) of such Act; and

"(2) a list of cases and proceedings, if any, brought during such period under the antitrust laws by the Department of Justice, and by the Federal Trade Commission, with respect to joint ventures for which notice was filed under such section at any time.

"(c) TRIENNIAL REPORT BY THE ATTORNEY GENERAL.—In the 30-day period beginning at each 3-year interval in the 6-year period beginning on the date of the enactment of this Act [June 10, 1993], the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the

Committee on the Judiciary of the Senate a description of the technological areas most commonly pursued by joint ventures for production for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)] during the 3-year period for which such report is made, and an analysis of the trends in the competitiveness of United States industry in such areas.

"(d) REVIEW OF ANTITRUST TREATMENT UNDER FOREIGN LAWS.—In the three 30-day periods beginning 1 year, 3 years, and 6 years after the date of the enactment of this Act [June 10, 1993], the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the antitrust treatment of United States businesses with respect to participation in joint ventures for production, under the law of each foreign nation any of whose domestic businesses disclosed its nationality under section 6(a)(3) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)(3)] at any time."

[1] *So in original.*

§4306. Application of section 4303 protections to production of products, processes, and services

Notwithstanding sections 4303 and 4305 of this title, the protections of section 4303 of this title shall not apply with respect to a joint venture's production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, unless—

(1) the principal facilities for such production are located in the United States or its territories, and

(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country whose law accords antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

(Pub. L. 98–462, §7, as added Pub. L. 103–42, §3(g), June 10, 1993, 107 Stat. 119.)

CHAPTER 70—COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION

Sec.

§4401. Public education

(a) Development

(1) The Secretary of Health and Human Services shall establish and carry out a program to inform the public of any dangers to human health resulting from the use of smokeless tobacco products. In carrying out such program the Secretary shall—

(A) develop educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

(B) make such programs, materials, and announcements available to States, local governments,

school systems, the media, and such other entities as the Secretary determines appropriate to further the purposes of this chapter;

(C) conduct and support research on the effect of smokeless tobacco on human health; and

(D) collect, analyze, and disseminate information and studies on smokeless tobacco and health.

(2) In developing programs, materials, and announcements under paragraph (1) the Secretary shall consult with the Secretary of Education, medical and public health entities, consumer groups, representatives of manufacturers of smokeless tobacco products, and other appropriate entities.

(b) Assistance

The Secretary of Health and Human Services may provide technical assistance and may make grants to States—

(1) to assist in the development of educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco,

(2) to assist in the distribution of such programs, materials, and announcements throughout the States, and

(3) to establish 18 as the minimum age for the purchase of smokeless tobacco.

(Pub. L. 99–252, §2, Feb. 27, 1986, 100 Stat. 30.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 99–252, §11, Feb. 27, 1986, 100 Stat. 35, provided that:

"(a) IN GENERAL.—Except as provided in sections 3(f) and 5(b) [sections 4402(f) and 4404(b) of this title] and subsection (b), this Act [enacting this chapter and amending section 342 of Title 21, Food and Drugs] shall take effect one year after the date of enactment of this Act [Feb. 27, 1986].

"(b) EXCEPTION.—Sections 2, 3(b), 3(c), 3(d), 3(e), 4(b), 7, 8, 9 [sections 4401, 4402(b) to (e), 4403(b), and 4406 to 4408 of this title], and 10 [amending section 342 of Title 21] shall take effect on the date of the enactment of this Act [Feb. 27, 1986]."

SHORT TITLE

Pub. L. 99–252, §1, Feb. 27, 1986, 100 Stat. 30, provided that: "This Act [enacting this chapter and amending section 342 of Title 21, Food and Drugs] may be cited as the 'Comprehensive Smokeless Tobacco Health Education Act of 1986'."

§4402. Smokeless tobacco warning

(a) General rule

(1) It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any smokeless tobacco product unless the product package bears, in accordance with the requirements of this chapter, one of the following labels:

WARNING: This product can cause mouth cancer.

WARNING: This product can cause gum disease and tooth loss.

WARNING: This product is not a safe alternative to cigarettes.

WARNING: Smokeless tobacco is addictive.

(2) Each label statement required by paragraph (1) shall be—

(A) located on the 2 principal display panels of the package, and each label statement shall comprise at least 30 percent of each such display panel; and

(B) in 17-point conspicuous and legible type and in black text on a white background, or white text on a black background, in a manner that contrasts by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under

subsection (b)(3), except that if the text of a label statement would occupy more than 70 percent of the area specified by subparagraph (A), such text may appear in a smaller type size, so long as at least 60 percent of such warning area is occupied by the label statement.

(3) The label statements required by paragraph (1) shall be introduced by each tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products concurrently into the distribution chain of such products.

(4) The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of any smokeless tobacco product that does not manufacture, package, or import smokeless tobacco products for sale or distribution within the United States.

(5) A retailer of smokeless tobacco products shall not be in violation of this subsection for packaging that—

(A) contains a warning label;

(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

(b) Required labels

(1) It shall be unlawful for any tobacco product manufacturer, packager, importer, distributor, or retailer of smokeless tobacco products to advertise or cause to be advertised within the United States any smokeless tobacco product unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

(2)(A) Each label statement required by subsection (a) in smokeless tobacco advertising shall comply with the standards set forth in this paragraph.

(B) For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent yield shall comprise at least 20 percent of the area of the advertisement.

(C) The word "WARNING" shall appear in capital letters, and each label statement shall appear in conspicuous and legible type.

(D) The text of the label statement shall be black on a white background, or white on a black background, in an alternating fashion under the plan submitted under paragraph (3).

(E) The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital "W" of the word "WARNING" in the label statements.

(F) The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement.

(G) The label statements shall be in English, except that—

(i) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

(ii) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

(3)(A) The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

(B) The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating

sequence in advertisements for each brand of smokeless tobacco product in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

(C) The Secretary shall review each plan submitted under subparagraphs (A) and (B) and approve it if the plan—

(i) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(ii) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.

(D) This paragraph applies to a retailer only if that retailer is responsible for or directs the label statements under this section, unless the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection.

(4) The Secretary may, through a rulemaking under section 553 of title 5, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

(c) Television and radio advertising

It is unlawful to advertise smokeless tobacco on any medium of electronic communications subject to the jurisdiction of the Federal Communications Commission.

(d) Authority to revise warning label statements

The Secretary may, by a rulemaking conducted under section 553 of title 5, adjust the format, type size, and text of any of the label requirements, require color graphics to accompany the text, increase the required label area from 30 percent up to 50 percent of the front and rear panels of the package, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act, if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of smokeless tobacco products.

(Pub. L. 99–252, §3, Feb. 27, 1986, 100 Stat. 30; Pub. L. 111–31, div. A, title II, §§204(a), 205(a), June 22, 2009, 123 Stat. 1846, 1848.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(4) and (d), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

2009—Pub. L. 111–31, §204(a), amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to smokeless tobacco warning labels and television and radio advertising.

Subsec. (d). Pub. L. 111–31, §205(a), amended section as amended by Pub. L. 111–31, §204, by adding subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–31, div. A, title II, §204(b), June 22, 2009, 123 Stat. 1848, provided that: "The amendment

made by subsection (a) [amending this section] shall take effect 12 months after the date of enactment of this Act [June 22, 2009]. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as amended by subsection (a)."

EFFECTIVE DATE

Subsec. (a) effective one year after Feb. 27, 1986, and subsecs. (b) to (e) effective Feb. 27, 1986, see section 11 of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4403. Ingredient reporting

(a) In general

(1) Each person who manufactures, packages, or imports smokeless tobacco products shall annually provide the Secretary with—

(A) a list of the ingredients added to tobacco in the manufacture of smokeless tobacco products which does not identify the company which uses the ingredients or the brand of smokeless tobacco which contains the ingredients; and

(B) a specification of the quantity of nicotine contained in each such product.

(2) A person or group of persons required to provide information by this subsection may designate an individual or entity to provide the information required by this subsection.

(b) Report

(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a), respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of smokeless tobacco products and the findings of such research;

(B) information pertaining to any such ingredient which in the judgment of the Secretary poses a health risk to users of smokeless tobacco; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) shall be treated as a trade secret or confidential information subject to section 552(b)(4) of title 5 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

(B) Subparagraph (A) does not authorize the withholding of information provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such information, the Secretary shall make the information available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the information of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by any person authorized to have access to such information, shall store it in a locked cabinet or file; and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

(Pub. L. 99–252, §4, Feb. 27, 1986, 100 Stat. 32.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Subsec. (a) effective one year after Feb. 27, 1986, and subsec. (b) effective Feb. 27, 1986, see section 11 of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4404. Enforcement, regulations, and construction

(a) Enforcement

(1) A violation of section 4402 of this title or the regulations promulgated pursuant to this chapter shall be considered a violation of section 45 of this title.

(2) Any person who is found to violate any provision of section 4402 or 4403(a) of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $10,000.

(b) Regulations under section 4402 of this title

(1) Regulations issued by the Federal Trade Commission under section 4402 of this title shall be issued in accordance with section 553 of title 5.

(2) Not later than 180 days after February 27, 1986, the Federal Trade Commission shall promulgate such regulations as it may require to implement section 4402 of this title.

(c) Construction

Nothing in this chapter (other than the requirements of sections 4402 and 4403 of this title) shall be construed to limit, restrict, or expand the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of smokeless tobacco products.

(Pub. L. 99–252, §5, Feb. 27, 1986, 100 Stat. 33.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Subsecs. (a) and (c) effective one year after Feb. 27, 1986, see section 11(a) of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4405. Injunctions

The several district courts of the United States are vested with jurisdiction, for cause shown, to prevent and restrain violations of sections 4402 and 4403 of this title upon application of the Federal Trade Commission in the case of a violation of section 4402 of this title or upon application of the Attorney General of the United States acting through the several United States attorneys in their several districts in the case of a violation of section 4402 or 4403 of this title.

(Pub. L. 99–252, §6, Feb. 27, 1986, 100 Stat. 33.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective one year after Feb. 27, 1986, see section 11(a) of Pub. L. 99–252, set out as a note under section 4401 of this title.

§4406. Preemption

(a) Federal action

Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no statement relating to the use of smokeless tobacco products and health, other than the statements required by section 4402 of this title, shall be required by any Federal agency to appear on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

(b) State and local action

No statement relating to the use of smokeless tobacco products and health, other than the statements required by section 4402 of this title, shall be required by any State or local statute or regulation to be included on any package or in any advertisement (unless the advertisement is an outdoor billboard advertisement) of a smokeless tobacco product.

(c) Effect on liability law

Nothing in this chapter shall relieve any person from liability at common law or under State statutory law to any other person.

(Pub. L. 99–252, §7, Feb. 27, 1986, 100 Stat. 34; Pub. L. 111–31, div. A, title II, §205(b), June 22, 2009, 123 Stat. 1849.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (a), is div. A of Pub. L. 111–31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of Title 21, Food and Drugs, and Tables.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–31 substituted "Except as provided in the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), no" for "No".

§4407. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 99–252, §8, Feb. 27, 1986, 100 Stat. 34, which required the Secretary of Health and Human Services and the Federal Trade Commission to transmit biennial reports to Congress on smokeless tobacco products, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, pages 95 and 173 of House Document No. 103–7.

§4408. Definitions

For purposes of this chapter:

(1) The term "smokeless tobacco" has the meaning given such term by section 387(18) of title 21.

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of

Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and installations of the Armed Forces.

(4) The term "package" means a pack, box, carton, pouch, or container of any kind in which smokeless tobacco products are offered for sale, sold, or otherwise distributed to consumers.

(5) The term "sale or distribution" includes sampling or any other distribution not for sale.

(6) The term "Secretary" means the Secretary of Health and Human Services.

(Pub. L. 99–252, §9, Feb. 27, 1986, 100 Stat. 34; Pub. L. 111–31, div. A, title I, §101(c), June 22, 2009, 123 Stat. 1830.)

EDITORIAL NOTES

AMENDMENTS

2009—Par. (1). Pub. L. 111–31 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'smokeless tobacco' means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity."

CHAPTER 71—PETROLEUM OVERCHARGE DISTRIBUTION AND RESTITUTION

Sec.

§4501. Restitutionary amounts covered

(a) In general

This chapter (other than section 4504 of this title)—

(1) specifies the procedure for the disbursement of funds collected, including interest thereon, by the Secretary or the courts pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970 (and the regulations issued thereunder) as restitution for actual or alleged violations of such Acts or regulations; and

(2) subject to subsection (c), applies to—

(A) any amount of such funds held in escrow by the Secretary through accounts administered by the Secretary of the Treasury on or after October 21, 1986; and

(B) any amount of such funds determined at any time, pursuant to judicial or administrative proceedings (including any settlement agreement or declaratory judgment) instituted by the Secretary to enforce such Acts and regulations, to be amounts paid for such actual or alleged violations, including any such amounts held in escrow by any court.

(b) Special rule

Amounts described in subsection (a)(2) and held in an escrow account by a court before October 21, 1986, may continue to be held by such court but shall be disbursed, together with any interest thereon, by the Secretary or, as appropriate, by the court only in accordance with the provisions of

this chapter.

(c) Exclusions

Subsection (a)(2) does not apply to—

(1) any amount actually disbursed before October 21, 1986, to any person or class of persons pursuant to section 155 of Public Law 97–377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) any amount to which any person or class of persons has an enforceable right, created or vested, or governed by the terms and conditions of the settlement approved on July 7, 1986, in In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) any amount designated by judicial or administrative order or judgment (including any settlement agreement or declaratory judgment) for disbursement at any time to any specific person or class of persons—

(A) identified in such order or judgment as injured by the violation or alleged violation of the Acts described in subsection (a)(1) (including the regulations thereunder); or

(B) identified in such order or judgment issued before October 21, 1986, for indirect restitution.

(d) Escrow accounts

Subject to subsections (b) and (c), the amounts covered by subsection (a) shall be held in appropriate escrow accounts administered for the Secretary by the Secretary of the Treasury.

(e) Interest

Consistent with the disbursement requirements of this chapter, the Secretary of the Treasury shall provide that amounts described in subsection (a) shall earn interest at the maximum rate earned on investments of Federal trust funds by the Secretary of the Treasury in short-term and long-term securities issued by the Federal Government (including minority bank investments).

(Pub. L. 99–509, title III, §3002, Oct. 21, 1986, 100 Stat. 1881.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(1), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Economic Stabilization Act of 1970, referred to in subsec. (a)(1), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

Section 155 of Public Law 97–377, referred to in subsec. (c)(1), is section 155 of Pub. L. 97–377, title I, Dec. 21, 1982, 96 Stat. 1919, which is not classified to the Code.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 99–509, title III, §3001, Oct. 21, 1986, 100 Stat. 1881, provided that: "This subtitle [subtitle A (§§3001–3008) of title III of Pub. L. 99–509, enacting this chapter] may be cited as the 'Petroleum Overcharge Distribution and Restitution Act of 1986'."

§4502. Identification and disbursement of restitutionary amounts

(a) In general

(1) Subject to paragraph (2)—

(A) all rulings, policies, or other statements (including any administrative order or settlement agreement) issued after October 21, 1986, by any office, official, or employee of the Department of Energy; and

(B) all orders, including declaratory judgments, issued by any court after October 21, 1986,

shall be consistent with the provisions of this chapter.

(2) Nothing in this section shall affect the settlement approved on July 7, 1986, in In Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas.

(b) to (d) Repealed. Pub. L. 99–509, title III, §3003(e), as added Pub. L. 105–277, div. A, §101(e) [title III, §337], Oct. 21, 1998, 112 Stat. 2681–231, 2681–295

(e) Repeal of subsections (b) to (d); equitable distribution of escrow remainder to claimants

Subsections (b), (c), and (d) of this section are repealed, and any rights that may have arisen are extinguished, on the date of the enactment of the Department of the Interior and Related Agencies Appropriations Act, 1999. After that date, the amount available for direct restitution to current and future refined petroleum product claimants under this chapter is reduced by the amounts specified in title II of that Act as being derived from amounts held in escrow under section 4501(d) of this title. The Secretary shall assure that the amount remaining in escrow to satisfy refined petroleum product claims for direct restitution is allocated equitably among the claimants.

(Pub. L. 99–509, title III, §3003, Oct. 21, 1986, 100 Stat. 1882; Pub. L. 105–277, div. A, §101(e) [title III, §337], Oct. 21, 1998, 112 Stat. 2681–231, 2681–295.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Department of the Interior and Related Agencies Appropriations Act, 1999, referred to in subsec. (e), is section 101(e) of div. A of Pub. L. 105–277, Oct. 21, 1998, 112 Stat. 2681–231. Provisions of title II of the Act relating to amounts held in escrow under section 4501(d) of this title (112 Stat. 2681–276) are not classified to the Code. For complete classification of this Act to the Code, see Tables.

This chapter, referred to in subsec. (e), was in the original "this Act", which was translated as meaning this subtitle, which enacted this chapter, to reflect the probable intent of Congress.

AMENDMENTS

1998—Subsecs. (b) to (e). Pub. L. 105–277 added subsec. (e) which struck out subsec. (b) relating to disbursement of restitutionary amounts as direct restitution to injured persons, subsec. (c) relating to determination of excess amount to be used for indirect restitution, and subsec. (d) relating to disbursement of excess amount as indirect restitution for energy conservation programs.

§4503. Deposit of remainder of excess amount into Treasury as indirect restitution

The amount that remains from the excess amount described in section 4502(c) [1] of this title after all disbursements have been made for a fiscal year under section 4502(d) [1] of this title shall be deposited by the Secretary of the Treasury into the general fund of the Treasury.

(Pub. L. 99–509, title III, §3004, Oct. 21, 1986, 100 Stat. 1884.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4502(c) and (d) of this title, referred to in text, was repealed by section 4502(e) of this title.

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

§4504. Statute of limitation

(a) In general

(1) Except as provided in subsection (b), the commencement of a civil enforcement action shall be barred unless such action is commenced before the later of—

(A) September 30, 1988; or

(B) six years after the date of the violation upon which the action is based.

(2) For purposes of paragraph (1), the term "commencement of a civil enforcement action" means—

(A) the signing and issuance of a proposed remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or

(B) the filing of a complaint with the appropriate district court of the United States.

(3) For purposes of this section, the term "civil enforcement action" means an administrative or judicial civil action by the Secretary under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970 (or the regulations issued thereunder) for the enforcement of any violation of such Acts or regulations.

(b) Exceptions

(1) In computing the periods established in subparagraphs (A) and (B) of subsection (a)(1), there shall be excluded any period—

(A) during which any person who is or may become the subject of a civil enforcement action is outside the United States, has absconded or concealed himself, or is not subject to legal process;

(B) during which facts material to the establishment and maintenance of a civil enforcement action could not be known;

(C) occurring before full compliance with any subpoena or special report order issued to any person under section 772 of this title, and such additional period (not to exceed 12 calendar months) after such compliance for the Secretary to consider the results thereof and commence a civil enforcement action;

(D) during the pendency of any relevant criminal action under the Acts or regulations described in subsection (a)(1) during which a civil enforcement action is held in abeyance as a result of prosecutorial discretion and with or without a stay, and such additional period (not to exceed 12 calendar months) after a final judicial order or dismissal of such criminal action to commence a civil enforcement action;

(E) before the issuance of an order that constitutes final agency action on a request for adjustment from any rule, regulation, or order under section 7194 of title 42, and such additional period (not to exceed 12 calendar months) to commence a civil enforcement action; or

(F) of extension, to which the Secretary and the defendant have consented in writing, before the expiration of the time periods prescribed in subsection (a)(1).

(2) The provisions of subsection (a) shall not affect or apply to any civil enforcement action commenced before, on, or after October 21, 1986, and remanded by the Office of Hearings and Appeals, the Federal Energy Regulatory Commission, or the court for further action of any kind.

(3) The provisions of subsection (a) shall not apply to any agency orders issued under the Acts or regulations described in subsection (a)(1) or to regulations issued under this chapter, other than a proposed remedial order subject to this section.

(c) Expression of intent

(1) It is the intent of the Congress that—

(A) the Secretary and the Administrator of the Economic Regulatory Administration shall, to

the greatest extent possible and within the time frames specified on September 12, 1986, by such Administrator to the Committee on Energy and Commerce of the House of Representatives, commence civil enforcement actions with respect to all cases known by such Administrator as of October 21, 1986, and designated by such Administrator as "prelitigation cases", unless such an action is found not to be warranted;

(B) the Secretary and such Administrator not delay civil enforcement actions so as to cause the limitation in subsection (a)(1) to apply to any such case;

(C) any negotiations for the purpose of settlement of alleged violations not delay the commencement of a civil enforcement action; and

(D) the Department of Justice cooperate in ensuring that activities necessary, including the enforcement of subpoenas, to commence civil enforcement actions are carried out in a timely manner.

(2) Any failure to comply with the time frames described in paragraph (1)(A) shall not be considered for any purpose in any administrative or judicial proceeding subsequently commenced.

(d) End of investigations and audits

Notwithstanding any other provision of law, the Secretary shall not initiate, after January 1, 1987, any audit or investigation of alleged civil violations of the Acts or regulations described in subsection (a)(1) for the purpose of commencement of any civil enforcement action. Nothing in this subsection shall affect or apply to any audit or investigation conducted with respect to any civil enforcement action commenced (within the limitation established by subsection (a)(1)) before, on, or after October 21, 1986. Nothing in this subsection shall limit the authority of the Secretary to continue any audit or investigation initiated before January 1, 1987.

(e) Limitation on review

Any review of a final agency action determined under section 7193 or 7194 of title 42 may not be initiated in any court by any person subject to such action after—

(1) 60 days after the effective date of that action; or

(2) 90 days after October 21, 1986,

whichever occurs later.

(f) Oversight

(1) In order to ensure the expeditious, effective, and efficient resolution of all civil enforcement actions (whether or not in administrative or judicial litigation) and all cases pending at the Office of Hearings and Appeals under subpart V regulations, the Secretary shall—

(A) maintain a personnel level for the compliance program of the Economic Regulatory Administration of 170 full-time equivalents for fiscal year 1987, subject to normal attrition and subject to the provisions of any appropriation Act enacted for such fiscal year concerning such program; and

(B) maintain for the remainder of the program an adequate mix of lawyers, auditors, technical, clerical, and administrative personnel.

(2) By July 1, 1987, and by July 1 of each year thereafter, the Administrator of the Economic Regulatory Administration shall provide to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate the full-time equivalent level necessary for such compliance program for the next fiscal year and the basis for that level.

(3) The Secretary shall, in any fiscal year, provide a notice of at least 30 days to such Committees before initiating any reduction of force at the Economic Regulatory Administration. Such notice shall provide at least—

(A) the reasons for such reduction;

(B) the impact on the mix of personnel and on all cases, whether or not in litigation, including

the subpart V regulation proceedings; and

(C) the expected costs and savings for the applicable fiscal year.

(4) The Administrator of the Economic Regulatory Administration shall keep such Committees fully and currently informed about the status (including delays, settlement negotiations, and other pertinent matters) of all enforcement cases (whether or not in litigation) and subpart V regulation proceedings.

(Pub. L. 99–509, title III, §3005, Oct. 21, 1986, 100 Stat. 1884.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(3), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Economic Stabilization Act of 1970, referred to in subsec. (a)(3), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

This chapter, referred to in subsec. (b)(3), was in the original "this Act", which was translated as meaning this subtitle, which enacted this chapter, to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§4505. Reports

(a) Report on receipts and disbursements

The Secretary shall transmit, not later than 60 days after October 21, 1986, a report to the committees referred to in subsection (d) containing a clear and complete statement of all receipts, disbursements, and commitments of restitutionary amounts, as of October 21, 1986, by the Secretary pursuant to—

(1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at any time by the Secretary to enforce the crude oil and petroleum product pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or the Economic Stabilization Act of 1970; or

(2) section 155 of Public Law 97–377.

(b) Report on collection of certain deficiency funds

The Secretary shall transmit a report each fiscal year, beginning in fiscal year 1987, to such committees on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97–377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to In

Re: the Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, including the use of such funds for administrative costs and attorneys fees.

(c) Report on amount estimated to be available for indirect restitution

The Secretary shall transmit, on March 1 of each year beginning with 1987 and continuing until all the restitutionary amounts to which section 4501(a) of this title applies have been collected and disbursed as provided in this chapter, a report to such committees containing an estimate of the amount that will be determined under section 4502(c) [1] of this title to be the excess amount for purposes of section 4502(d)(1)(B) [1] of this title for the fiscal year beginning the next October 1.

(d) Receipt by committees

The reports required by this chapter shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(Pub. L. 99–509, title III, §3006, Oct. 21, 1986, 100 Stat. 1886.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a)(1), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Economic Stabilization Act of 1970, referred to in subsec. (a)(1), is title II of Pub. L. 91–379, Aug. 15, 1970, 84 Stat. 799, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

Section 155 of Public Law 97–377, referred to in subsecs. (a)(2), (b), is section 155 of Pub. L. 97–377, title I, Dec. 21, 1982, 96 Stat. 1919, which is not classified to the Code.

Section 4502(c) and (d) of this title, referred to in subsec. (c), was repealed by section 4502(e) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

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

§4506. Termination

(a) In general

(1) Except as provided in subsection (b), the provisions of this chapter (other than section 4504 of this title) shall terminate 90 days after the Secretary—

(A) determines that all of the restitutionary amounts to which section 4501(a) of this title applies have been collected and disbursed as provided in this chapter; and

(B) submits to Congress the final report required by section 4505 of this title.

(2) Such final report shall include the determination (and the justification thereof) described in paragraph (1)(A). Such report shall also be published in the Federal Register.

(b) Exception

The requirements of section 4502(d) [1] of this title shall continue to be applicable to the use of restitutionary amounts received under this chapter as long as such funds remain available.

(Pub. L. 99–509, title III, §3007, Oct. 21, 1986, 100 Stat. 1887.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4502(d) of this title, referred to in subsec. (b), was repealed by section 4502(e) of this title.

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

§4507. Definitions

For purposes of this chapter:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "subpart V regulations" means the provisions of Subpart V—Special Procedures for Distribution of Refunds (10 CFR 205.280–205.288) and any amendment made after October 21, 1986, and all precedents and decisions under such regulations, but only to the extent that such provisions, precedents, decisions, and amendments are consistent with the provisions of this chapter.

(3) The term "energy conservation programs" means—

(A) the program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following);

(B) the programs under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(C) the program under part G of title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following); and

(D) the program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

(4) The term "person" includes refiners, retailers, resellers, farmer cooperatives, transportation entities, public and private utilities, school districts, Federal, State, and local governmental entities, farmers, and other individuals and their successors.

(5) The term "State" means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

(Pub. L. 99–509, title III, §3008, Oct. 21, 1986, 100 Stat. 1887.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Energy Conservation and Existing Buildings Act of 1976, referred to in par. (3)(A), probably means the Energy Conservation and Existing Buildings Act of 1976, which is title IV of Pub. L. 94–385, Aug. 14, 1976, 90 Stat. 1150. Part A of the Energy Conservation and Existing Buildings Act of 1976, is classified generally to part A (§6861 et seq.) of subchapter III of chapter 81 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of Title 42 and Tables.

The Energy Policy and Conservation Act, referred to in par. (3)(B), (C), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871. Parts D and G of title III of the Energy Policy and Conservation Act are classified generally to

parts B (§6321 et seq.) and E (§6371 et seq.), respectively, of subchapter III of chapter 77 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables.

The National Energy Extension Service Act, referred to in par. (3)(D), is title V of Pub. L. 95–39, June 3, 1977, 91 Stat. 191, which was classified principally to chapter 83 (§7001 et seq.) of Title 42 and was repealed by Pub. L. 102–486, title I, §143(a), Oct. 24, 1992, 106 Stat. 2843. For complete classification of this Act to the Code, see Short Title note set out under section 7001 of Title 42 and Tables.

CHAPTER 72—SEMICONDUCTOR RESEARCH

SUBCHAPTER I—COOPERATIVE RESEARCH PROGRAM

SUBCHAPTER I—COOPERATIVE RESEARCH PROGRAM

§4601. Findings, purposes, and definitions

(a) Findings

The Congress finds that it is in the national economic and security interests of the United States for the Department of Defense to provide financial assistance to the industry consortium known as Sematech for research and development activities in the field of semiconductor manufacturing technology.

(b) Purposes

The purposes of this subchapter are—

(1) to encourage the semiconductor industry in the United States—

(A) to conduct research on advanced semiconductor manufacturing techniques; and

(B) to develop techniques to use manufacturing expertise for the manufacture of a variety of semiconductor products; and

(2) in order to achieve the purpose set out in paragraph (1), to provide a grant program for the

financial support of semiconductor research activities conducted by Sematech.

(c) Definitions

In this subchapter:

(1) The terms "Semiconductor Technology Council" and "Council" mean the advisory council established by section 4603 of this title.

(2) The term "Sematech" means a consortium of firms in the United States semiconductor industry established for the purposes of (A) conducting research concerning advanced semiconductor manufacturing techniques, and (B) developing techniques to adapt manufacturing expertise to a variety of semiconductor products.

(Pub. L. 100–180, div. A, title II, §271, Dec. 4, 1987, 101 Stat. 1068; Pub. L. 103–160, div. A, title II, §263(c)(1), Nov. 30, 1993, 107 Stat. 1610.)

EDITORIAL NOTES

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–160 substituted "Semiconductor Technology Council" for "Advisory Council on Federal Participation in Sematech".

§4602. Grants to Sematech

(a) Authority to make grants

The Secretary of Defense shall make grants, in accordance with section 6304 of title 31, to Sematech in order to defray expenses incurred by Sematech in conducting research on and development of semiconductor manufacturing technology. The grants shall be made in accordance with a memorandum of understanding entered into under subsection (b).

(b) Memorandum of understanding

The Secretary of Defense shall enter into a memorandum of understanding with Sematech for the purposes of this subchapter. The memorandum of understanding shall require the following:

(1) That Sematech have—

(A) a charter agreed to by all representatives of the semiconductor industry that are participating members of Sematech; and

(B) an annual operating plan that is developed in consultation with the Secretary of Defense and the Semiconductor Technology Council.

(2) That the total amount of funds made available to Sematech by Federal, State, and local government agencies for any fiscal year for the support of research and development activities of Sematech under this section may not exceed 50 percent of the total cost of such activities.

(3) That Sematech, in conducting research and development activities pursuant to the memorandum of understanding, cooperate with and draw on the expertise of the national laboratories of the Department of Energy and of colleges and universities in the United States in the field of semiconductor manufacturing technology.

(4) That an independent, commercial auditor be retained (A) to determine the extent to which the funds made available to Sematech by the United States for the research and development activities of Sematech have been expended in a manner that is consistent with the purposes of this subchapter, the charter of Sematech, and the annual operating plan of Sematech, and (B) to submit to the Secretary of Defense, Sematech, and the Comptroller General of the United States an annual report containing the findings and determinations of such auditor.

(5) That (A) the Secretary of Defense be permitted to use intellectual property, trade secrets, and technical data owned and developed by Sematech in the same manner as a participant in

Sematech and to transfer such intellectual property, trade secrets, and technical data to Department of Defense contractors for use in connection with Department of Defense requirements, and (B) the Secretary not be permitted to transfer such property to any person for commercial use.

(6) That Sematech take all steps necessary to maximize the expeditious and timely transfer of technology developed and owned by Sematech to the participants in Sematech in accordance with the agreement between Sematech and those participants and for the purpose of improving manufacturing productivity of United States semiconductor firms.

(c) Construction of memorandum of understanding

The memorandum of understanding entered into under subsection (b) shall not be considered to be a contract for the purpose of any law or regulation relating to the formation, content, and administration of contracts awarded by the Federal Government and subcontracts under such contracts, including chapter 271 of title 10, section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168),[1] and the Federal Acquisition Regulations, and such provisions of law and regulation shall not apply with respect to the memorandum of understanding.

(d) Funding for FY88

Of the amounts appropriated to the Defense Agencies for fiscal year 1988 for research, development, test, and evaluation, $100,000,000 may be obligated only to make grants under this section.

(Pub. L. 100–180, div. A, title II, §272, Dec. 4, 1987, 101 Stat. 1068; Pub. L. 103–160, div. A, title II, §263(c)(2), Nov. 30, 1993, 107 Stat. 1610; Pub. L. 117–81, div. A, title XVII, §1702(e)(7), Dec. 27, 2021, 135 Stat. 2157.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 719 of the Defense Production Act of 1950, referred to in subsec. (c), is section 719 of act Sept. 8, 1950, ch. 932, title VII, as added Pub. L. 91–379, title I, §103, Aug. 15, 1970, 84 Stat. 796, which was formerly classified to section 2168 of the former Appendix to Title 50, War and National Defense, prior to repeal by Pub. L. 100–679, §5(b), Nov. 17, 1988, 102 Stat. 4063.

AMENDMENTS

2021—Subsec. (c). Pub. L. 117–81 substituted "chapter 271" for "section 2306a".

1993—Subsec. (b)(1)(B). Pub. L. 103–160 substituted "Semiconductor Technology Council" for "Advisory Council on Federal Participation in Sematech".

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

§4603. Semiconductor Technology Council

(a) Establishment

There is established the Semiconductor Technology Council.

(b) Purposes and functions

(1) The purposes of the Council are the following:

(A) To link assessment by the semiconductor industry of future market and national security needs to opportunities for technology development through cooperative public and private investment.

(B) To seek ways to respond to the technology challenges for semiconductors by fostering precompetitive cooperation among industry, the Federal Government, and institutions of higher education.

(C) To make available judgments, assessments, insights, and recommendations that relate to the

opportunities for new research and development efforts and the potential to better rationalize and align industry and government contributions to semiconductor research and development.

(2) The Council shall carry out the following functions:

(A) Advise Sematech and the Secretary of Defense on appropriate technology goals and appropriate level of effort for the research and development activities of Sematech.

(B) Review the emerging markets, technology developments, and core technology challenges for semiconductor research and development and semiconductor manufacturing and explore opportunities for improved coordination among industry, the Federal Government, and institutions of higher education regarding such developments and challenges.

(C) Assess the effect on the appropriate role of Sematech of public and private sector international agreements in semiconductor research and development.

(D) Exchange views regarding the competitiveness of United States semiconductor technology and new or emerging semiconductor technologies that could affect national economic and security interests.

(E) Exchange and update information and identify overlaps and gaps regarding the efforts of industry, the Federal Government, and institutions of higher education in semiconductor research and development.

(F) Assess technology progress relative to industry requirements and Federal Government requirements, responding as appropriate to the challenges in the national semiconductor technology roadmap developed by representatives of industry, the Federal Government, and institutions of higher education.

(G) Make recommendations regarding the semiconductor technology development efforts that should be supported by Federal agencies and industry.

(H) Appoint subgroups as appropriate in connection with the updating of the semiconductor technology roadmap.

(I) Publish and submit to Congress by March 31 of each year an annual report addressing the semiconductor technology challenges and developments for industry, government, and institutions of higher education and the relationship among the challenges and developments for each, including an evaluation of the role of Sematech.

(c) Membership

The Council shall be composed of 16 members as follows:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics who shall be Cochairman of the Council.

(2) The Under Secretary of Energy responsible for science and technology matters.

(3) The Under Secretary of Commerce for Technology.

(4) The Director of the Office of Science and Technology Policy.

(5) The Assistant to the President for Economic Policy.

(6) The Director of the National Science Foundation.

(7) Ten members appointed by the President as follows:

(A) Four individuals who are eminent in the semiconductor device industry, one of whom shall be Cochairman of the Council.

(B) Two individuals who are eminent in the semiconductor equipment and materials industry.

(C) Three individuals who are eminent in the semiconductor user industry, including representatives from the telecommunications and computer industries.

(D) One individual who is eminent in an academic institution.

(d) Terms of membership

Each member of the Council appointed under subsection (c)(7) shall be appointed for a term of three years, except that of the members first appointed, two shall be appointed for a term of one year, five shall be appointed for a term of two years, and three shall be appointed for a term of three years, as designated by the President at the time of appointment. A member of the Council may serve after the expiration of the member's term until a successor has taken office.

(e) Vacancies

A vacancy in the Council shall not affect its powers but, in the case of a member appointed under subsection (c)(7), shall be filled in the same manner as the original appointment was made. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term.

(f) Quorum

Eleven members of the Council shall constitute a quorum.

(g) Meetings

The Council shall meet at the call of a Cochairman.

(h) Compensation

(1) Each member of the Council shall serve without compensation.

(2) While away from their homes or regular places of business in the performance of duties for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sections 5702 and 5703 of title 5.

(i) Chapter 10 of title 5

Section 1013 of title 5 shall not apply to the Council.

(j) Support for Council

The Council shall use Federal funds made available to Sematech as needed for general and administrative support in accomplishing the Council's purposes.

(Pub. L. 100–180, div. A, title II, §273, Dec. 4, 1987, 101 Stat. 1070; Pub. L. 102–245, title I, §103(e), Feb. 14, 1992, 106 Stat. 9; Pub. L. 103–160, div. A, title II, §263(b), (c)(3)–(e), Nov. 30, 1993, 107 Stat. 1608, 1610; Pub. L. 103–337, div. A, title II, §251, Oct. 5, 1994, 108 Stat. 2702; Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 117–286, §4(a)(72), Dec. 27, 2022, 136 Stat. 4313.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (i). Pub. L. 117–286 substituted "Chapter 10 of title 5" for "Federal Advisory Committee Act" in heading and "Section 1013 of title 5" for "Section 14 of the Federal Advisory Committee Act" in text.

1999—Subsec. (c)(1). Pub. L. 106–65 substituted "Under Secretary of Defense for Acquisition, Technology, and Logistics" for "Under Secretary of Defense for Acquisition and Technology".

1994—Subsec. (b)(2)(I). Pub. L. 103–337 inserted "and submit to Congress by March 31 of each year" after "Publish".

1993—Pub. L. 103–160, §263(b), substituted "Semiconductor Technology Council" for "Advisory Council" in section catchline.

Subsec. (a). Pub. L. 103–160, §263(b), added subsec. (a) and struck out former subsec. (a) which read as follows: "There is established the Advisory Council on Federal Participation in Sematech."

Subsec. (b). Pub. L. 103–160, §263(b), added subsec. (b) and struck out former subsec. (b) which related to the functions of the Advisory Council of Federal Participation in Sematech.

Subsec. (c). Pub. L. 103–160, §263(b), added subsec. (c) and struck out former subsec. (c) which related to the membership of the Advisory Council on Federal Participation in Sematech.

Subsec. (d). Pub. L. 103–160, §263(c)(3)(A), substituted "subsection (c)(7)" for "subsection (c)(6)" and "five shall be appointed for a term of two years" for "two shall be appointed for a term of two years".

Subsec. (e). Pub. L. 103–160, §263(c)(3)(B), substituted "subsection (c)(7)" for "subsection (c)(6)".

Subsec. (f). Pub. L. 103–160, §263(c)(3)(C), substituted "Eleven members" for "Seven members".

Subsec. (g). Pub. L. 103–160, §263(d), substituted "a Cochairman" for "the Chairman or a majority of its members".

Subsec. (j). Pub. L. 103–160, §263(e), added subsec. (j).

1992—Subsec. (c)(4). Pub. L. 102–245 substituted "Technology" for "Economic Affairs".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY COUNCIL ON FEDERAL PARTICIPATION IN SEMATECH

Pub. L. 103–160, div. A, title II, §263(a), Nov. 30, 1993, 107 Stat. 1608, provided that: "The advisory council known as the Advisory Council on Federal Participation in Sematech, established by section 273 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (15 U.S.C. 4603), is hereby terminated."

FIRST MEETING OF SEMICONDUCTOR TECHNOLOGY COUNCIL

Pub. L. 103–160, div. A, title II, §263(f), Nov. 30, 1993, 107 Stat. 1610, provided that: "The first meeting of the Semiconductor Technology Council shall be held not later than 45 days after the date of the enactment of this Act [Nov. 30, 1993]."

REFERENCES TO TERMINATED COUNCIL

Pub. L. 103–160, div. A, title II, §263(g), Nov. 30, 1993, 107 Stat. 1610, provided that: "A reference in any provision of law to the Advisory Council on Federal Participation in Sematech shall be deemed to refer to the Semiconductor Technology Council established by section 273 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 [15 U.S.C. 4603], as amended by subsection (b)."

§4603a. Study and report by Semiconductor Technology Council

(a) Study and report

Not later than February 1, 1989, and annually thereafter for each fiscal year in which appropriated funds are expended for Sematech the Semiconductor Technology Council established under section 4603(a) of this title shall conduct a study and submit a report to the Governmental Affairs Committee and the Armed Services Committee of the Senate and to appropriate committees of the House of Representatives concerning Federal participation in Sematech. The study and report shall be conducted under the direction of the Under Secretary of Commerce for Technology.

(b) Council recommendations and report

The Council shall include in the report submitted under subsection (a) the following:

(1) identification of potential sources of Federal funding from department and agency budgets for Sematech and recommendations concerning methods and terms of Federal financial participation in Sematech, including grants, loans, loan guarantees, and contributions in kind. The feasibility of methods of Federal recoupment shall also be considered;

(2) definition and assessment of continued Federal participation in Sematech including, but not limited to, issues of technology research and development, civilian and defense industrial base objectives and initiatives, and commercialization. The report shall include a summary of the most recent plans, milestones, and cost estimates for Sematech, including any changes and alterations, and shall comment on Sematech's accomplishments and shortfalls in the preceding fiscal year;

(3) coordination of inter-agency participation, including all matters pertaining to Federal funding and decisionmaking, and other issues regarding Federal participation in Sematech; and

(4) any other issues and questions the Council deems appropriate shall be considered.

(Pub. L. 100–418, title V, §5422, Aug. 23, 1988, 102 Stat. 1468; Pub. L. 102–245, title I, §103(e), Feb. 14, 1992, 106 Stat. 9; Pub. L. 103–160, div. A, title II, §263(g), Nov. 30, 1993, 107 Stat. 1610.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of part F of title II of division A of Pub. L. 100–180 which comprises this subchapter.

AMENDMENTS

1993—Pub. L. 103–160 substituted "Semiconductor Technology Council" for "Advisory Council on Federal Participation in Sematech" in section catchline and subsec. (a).

1992—Subsec. (a). Pub. L. 102–245 substituted "Technology" for "Economic Affairs".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§4604. Repealed. Pub. L. 104–66, title I, §1031(a)(2), Dec. 21, 1995, 109 Stat. 714

Section, Pub. L. 100–180, div. A, title II, §274, Dec. 4, 1987, 101 Stat. 1071, directed Comptroller General to review annual reports submitted by auditor on Sematech funding and transmit comments to Congress.

§4605. Export of semiconductor manufacturing

Any export of materials, equipment, and technology developed by Sematech in whole or in part with financial assistance provided under section 4602(a) of this title shall be subject to the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) [1] and shall not be subject to the Arms Export Control Act [22 U.S.C. 2751 et seq.].

(Pub. L. 100–180, div. A, title II, §275, Dec. 4, 1987, 101 Stat. 1071.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in text, is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which was classified principally to section 2401 et seq. of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as chapter 56 (§4601 et seq.) of Title 50, and was repealed by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232, except for sections 11A, 11B, and 11C thereof (50 U.S.C. 4611, 4612, 4613).

The Arms Export Control Act, referred to in text, is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

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

§4606. Protection of information

(a) Freedom of Information Act

Section 552 of title 5 shall not apply to information obtained by the Federal Government on a confidential basis under section 4602(b)(5) of this title.

(b) Intellectual property

Notwithstanding any other provision of law, intellectual property, trade secrets, and technical data owned and developed by Sematech or any of the participants in Sematech may not be disclosed by any officer or employee of the Department of Defense except as provided in the provision included in the memorandum of understanding pursuant to section 4602(b)(5) of this title.

(Pub. L. 100–180, div. A, title II, §276, Dec. 4, 1987, 101 Stat. 1071.)

SUBCHAPTER II—DEPARTMENT OF ENERGY SEMICONDUCTOR TECHNOLOGY RESEARCH EXCELLENCE INITIATIVE

§4621. Findings

Congress makes the following findings:

(1) Semiconductors and related microelectronic devices are key components in computers, telecommunications equipment, advanced defense systems, and other equipment.

(2) Aggregate sales of such equipment, in excess of $230,000,000,000 annually, comprise a significant portion of the gross national product of the United States.

(3) The leadership position of the United States in advanced technology is threatened by (A) competition from foreign businesses which is promoted and facilitated by the increasingly active involvement of foreign governments, and (B) other changes in the nature of foreign competition.

(4) The principal cause of the relative shift in strength of the United States and its semiconductor competitors is the establishment of a long-term goal by a major foreign competitor to achieve world superiority in semiconductor research and manufacturing technology and the pursuit of such goal by that competitor by effectively marshalling all of the government, industry, and academic resources needed to achieve that goal.

(5) Although the United States semiconductor industry leads all other principal United States industries in terms of its reinvestment in research and development, that has been insufficient by worldwide standards.

(6) Electronic equipment is essential to protect the national security of the United States, as is evidenced by the allocation of approximately 35 percent of the total research, development, and procurement budgets of the Department of Defense to electronics research.

(7) The Armed Forces of the United States will eventually depend extensively on foreign semiconductor technology unless significant steps are taken, and taken at an early date, to retain United States leadership in semiconductor technology research.

(8) It is in the interests of the national security and national economy of the United States for the United States to regain its traditional world leadership in the field of semiconductors.

(9) The most effective means of regaining that leadership is through a joint research effort of the Federal Government and private industry of the United States to improve semiconductor manufacturing technology and to develop practical uses for such technology.

(10) In order to meet the national defense needs of the United States and to insure the continued vitality of a commercial manufacturing base in the United States, it is essential that priority be given to the development, demonstration, and advancement of the semiconductor technology base in the United States.

(11) The national laboratories of the Department of Energy are a major national research resource, and the extensive involvement of such laboratories in the semiconductor research initiatives of the Federal Government and private industry would be an effective use of such laboratories and would help insure the success of such initiatives.

(Pub. L. 100–180, div. C, title I, §3141, Dec. 4, 1987, 101 Stat. 1241.)

§4622. Establishment of semiconductor manufacturing technology research initiative

The Secretary of Energy shall initiate and carry out a program (hereinafter in this subchapter referred to as the "Initiative") of research on semiconductor manufacturing technology and on the practical applications of such technology. The Secretary may carry out the Initiative in a way that complements the activities of a consortium of United States semiconductor manufacturers, materials

manufacturers, and equipment manufacturers, established for the purpose of conducting research concerning advanced semiconductor manufacturing techniques and developing techniques to adopt manufacturing expertise to a variety of semiconductor products.

(Pub. L. 100–180, div. C, title I, §3142, Dec. 4, 1987, 101 Stat. 1242.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle" and was translated as reading "this part" meaning part D of title I of division C of Pub. L. 100–180 which enacted this subchapter, to reflect the probable intent of Congress because title I did not contain subtitles.

§4623. Participation of national laboratories of Department of Energy

(a) Mission of national laboratories

Each national laboratory of the Department of Energy may participate in research and development projects under the Initiative in conjunction with the Department of Defense or with any consortium, college, or university carrying out any project for or in cooperation with any consortium referred to in section 4622 of this title, to the extent that such participation is consistent with the missions of the national laboratory.

(b) Agreements

The Secretary of Energy may enter into such agreements with the Secretary of Defense, with any consortium referred to in section 4622 of this title, and with any college or university as may be necessary to provide for the active participation of the national laboratories of the Department of Energy in the Initiative.

(c) Research and development

One or more national laboratories of the Department of Energy shall participate in the Initiative by conducting research and development activities relating to research on the development of semiconductor manufacturing technologies. Such activities may include research and development relating to materials fabrication, materials characterization, design and modeling of devices, and new processing equipment.

(Pub. L. 100–180, div. C, title I, §3143, Dec. 4, 1987, 101 Stat. 1243.)

§4624. Personnel exchanges

The Secretary of Energy may authorize temporary exchanges of personnel between the national laboratories of the Department of Energy and any domestic firm or any consortium referred to in section 4622 of this title that is participating in the Initiative. The exchange of personnel shall be subject to such restrictions, limitations, terms, and conditions that the Secretary of Energy considers necessary in the interest of national security.

(Pub. L. 100–180, div. C, title I, §3144, Dec. 4, 1987, 101 Stat. 1243.)

§4625. Other Department of Energy resources

(a) Availability of resources

Subject to subsection (b), the Secretary of Energy may make available to the Department of Defense, to any other department or agency of the Federal Government, and to any consortium that

has entered into an agreement in furtherance of the Initiative any facilities, personnel, equipment, services, and other resources of the Department of Energy for the purpose of conducting research and development projects under the Initiative consistent with section 4623(a) of this title.

(b) Reimbursement

The Secretary may make facilities available under this section only to the extent that the cost of the use of such facilities is reimbursed by the user.

(Pub. L. 100–180, div. C, title I, §3145, Dec. 4, 1987, 101 Stat. 1243.)

§4626. Budgeting for semiconductor manufacturing technology research

(a) Budget submission

To the extent the Secretary considers appropriate and necessary, the Secretary of Energy, in preparing the research and development budget of the Department of Energy to be included in the annual budget submitted to the Congress by the President under section 1105(a) of title 31, shall provide for programs, projects, and activities that encourage the development of new technology in the field of semiconductors.

(b) Budget categories

The programs, projects, and activities described in subsection (a) shall be included in the budget for general science and research activities of the Department of Energy, except that any programs, projects, and activities that directly support and directly benefit the defense activities of the Department shall be included in the budget for atomic energy defense activities of the Department of Energy.

(Pub. L. 100–180, div. C, title I, §3146, Dec. 4, 1987, 101 Stat. 1243.)

§4627. Cost-sharing agreements

(a) Permitted provisions

The director of each national laboratory of the Department of Energy that is participating in the Initiative or the contractor operating any such national laboratory, in carrying out programs under a contract with the Department of Energy, may include in any research and development agreement entered into with a domestic firm in connection with such Initiative a cooperative provision for the domestic firm to pay a portion of the cost of the research and development activities.

(b) Limitations

(1) Not more than an amount equal to 1 percent of any national laboratory's annual budget shall be received from nonappropriated funds derived from contracts entered into under the Initiative in any fiscal year, except to the extent approved in advance by the Secretary of Energy.

(2) No Department of Energy national laboratory may receive more than $10,000,000 of nonappropriated funds under any cooperative research and development agreement entered into under this subsection in connection with the Initiative, except to the extent approved in advance by the Secretary of Energy.

(Pub. L. 100–180, div. C, title I, §3147, Dec. 4, 1987, 101 Stat. 1244.)

§4628. Department of Energy oversight of cooperative agreements relating to Initiative

(a) Provisions relating to disapproval and modification of agreements

If the Secretary of Energy desires an opportunity to disapprove or require the modification of any agreement under section 4627 of this title, the agreement shall provide a 90-day period within which

such action may be taken, beginning on the date the agreement is submitted to the Secretary.

(b) Record of agreements

Each national laboratory shall maintain a record of all agreements entered into under this section.

(Pub. L. 100–180, div. C, title I, §3148, Dec. 4, 1987, 101 Stat. 1244.)

§4629. Avoidance of duplication

In carrying out the Initiative, the Secretary of Energy shall ensure that unnecessary duplicative research is not performed at the research facilities (including the national laboratories of the Department of Energy) that are participating in the Initiative.

(Pub. L. 100–180, div. C, title I, §3149, Dec. 4, 1987, 101 Stat. 1244.)

§4630. Authorization of appropriations

There is authorized to be appropriated to the Department of Energy for fiscal year 1988 the sum of $25,000,000 for general science and research activities of the Department of Energy under the Initiative.

(Pub. L. 100–180, div. C, title I, §3150, Dec. 4, 1987, 101 Stat. 1244.)

§4631. Technology transfer

(a) In general

The Secretary of Energy shall adopt procedures to provide for timely and efficient transfer of semiconductor technology developed under the Initiative pursuant to applicable laws, Executive orders, and regulations.

(b) Plan for commercialization enhancement

(1) Not later than one year after the date on which funds are first appropriated to conduct the Initiative, the Secretary of Energy shall transmit to the committees of Congress named in paragraph (2) a plan for the transfer of semiconductor technology and information generated by the Initiative.

(2) The committees of Congress referred to in paragraph (1) are the Committees on Armed Services of the Senate and House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives.

(Pub. L. 100–180, div. C, title I, §3151, Dec. 4, 1987, 101 Stat. 1244; Pub. L. 103–437, §5(b)(6), Nov. 2, 1994, 108 Stat. 4582.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–437 substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology".

§4632. Semiconductor research and development

(a) Short title

This section may be cited as the "National Advisory Committee on Semiconductor Research and Development Act of 1988".

(b) Findings and purposes

(1) The Congress finds and declares that—

(A) semiconductor technology is playing an ever-increasing role in United States industrial and commercial products and processes, making secure domestic sources of state-of-the-art semiconductors highly desirable;

(B) modern weapons systems are highly dependent on leading edge semiconductor devices, and it is counter to the national security interest to be heavily dependent upon foreign sources for this technology;

(C) governmental responsibilities related to the semiconductor industry are divided among many Federal departments and agencies; and

(D) joint industry-government consideration of semiconductor industry problems is needed at this time.

(2) The purposes of this section are—

(A) to establish the National Advisory Committee on Semiconductors; and

(B) to assign to such Committee the responsibility for devising and promulgating a national semiconductor strategy, including research and development, the implementation of which will assure the continued leadership of the United States in semiconductor technology.

(c) Creation of Committee

There is hereby created in the executive branch of the Government an independent advisory body to be known as the National Advisory Committee on Semiconductors (hereafter in this section referred to as the "Committee").

(d) Functions

(1) The Committee shall—

(A) collect and analyze information on the needs and capabilities of industry, the Federal Government, and the scientific and research communities related to semiconductor technology;

(B) identify the components of a successful national semiconductor strategy in accordance with subsection (b)(2)(B);

(C) analyze options, establish priorities, and recommend roles for participants in the national strategy;

(D) assess the roles for government and national laboratories and other laboratories supported largely for government purposes in contributing to the semiconductor technology base of the Nation, as well as to access the effective use of the resources of United States private industry, United States universities, and private-public research and development efforts; and

(E) provide results and recommendations to agencies of the Federal Government involved in legislative, policymaking, administrative, management, planning, and technology activities that affect or are part of a national semiconductor strategy, and to the industry and other nongovernmental groups or organizations affected by or contributing to that strategy.

(2) In fulfilling this responsibility, the Committee shall—

(A) monitor the competitiveness of the United States semiconductor technology base;

(B) determine technical areas where United States semiconductor technology is deficient relative to international competition;

(C) identify new or emerging semiconductor technologies that will impact the national defense or United States competitiveness or both;

(D) develop research and development strategies, tactics, and plans whose execution will assure United States semiconductor competitiveness; and

(E) recommend appropriate actions that support the national semiconductor strategy.

(e) Membership and procedures

(1)(A) The Committee shall be composed of 13 members, 7 of whom shall constitute a quorum.

(B) The Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, the Director of the Office of Science and Technology Policy, and the Director of the National Science

Foundation, or their designees, shall serve as members of the Committee.

(C) The President, acting through the Director of the Office of Science and Technology Policy, shall appoint, as additional members of the Committee, 4 members from outside the Federal Government who are eminent in the semiconductor industry, and 4 members from outside the Federal Government who are eminent in the fields of technology, defense, and economic development.

(D) One of the members appointed under subparagraph (C), as designated by the President at the time of appointment, shall be chairman of the Committee.

(2) Funding and administrative support for the Committee shall be provided to the Office of Science and Technology Policy through an arrangement with an appropriate agency or organization designated by the Committee, in accordance with a memorandum of understanding entered into between them.

(3) Members of the Committee, other than full-time employees of the Federal Government, while attending meetings of the Committee or otherwise performing duties at the request of the Chairman while away from their homes or regular places of business, shall be allowed travel expenses in accordance with subchapter I of chapter 57 of title 5.

(4) The Chairman shall call the first meeting of the Committee not later than 90 days after August 23, 1988.

(5) At the close of each fiscal year the Committee shall submit to the President and the Congress a report on its activities conducted during such year and its planned activities for the coming year, including specific findings and recommendations with respect to the national semiconductor strategy devised and promulgated under subsection (b)(2)(B). The first report shall include an analysis of those technical areas, including manufacturing, which are of importance to the United States semiconductor industry, and shall make specific recommendations regarding the appropriate Federal role in correcting any deficiencies identified by the analysis. Each report shall include an estimate of the length of time the Committee must continue before the achievement of its purposes and the issuance of its final report.

(f) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section such sums as may be necessary for the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993.

(Pub. L. 100–418, title V, §5142, Aug. 23, 1988, 102 Stat. 1444; Pub. L. 102–245, title I, §105(f), Feb. 14, 1992, 106 Stat. 12.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Technology Competitiveness Act and as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of part D of title I of division C of Pub. L. 100–180 which comprises this subchapter.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–245 substituted "1990, 1991, 1992, and 1993" for "and 1990".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e)(5) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 178 of House Document No. 103–7.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to

the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 1013 of Title 5, Government Organization and Employees.

CHAPTER 72A—CREATING HELPFUL INCENTIVES TO PRODUCE SEMICONDUCTORS FOR AMERICA

Sec.

§4651. Definitions

In this chapter:

(1) The term "appropriate committees of Congress" means—

(A) the Select Committee on Intelligence, the Committee on Energy and Natural Resources, the Committee on Commerce, Science, and Transportation, the Committee on Foreign Relations, the Committee on Armed Services, the Committee on Appropriations, the Committee on Banking, Housing, and Urban Affairs, the Committee on Homeland Security and Governmental Affairs, and the Committee on Finance of the Senate; and

(B) the Permanent Select committee [1] on Intelligence, the Committee on Energy and Commerce, the Committee on Foreign Affairs, the Committee on Armed Services, the Committee on Science, Space, and Technology, the Committee on Appropriations, the Committee on Financial Services, the Committee on Homeland Security, and the Committee on Ways and Means of the House of Representatives..[2]

(2) The term "covered entity" means a nonprofit entity, a private entity, a consortium of private entities, or a consortium of nonprofit, public, and private entities with a demonstrated ability to substantially finance, construct, expand, or modernize a facility relating to fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment.

(3) The term "covered incentive":

(A) means an incentive offered by a governmental entity to a covered entity for the purposes of constructing within the jurisdiction of the governmental entity, or expanding or modernizing an existing facility within that jurisdiction, a facility described in paragraph (2); and

(B) a workforce-related incentive (including a grant agreement relating to workforce training or vocational education), any concession with respect to real property, funding for research and development with respect to semiconductors, and any other incentive determined appropriate by the Secretary, in consultation with the Secretary of State.

(4) The term "person" includes an individual, partnership, association, corporation, organization, or any other combination of individuals.

(5) The term "critical manufacturing industry"—

(A) means an industry, industry group, or a set of related industries or related industry

groups—

(i) assigned a North American Industry Classification System code beginning with 31, 32, or 33; and

(ii) for which the applicable industry group or groups in the North American Industry Classification System code cumulatively—

(I) manufacture primary products and parts, the sum of which account for not less than 5 percent of the manufacturing value added by industry gross domestic product of the United States; and

(II) employ individuals for primary products and parts manufacturing activities that, combined, account for not less than 5 percent of manufacturing employment in the United States; and

(B) may include any other manufacturing industry designated by the Secretary based on the relevance of the manufacturing industry to the national and economic security of the United States, including the impacts of job losses.

(6) The term "foreign entity"—

(A) means—

(i) a government of a foreign country and a foreign political party;

(ii) a natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual (as such term is defined in section 1324b(a)(3) of title 8; or

(iii) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; and

(B) includes—

(i) any person owned by, controlled by, or subject to the jurisdiction or direction of a an entity listed in subparagraph (A);

(ii) any person, wherever located, who acts as an agent, representative, or employee of an entity listed in subparagraph (A);

(iii) any person who acts in any other capacity at the order, request, or under the direction or control, of an entity listed in subparagraph (A), or of a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by an entity listed in subparagraph (A);

(iv) any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise, owns 25 percent or more of the equity interests of an entity listed in subparagraph (A);

(v) any person with significant responsibility to control, manage, or direct an entity listed in subparagraph (A);

(vi) any person, wherever located, who is a citizen or resident of a country controlled by an entity listed in subparagraph (A); or

(vii) any corporation, partnership, association, or other organization organized under the laws of a country controlled by an entity listed in subparagraph (A).

(7) The term "foreign country of concern" means—

(A) a country that is a covered nation (as defined in section 4872(d) of title 10); and

(B) any country that the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.

(8) The term "foreign entity of concern" means any foreign entity that is—

(A) designated as a foreign terrorist organization by the Secretary of State under section 1189 of title 8;

(B) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury;

(C) owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is listed in section 2533c [3] of title 10; or

(D) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under—

(i) chapter 37 of title 18 (commonly known as the "Espionage Act") (18 U.S.C. 792 [791] et seq.);

(ii) section 951 or 1030 of title 18;

(iii) chapter 90 of title 18 (commonly known as the "Economic Espionage Act of 1996");

(iv) the Arms Export Control Act (22 U.S.C. 2751 et seq.);

(v) sections 2274, 2275, 2276, 2277, or 2284 of title 42;

(vi) the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.); or

(vii) the International Economic Emergency Powers Act [3] (50 U.S.C. 1701 et seq.); or

(E) determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States under this chapter.

(9) The term "governmental entity" means a State or local government.

(10) The term "mature technology node" has the meaning given the term by the Secretary.

(11) The term "nonprofit entity" means an entity described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of title 26.

(12) The term "Secretary" means the Secretary of Commerce.

(13) The term "semiconductor" has the meaning given that term by the Secretary.

(Pub. L. 116–283, div. H, title XCIX, §9901, Jan. 1, 2021, 134 Stat. 4843; Pub. L. 117–167, div. A, §103(a), Aug. 9, 2022, 136 Stat. 1379.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2533c of title 10, referred to par. (8)(C), was renumbered section 4872 of title 10 by Pub. L. 116–283, div. A, title XVIII, §1870(d)(2), Jan. 1, 2021, 134 Stat. 4286, as amended by Pub. L. 117–81, div. A, title XVII, §1701(t)(2)(B), (C), Dec. 27, 2021, 135 Stat. 2150.

The Arms Export Control Act, referred to in par. (8)(D)(iv), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The Export Control Reform Act of 2018, referred to in par. (8)(D)(vi), is subtitle B (§§1741–1781) of title XVII of div. A of Pub. L. 115–232, Aug. 13, 2018, 132 Stat. 2208, which is classified principally to chapter 58 (§4801 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of Title 50 and Tables.

The International Economic Emergency Powers Act, referred to in par. (8)(D)(vii), probably should be the International Emergency Economic Powers Act, which is title II of Pub. L. 95–223, Dec. 28, 1977, 91 Stat. 1626 and is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

This chapter, referred to in par. (8)(E), was in the original "this Act" and was translated as reading "this title", meaning title XCIX of div. H of Pub. L. 116–283, to reflect the probable intent of Congress.

AMENDMENTS

2022—Par. (2). Pub. L. 117–167, §103(a)(1), substituted "a nonprofit entity, a private entity, a consortium of private entities, or a consortium of nonprofit, public, and private entities" for "a private entity, a consortium

of private entities, or a consortium of public and private entities" and "of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment." for "of semiconductors." and inserted "production," before "or research and development".

Pars. (5), (6). Pub. L. 117–167, §103(a)(2), (3), added par. (5) and redesignated former par. (5) as (6). Former par. (6) redesignated (8).

Par. (7). Pub. L. 117–167, §103(a)(4), added par. (7). Former par. (7) redesignated (9).

Pars. (8), (9). Pub. L. 117–167, §103(a)(2), redesignated pars. (6) and (7) as (8) and (9), respectively. Former pars. (8) and (9) redesignated (12) and (13), respectively.

Pars. (10), (11). Pub. L. 117–167, §103(a)(5), added pars. (10) and (11).

Pars. (12), (13). Pub. L. 117–167, §103(a)(2), redesignated pars. (8) and (9) as (12) and (13), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2024 AMENDMENT

Pub. L. 118–105, §1, Oct. 2, 2024, 138 Stat. 1587, provided that: "This Act [amending sections 4652 and 4659 of this title] may be cited as the 'Building Chips in America Act of 2023'."

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–167, div. A, §101, Aug. 9, 2022, 136 Stat. 1372, provided that: "This division [enacting section 4659 of this title and section 48D of Title 26, Internal Revenue Code, amending this section, sections 4652 and 4656 of this title, section 905 of Title 2, The Congress, sections 46, 49, 50, and 1371 of Title 26, and section 906 of Title 47, Telecommunications, and enacting provisions set out as notes under section 4652 of this title and section 905 of Title 2] may be cited as the 'CHIPS Act of 2022'."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 14080. IMPLEMENTATION OF THE CHIPS ACT OF 2022

Ex. Ord. No. 14080, Aug. 25, 2022, 87 F.R. 52847, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to effectively implement the incentives for semiconductor research, development, and manufacturing provided by division A of H.R. 4346 (the "Act"), it is hereby ordered as follows:

SECTION 1. *Background*. The Act, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022 [div. A of Pub. L. 117–167], will make transformative investments to restore and advance our Nation's leadership in the research, development, and manufacturing of semiconductors. These investments will strengthen our Nation's manufacturing and industrial base; create well-paying, high-skilled jobs in construction, manufacturing, and maintenance; catalyze regional economic development throughout the country; bolster United States technology leadership; and reduce our dependence on critical technologies from China and other vulnerable or overly concentrated foreign supply chains.

Meeting these objectives will require effective implementation of the Act by my Administration, in collaboration with State, local, Tribal, and territorial governments; the private sector; institutions of higher education; workforce development organizations; labor unions and other worker organizations; and allied and partner countries.

SEC. 2. *Implementation Priorities*. In implementing the Act, all agencies (as described in section 3502(1) of title 44, United States Code, except for the agencies described in section 3502(5) of title 44) shall, as appropriate and to the extent consistent with law, prioritize:

(a) protecting taxpayer resources, including by ensuring strong compliance and accountability measures for funding recipients;

(b) meeting economic, sustainability, and national security needs, including by building domestic manufacturing capacity that reduces reliance on vulnerable or overly concentrated foreign production for both leading-edge and mature microelectronics;

(c) ensuring long-term leadership in the microelectronics sector, including by establishing a dynamic, collaborative network for microelectronics research and innovation to enable long-term United States leadership in critical industries;

(d) catalyzing private-sector investment, including by reducing risk and maximizing large-scale private investment in production, breakthrough technologies, and worker and workforce development;

(e) generating benefits—such as well-paying, high-skilled union jobs and opportunities for startups; small businesses; and minority-owned, veteran-owned, and women-owned businesses—for a broad range of

stakeholders and communities, including by investing in disadvantaged communities and by partnering with State, local, Tribal, and territorial governments and with institutions of higher education; and

(f) strengthening and expanding regional manufacturing and innovation ecosystems, including by investing in suppliers, manufacturers, workforce development, basic and translational research, and related infrastructure and cybersecurity throughout the microelectronics supply chain, and by facilitating the expansion, creation, and coordination of semiconductor clusters.

SEC. 3. *CHIPS Implementation Steering Council*. (a) There is established within the Executive Office of the President the CHIPS Implementation Steering Council (Steering Council). The function of the Steering Council is to coordinate policy development to ensure the effective implementation of the Act within the executive branch.

(b) The Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and the Director of the Office of Science and Technology Policy shall serve as Co-Chairs of the Steering Council.

(c) In addition to the Co-Chairs, the Steering Council shall consist of the following members:

(i) the Secretary of State;

(ii) the Secretary of the Treasury;

(iii) the Secretary of Defense;

(iv) the Secretary of Commerce;

(v) the Secretary of Labor;

(vi) the Secretary of Energy;

(vii) the Director of the Office of Management and Budget;

(viii) the Administrator of the Small Business Administration;

(ix) the Director of National Intelligence;

(x) the Assistant to the President for Domestic Policy;

(xi) the Chair of the Council of Economic Advisers;

(xii) the National Cyber Director;

(xiii) the Director of the National Science Foundation; and

(xiv) the heads of such other executive departments, agencies, and offices as the Co-Chairs may from time to time invite to participate.

(d) The Co-Chairs may create and coordinate subgroups consisting of Steering Council members or their designees, as appropriate.

(e) The Co-Chairs may consult with leaders from industry, labor unions and other worker organizations, institutions of higher education, research institutions, and civil society, as appropriate and consistent with law, to provide individual perspectives and advice to the Steering Council on the effective implementation of the Act.

(f) The Co-Chairs may consult with the President's Council of Advisors on Science and Technology, as appropriate and consistent with law, to provide advice to the Steering Council.

SEC. 4. *Effective and Efficient Stewardship and Oversight of Taxpayer Resources*. The Director of the Office of Management and Budget shall take appropriate actions to promote and monitor, with respect to execution of the Act, the effective and efficient stewardship and oversight of taxpayer resources, in collaboration with the Steering Council and the heads of agencies responsible for implementing the Act.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

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

[2] *So in original.*

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

§4652. Semiconductor incentives

(a) Financial assistance program

(1) In general

The Secretary shall establish in the Department of Commerce a program that, in accordance with the requirements of this section and subject to the availability of appropriations for such purposes, provides Federal financial assistance to covered entities to incentivize investment in facilities and equipment in the United States for the fabrication, assembly, testing, advanced packaging, production, or research and development of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment.

(2) Procedure

(A) In general

A covered entity shall submit to the Secretary an application that describes the project for which the covered entity is seeking financial assistance under this section.

(B) Eligibility

In order for a covered entity to qualify for financial assistance under this section, the covered entity shall demonstrate to the Secretary, in the application submitted by the covered entity under subparagraph (A), that—

(i) the covered entity has a documented interest in constructing, expanding, or modernizing a facility described in paragraph (1) [1]

(ii) with respect to the project described in clause (i), the covered entity has—

(I) been offered a covered incentive;

(II) made commitments to worker and community investment, including through—

(aa) training and education benefits paid by the covered entity; and

(bb) programs to expand employment opportunity for economically disadvantaged individuals; and

(III) secured commitments from regional educational and training entities and institutions of higher education to provide workforce training, including programming for training and job placement of economically disadvantaged individuals;

(IV) an executable plan to sustain the facility described in clause (i) without additional Federal financial assistance under this subsection for facility support;

(V) determined—

(aa) the type of semiconductor technology, equipment, materials, or research and development the covered entity will produce at the facility described in clause (i); and

(bb) the customers, or categories of customers, to which the covered entity plans to sell the semiconductor technology, equipment, materials, or research and development described in item (aa); and

(VI) documented, to the extent practicable, workforce needs and developed a strategy to meet such workforce needs consistent with the commitments described in subclauses (II) and (III);

(iii) with respect to the project described in clause (i), the covered entity has an executable plan to identify and mitigate relevant semiconductor supply chain security risks, such as risks associated with access, availability, confidentiality, integrity, and a lack of geographic diversification in the covered entity's supply chain; and

(iv) with respect to any project for the production, assembly, or packaging of semiconductors, the covered entity has implemented policies and procedures to combat cloning, counterfeiting, and relabeling of semiconductors, as applicable.

(C) Considerations for review

With respect to the review by the Secretary of an application submitted by a covered entity under subparagraph (A)—

(i) the Secretary may not approve the application unless the Secretary—

(I) confirms that the covered entity has satisfied the eligibility criteria under subparagraph (B);

(II) determines that the project to which the application relates is in the economic and national security interests of the United States; and

(III) has notified the appropriate committees of Congress not later than 15 days before making any commitment to provide a grant to any covered entity that exceeds $10,000,000;

(ii) the Secretary may consider whether—

(I) the covered entity has previously received financial assistance made under this subsection;

(II) the governmental entity offering the applicable covered incentive has benefitted from financial assistance previously provided under this subsection;

(III) the covered entity has demonstrated that they are responsive to the national security needs or requirements established by the Intelligence Community (or an agency thereof), the National Nuclear Security Administration, or the Department of Defense; and

(IV) when practicable, a consortium that is considered a covered entity includes a small business concern, as defined under section 632 of this title, notwithstanding section 121.103 of title 13, Code of Federal Regulations;

(iii) the Secretary shall consider the type of semiconductor technology produced by the covered entity and whether that semiconductor technology advances the economic and national security interests of the United States;

(iv) the Secretary may not approve an application, unless the covered entity provides a plan that does not use Federal financial assistance to assist efforts to physically relocate existing facility infrastructure to another jurisdiction within the United States, unless the project is in the interest of the United States; and

(v) the Secretary may not approve an application if the Secretary determines that the covered entity is a foreign entity of concern.

(D) Priority

In awarding Federal financial assistance to covered entities under this subsection, the Secretary shall—

(i) give priority to ensuring that a covered entity receiving financial assistance will—

(I) manufacture semiconductors necessary to address gaps and vulnerabilities in the domestic supply chain across a diverse range of technology and process nodes; and

(II) provide a secure supply of semiconductors necessary for the national security, manufacturing, critical infrastructure, and technology leadership of the United States and other essential elements of the economy of the United States; and

(ii) ensure that the assistance is awarded to covered entities for both advanced and mature technology nodes to meet the priorities described in clause (i).

(E) Records

The Secretary may request records and information from the applicant to review the status of a covered entity. The applicant shall provide the records and information requested by the Secretary.

(3) Amount

(A) In general

The Secretary shall determine the appropriate amount and funding type for each financial assistance award made to a covered entity under this subsection.

(B) Larger investment

Federal investment in any individual project shall not exceed $3,000,000,000 unless the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, recommends to the President, and the President certifies and reports to the appropriate committees of Congress, that a larger investment is necessary to—

(i) significantly increase the proportion of reliable domestic supply of semiconductors relevant for national security and economic competitiveness that can be met through domestic production; and

(ii) meet the needs of national security.

(4) Use of funds

A covered entity that receives a financial assistance award under this subsection may only use the financial assistance award amounts to—

(A) finance the construction, expansion, or modernization of a facility or equipment to be used for the purposes described in paragraph (1), as documented in the application submitted by the covered entity under paragraph (2)(B), as determined necessary by the Secretary for purposes relating to the national security and economic competitiveness of the United States;

(B) support workforce development for a facility described in subparagraph (A);

(C) support site development and modernization for a facility described in subparagraph (A); and

(D) pay reasonable costs related to the operating expenses for a facility described in subparagraph (A), including specialized workforce, essential materials, and complex equipment maintenance, as determined by the Secretary.

(5) Clawback

(A) Target dates

For all awards to covered entities, the Secretary shall—

(i) determine target dates by which a project shall commence and complete; and

(ii) set these dates by the time of award.

(B) Progressive recovery for delays

If the project does not commence and complete by the set target dates in (A), the Secretary shall progressively recover up to the full amount of an award provided to a covered entity under this subsection.

(C) Technology clawback

The Secretary shall recover the full amount of an award provided to a covered entity under this subsection if, during the applicable term with respect to the award, the covered entity knowingly engages in any joint research or technology licensing effort—

(i) with a foreign entity of concern; and

(ii) that relates to a technology or product that raises national security concerns, as determined by the Secretary and communicated to the covered entity before engaging in such joint research or technology licensing.

(D) Waiver

In the case of delayed projects, the Secretary may waive elements of the clawback provisions incorporated in each award after—

(i) making a formal determination that circumstances beyond the ability of the covered entity to foresee or control are responsible for delays; and

(ii) submitting congressional notification.

(E) Congressional notification

The Secretary shall notify appropriate committees of Congress—

(i) of the clawback provisions attending each such award; and

(ii) of any waivers provided, not later than 15 days after the date on which such a waiver was provided.

(6) Expansion clawback

(A) Definition of legacy semiconductor

(i) In general

In this paragraph, the term "legacy semiconductor"—

(I) includes—

(aa) a semiconductor technology that is of the 28 nanometer generation or older for logic;

(bb) with respect to memory technology, analog technology, packaging technology, and any other relevant technology, any legacy generation of semiconductor technology relative to the generation described in item (aa), as determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence; and

(cc) any additional semiconductor technology identified by the Secretary in a public notice issued under clause (ii); and

(II) does not include a semiconductor that is critical to national security, as determined by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence.

(ii) Updates

Not later than 2 years after August 9, 2022, and not less frequently than once every 2 years thereafter for the 8-year period after the last award under this section is made, the Secretary, after public notice and an opportunity for comment and if applicable and necessary, shall issue a public notice identifying any additional semiconductor technology included in the meaning of the term "legacy semiconductor" under clause (i).

(iii) Functions of the Secretary

The functions of the Secretary under this paragraph shall not be subject to sections 551, 553 through 559, and 701 through 706 of title 5.

(iv) Consultation

In carrying out clause (ii), the Secretary shall consult with the Director of National Intelligence and the Secretary of Defense.

(v) Considerations

In carrying out clause (ii), the Secretary shall consider—

(I) state-of-the-art semiconductor technologies in the United States and internationally, including in foreign countries of concern; and

(II) consistency with export controls relating to semiconductors.

(B) Definition of semiconductor manufacturing

In this paragraph, the term "semiconductor manufacturing"—

(i) has the meaning given the term by the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence; and

(ii) includes front-end semiconductor fabrication.

(C) Required agreement

(i) In general

On or before the date on which the Secretary awards Federal financial assistance to a covered entity under this section, the covered entity shall enter into an agreement with the Secretary specifying that, during the 10-year period beginning on the date of the award, subject to clause (ii), the covered entity may not engage in any significant transaction, as

defined in the agreement, involving the material expansion of semiconductor manufacturing capacity in the People's Republic of China or any other foreign country of concern.

(ii) Exceptions

The prohibition in the agreement required under clause (i) shall not apply to—

(I) existing facilities or equipment of a covered entity for manufacturing legacy semiconductors; or

(II) significant transactions involving the material expansion of semiconductor manufacturing capacity that—

(aa) produces legacy semiconductors; and

(bb) predominately serves the market of a foreign country of concern.

(iii) Affiliated group

For the purpose of applying the requirements in an agreement required under clause (i), a covered entity shall include the covered entity receiving financial assistance under this section, as well as any member of the covered entity's affiliated group under section 1504(a) of title 26, without regard to section 1504(b)(3) of title 26.

(D) Notification requirements

During the applicable term of the agreement of a covered entity required under subparagraph (C)(i), the covered entity shall notify the Secretary of any planned significant transactions of the covered entity involving the material expansion of semiconductor manufacturing capacity in the People's Republic of China or any other foreign country of concern.

(E) Violation of agreement

(i) Notification to covered entities

Not later than 90 days after the date of receipt of a notification described in subparagraph (D) from a covered entity, the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, shall—

(I) determine whether the significant transaction described in the notification would be a violation of the agreement of the covered entity required under subparagraph (C)(i); and

(II) notify the covered entity of the Secretary's decision under subclause (I).

(ii) Opportunity to remedy

Upon a notification under clause (i)(II) that a planned significant transaction of a covered entity is a violation of the agreement of the covered entity required under subparagraph (C)(i), the Secretary shall—

(I) immediately request from the covered entity tangible proof that the planned significant transaction has ceased or been abandoned; and

(II) provide the covered entity 45 days to produce and provide to the Secretary the tangible proof described in subclause (I).

(iii) Failure by the covered entity to cease or remedy the activity

Subject to clause (iv), if a covered entity fails to remedy a violation as set forth under clause (ii), the Secretary shall recover the full amount of the Federal financial assistance provided to the covered entity under this section.

(iv) Mitigation

If the Secretary, in consultation with the Secretary of Defense and the Director of National Intelligence, determines that a covered entity planning a significant transaction that would violate the agreement required under subparagraph (C)(i) could take measures in connection with the transaction to mitigate any risk to national security, the Secretary—

(I) may negotiate, enter into, and enforce any agreement or condition for the mitigation; and,

(II) waive the recovery requirement under clause (iii).

(F) Submission of records

(i) In general

The Secretary may request from a covered entity records and other necessary information to review the compliance of the covered entity with the agreement required under subparagraph (C)(i).

(ii) Eligibility

In order to be eligible for Federal financial assistance under this section, a covered entity shall agree to provide records and other necessary information requested by the Secretary under clause (i).

(G) Confidentiality of records

(i) In general

Subject to clause (ii), any information derived from records or necessary information disclosed by a covered entity to the Secretary under this section—

(I) shall be exempt from disclosure under section 552(b)(3) of title 5; and

(II) shall not be made public.

(ii) Exceptions

Clause (i) shall not prevent the disclosure of any of the following by the Secretary:

(I) Information relevant to any administrative or judicial action or proceeding.

(II) Information that a covered entity has consented to be disclosed to third parties.

(III) Information necessary to fulfill the requirement of the congressional notification under subparagraph (H).

(H) Congressional notification

Not later than 60 days after the date on which the Secretary finds a violation by a covered entity of an agreement required under subparagraph (C)(i), and after providing the covered entity with an opportunity to provide information in response to that finding, the Secretary shall provide to the appropriate Committees of Congress—

(i) a notification of the violation;

(ii) a brief description of how the Secretary determined the covered entity to be in violation; and

(iii) a summary of any actions or planned actions by the Secretary in response to the violation.

(I) Regulations

The Secretary may issue regulations implementing this paragraph.

(b) Coordination required

In carrying out the program established under subsection (a), the Secretary shall coordinate with the Secretary of State, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Energy, and the Director of National Intelligence.

(c) GAO reviews

The Comptroller General of the United States shall—

(1) not later than 2 years after the date of disbursement of the first financial award under subsection (a), and biennially thereafter for 10 years, conduct a review of the program established under subsection (a), which shall include, at a minimum—

(A) a determination of the number of instances in which financial assistance awards were provided under that subsection during the period covered by the review;

(B) an evaluation of how—

(i) the program is being carried out, including how recipients of financial assistance awards are being selected under the program;

(ii) other Federal programs are leveraged for manufacturing, research, and training to

complement the financial assistance awards awarded under the program; and

(iii) the Federal Government could take specific actions to address shortages in the semiconductor supply chain, including—

(I) demand-side incentives, including incentives related to the information and communications technology supply chain; and

(II) additional incentives, at national and global scales, to accelerate utilization of leading-edge semiconductor nodes to address shortages in mature semiconductor nodes; and

(C) a description of the outcomes of projects supported by awards made under the program, including a description of—

(i) facilities described in subsection (a)(1) that were constructed, expanded, or modernized as a result of awards made under the program;

(ii) research and development carried out with awards made under the program;

(iii) workforce training programs carried out with awards made under the program, including efforts to hire individuals from disadvantaged populations; and

(iv) the impact of projects on the United States share of global microelectronics production;

(v) how projects are supporting the semiconductor needs of critical infrastructure industries in the United States, including those industries designated by the Cybersecurity and Infrastructure Security Agency as essential infrastructure industries; and

(D) drawing on data made available by the Department of Labor or other sources, to the extent practicable, an analysis of—

(i) semiconductor industry data regarding businesses that are—

(I) majority owned and controlled by minority individuals;

(II) majority owned and controlled by women; or

(III) majority owned and controlled by both women and minority individuals;

(ii) the number and amount of contracts and subcontracts awarded by each covered entity using funds made available under subsection (a) disaggregated by recipients of each such contract or subcontracts that are majority owned and controlled by minority individuals and majority owned and controlled by women; and

(iii) aggregated workforce data, including data by race or ethnicity, sex, and job categories. [2]

(2) submit to the appropriate committees of Congress the results of each review conducted under paragraph (1).

(d) Sense of Congress

It is the sense of Congress that, in carrying out subsection (a), the Secretary should allocate funds in a manner that—

(1) strengthens the security and resilience of the semiconductor supply chain, including by mitigating gaps and vulnerabilities;

(2) provides a supply of secure semiconductors relevant for national security;

(3) strengthens the leadership of the United States in semiconductor technology;

(4) grows the economy of the United States and supports job creation in the United States;

(5) bolsters the semiconductor and skilled technical workforces in the United States;

(6) promotes the inclusion of economically disadvantaged individuals and small businesses; and

(7) improves the resiliency of the semiconductor supply chains of critical manufacturing industries.

(e) Additional assistance for mature technology nodes

(1) In general

The Secretary shall establish within the program established under subsection (a) an additional program that provides Federal financial assistance to covered entities to incentivize investment in facilities and equipment in the United States for the fabrication, assembly, testing, or packaging of semiconductors at mature technology nodes.

(2) Eligibility and requirements

In order for an entity to qualify to receive Federal financial assistance under this subsection, the covered entity shall agree to—

(A) submit an application under subsection (a)(2)(A);

(B) meet the eligibility requirements under subsection (a)(2)(B);

(C)(i) provide equipment or materials for the fabrication, assembly, testing, or packaging of semiconductors at mature technology nodes in the United States; or

(ii) fabricate, assemble using packaging, or test semiconductors at mature technology nodes in the United States;

(D) commit to using any Federal financial assistance received under this section to increase the production of semiconductors at mature technology nodes; and

(E) be subject to the considerations described in subsection (a)(2)(C).

(3) Procedures

In granting Federal financial assistance to covered entities under this subsection, the Secretary may use the procedures established under subsection (a).

(4) Considerations

In addition to the considerations described in subsection (a)(2)(C), in granting Federal financial assistance under this subsection, the Secretary may consider whether a covered entity produces or supplies equipment or materials used in the fabrication, assembly, testing, or packaging of semiconductors at mature technology nodes that are necessary to support a critical manufacturing industry.

(5) Priority

In awarding Federal financial assistance to covered entities under this subsection, the Secretary shall give priority to covered entities that support the resiliency of semiconductor supply chains for critical manufacturing industries in the United States.

(6) Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this subsection $2,000,000,000, which shall remain available until expended.

(f) Construction projects

Section 3212 of title 42 shall apply to a construction project that receives financial assistance from the Secretary under this section.

(g) Loans and loan guarantees

(1) In general

Subject to the requirements of subsection (a) and this subsection, the Secretary may make or guarantee loans to covered entities as financial assistance under this section.

(2) Conditions

The Secretary may select eligible projects to receive loans or loan guarantees under this subsection if the Secretary determines that—

(A) the covered entity—

(i) has a reasonable prospect of repaying the principal and interest on the loan; and

(ii) has met such other criteria as may be established and published by the Secretary; and

(B) the amount of the loan (when combined with amounts available to the loan recipient from other sources) will be sufficient to carry out the project.

(3) Reasonable prospect of repayment

The Secretary shall base a determination of whether there is a reasonable prospect of repayment of the principal and interest on a loan under paragraph (2)(A)(i) on a comprehensive evaluation of whether the covered entity has a reasonable prospect of repaying the principal and interest, including, as applicable, an evaluation of—

(A) the strength of the contractual terms of the project the covered entity plans to perform (if commercially reasonably available);

(B) the forecast of noncontractual cash flows supported by market projections from reputable sources, as determined by the Secretary;

(C) cash sweeps and other structure enhancements;

(D) the projected financial strength of the covered entity—

(i) at the time of loan close; and

(ii) throughout the loan term after the project is completed;

(E) the financial strength of the investors and strategic partners of the covered entity, if applicable;

(F) other financial metrics and analyses that the private lending community and nationally recognized credit rating agencies rely on, as determined appropriate by the Secretary; and

(G) such other criteria the Secretary may determine relevant.

(4) Rates, terms, and repayments of loans

A loan provided under this subsection—

(A) shall have an interest rate that does not exceed a level that the Secretary determines appropriate, taking into account, as of the date on which the loan is made, the cost of funds to the Department of the Treasury for obligations of comparable maturity; and

(B) shall have a term of not more than 25 years.

(5) Additional terms

A loan or guarantee provided under this subsection may include any other terms and conditions that the Secretary determines to be appropriate.

(6) Responsible lender

No loan may be guaranteed under this subsection, unless the Secretary determines that—

(A) the lender is responsible; and

(B) adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(7) Advanced budget authority

New loans may not be obligated and new loan guarantees may not be committed to under this subsection, unless appropriations of budget authority to cover the costs of such loans and loan guarantees are made in advance in accordance with section 661c(b) of title 2.

(8) Continued oversight

The loan agreement for a loan guaranteed under this subsection shall provide that no provision of the loan agreement may be amended of [3] waived without the consent of the Secretary.

(h) Authority relating to environmental review

(1) In general

Notwithstanding any other provision of law, the provision by the Secretary of Federal financial assistance for a project described in this section that satisfies the requirements under subsection (a)(2)(C)(i) of this section shall not be considered to be a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (referred to in this subsection as "NEPA") or an undertaking for the purposes of division A of subtitle III of title 54 if—

(A) the activity described in the application for that project has commenced not later than December 31, 2024;

(B) the Federal financial assistance provided is in the form of a loan or loan guarantee; or

(C) the Federal financial assistance provided, excluding any loan or loan guarantee,

comprises not more than 10 percent of the total estimated cost of the project.

(2) Savings clause

Nothing in this subsection may be construed as altering whether an activity described in subparagraph (A), (B), or (C) of paragraph (1) is considered to be a major Federal action under NEPA, or an undertaking under division A of subtitle III of title 54, for a reason other than that the activity is eligible for Federal financial assistance provided under this section.

(i) Oversight

Not later than 4 years after disbursement of the first financial award under subsection (a), the Inspector General of the Department of Commerce shall audit the program under this section to assess—

(1) whether the eligibility requirements for covered entities receiving financial assistance under the program are met;

(2) whether eligible entities use the financial assistance received under the program in accordance with the requirements of this section;

(3) whether the covered entities receiving financial assistance under this program have carried out the commitments made to worker and community investment under subsection (a)(2)(B)(ii)(II) by the target date for completion set by the Secretary under subsection (a)(5)(A);

(4) whether the required agreement entered into by covered entities and the Secretary under subsection (a)(6)(C)(i), including the notification process, has been carried out to provide covered entities sufficient guidance about a violation of the required agreement;

(5) whether the Secretary has provided timely Congressional notification about violations of the required agreement under subsection (a)(6)(C)(i), including the required information on how the Secretary reached a determination of whether a covered entity was in violation under subsection (a)(6)(E); and

(6) whether the Secretary has sufficiently reviewed any covered entity engaging in a listed exception under subsection (a)(6)(C)(ii).

(j) Prohibition on use of funds

No funds made available under this section may be used to construct, modify, or improve a facility outside of the United States.

(Pub. L. 116–283, div. H, title XCIX, §9902, Jan. 1, 2021, 134 Stat. 4846; Pub. L. 117–167, div. A, §§103(b), 105(a), Aug. 9, 2022, 136 Stat. 1380, 1391; Pub. L. 118–105, §2(1), Oct. 2, 2024, 138 Stat. 1587.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (h)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2024—Subsecs. (h) to (j). Pub. L. 118–105 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

2022—Subsec. (a)(1). Pub. L. 117–167, §103(b)(1), substituted "for the fabrication" for "for semiconductor fabrication" and "of semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment." for period at end and inserted "production," before "or research and development".

Subsec. (a)(2)(B)(ii)(V), (VI). Pub. L. 117–167, §103(b)(2)(B), added subcls. (V) and (VI).

Subsec. (a)(2)(B)(iii), (iv). Pub. L. 117–167, §103(b)(2)(A), (C), added cls. (iii) and (iv).

Subsec. (a)(2)(C)(i)(II). Pub. L. 117–167, §103(b)(2)(D)(i)(I), substituted "is in the economic and national

security interests of the United States" for "is in the interest of the United States".

Subsec. (a)(2)(C)(i)(III). Pub. L. 117–167, §103(b)(2)(D)(i)(II), struck out "and" at end.

Subsec. (a)(2)(C)(iii) to (v). Pub. L. 117–167, §103(b)(2)(D)(ii)–(iv), added cls. (iii) and (iv) and redesignated former cl. (iii) as (v).

Subsec. (a)(2)(D), (E). Pub. L. 117–167, §103(b)(2)(E), (F), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(4)(A). Pub. L. 117–167, §103(b)(3), substituted "used for the purposes" for "used for semiconductors".

Subsec. (a)(5)(A). Pub. L. 117–167, §103(b)(4)(A), struck out "major" before "awards" in introductory provisions.

Subsec. (a)(5)(D). Pub. L. 117–167, §103(b)(4)(B), struck out "major" before "award" in introductory provisions.

Subsec. (a)(5)(E)(i). Pub. L. 117–167, §103(b)(4)(C), struck out "major" before "award".

Subsec. (a)(6). Pub. L. 117–167, §103(b)(5), added par. (6).

Subsec. (c)(1)(B)(iii). Pub. L. 117–167, §105(a)(1)(A), added cl. (iii).

Subsec. (c)(1)(C)(v). Pub. L. 117–167, §105(a)(1)(B), added cl. (v).

Subsec. (c)(1)(D). Pub. L. 117–167, §105(a)(2), which directed amendment of subsec. (c) by adding subpar. (D) after par. (1)(C)(iv), was executed by making the addition after par. (1)(C)(v), to reflect the probable intent of Congress and the addition of cl. (v) by Pub. L. 117–167, §105(a)(1)(B). See above.

Subsecs. (d) to (i). Pub. L. 117–167, §103(b)(6), added subsecs. (d) to (i).

STATUTORY NOTES AND RELATED SUBSIDIARIES

OPPORTUNITY AND INCLUSION

Pub. L. 117–167, div. A, §104, Aug. 9, 2022, 136 Stat. 1390, provided that:

"(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act [Aug. 9, 2022], the Secretary of Commerce shall establish activities in the Department of Commerce, within the program established under section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652), to carry out this section using funds appropriated under this Act [div. A of Pub. L. 117–167, see Tables for classification].

"(b) IN GENERAL.—The Secretary of Commerce shall assign personnel to lead and support the activities carried out under this section, including coordination with other workforce development activities of the Department of Commerce or of Federal agencies, as defined in section 551 of title 5, United States Code, as appropriate.

"(c) ACTIVITIES.—Personnel assigned by the Secretary to carry out the activities under this section shall—

"(1) assess the eligibility of a covered entity, as defined in section 9901 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), for financial assistance for a project with respect to the requirements under subclauses (II) and (III) of section 9902(a)(2)(B)(ii) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652(a)(2)(B)(ii)(II) and (III));

"(2) ensure that each covered entity, as defined in section 9901 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), that is awarded financial assistance under section 9902 of that Act (15 U.S.C. 4652) is carrying out the commitments of the covered entity to economically disadvantaged individuals as described in the application of the covered entity under that section by the target dates for completion established by the Secretary of Commerce under subsection(a)(5)(A) of that section; and

"(3) increase participation of and outreach to economically disadvantaged individuals, minority-owned businesses, veteran-owned businesses, and women-owned businesses, as defined by the Secretary of Commerce, respectively, in the geographic area of a project under section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652) and serve as a resource for those individuals, businesses, and covered entities.

"(d) STAFF.—The activities under this section shall be staffed at the appropriate levels to carry out the functions and responsibilities under this section until 95 percent of the amounts of funds made available for the program established under section 9902 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4652) have been expended.

"(e) REPORT.—Beginning on the date that is 1 year after the date on which the Secretary of Commerce establishes the activities described in subsection (c), the Secretary of Commerce shall submit to the

appropriate committees of Congress, as defined in section 9901(1) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (15 U.S.C. 4651), and make publicly available on the website of the Department of Commerce an annual report regarding the actions taken by the Department of Commerce under this section."

REFERENCES IN PUB. L. 117–167

Pub. L. 117–167, §2, Aug. 9, 2022, 136 Stat. 1371, provided that: "Except as expressly provided otherwise, any reference to 'this Act' contained in any division of this Act [see Tables for classification] shall be treated as referring only to the provisions of that division."

[1] So in original. Probably should be followed by a semicolon.

[2] So in original. The period probably should be "; and".

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

§4653. Department of Defense

(a) Department of Defense efforts

(1) In general

Subject to the availability of appropriations for such purposes, the Secretary of Defense, in consultation with the Secretary of Commerce, the Secretary of Energy, the Secretary of Homeland Security, and the Director of National Intelligence, shall establish a public-private partnership through which the Secretary shall work to incentivize the formation of one or more consortia of companies (or other such partnerships of private-sector entities, as appropriate) to ensure the development and production of measurably secure microelectronics, including integrated circuits, logic devices, memory, and the packaging and testing practices that support these microelectronic components by the Department of Defense, the intelligence community, critical infrastructure sectors, and other national security applications. Such incentives may include the use of grants under section 4652 of this title, and providing incentives for the creation, expansion, or modernization of one or more commercially competitive and sustainable microelectronics manufacturing or advanced research and development facilities in the United States.

(2) Risk mitigation requirements

A participant in a consortium formed with incentives under paragraph (1)—

(A) shall have the potential to enable design, perform fabrication, assembly, package, or test functions for microelectronics deemed critical to national security as defined by the National Security Advisor and the Secretary of Defense;

(B) may be a fabless company migrating its designs to the facility envisioned in paragraph (1) or migrating to an existing facility onshore;

(C) may be companies, including fabless companies and companies that procure large quantities of microelectronics, willing to co-invest to achieve the objectives set forth in paragraph (1);

(D) shall include management processes to identify and mitigate supply chain security risks; and

(E) shall be capable of providing microelectronic components that are consistent with applicable measurably secure supply chain and operational security standards established under section 224(b) of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92).

(3) National security considerations

The Secretary of Defense and the Director of National Intelligence shall select participants for each consortium and or [1] partnership formed with incentives under paragraph (1). In selecting

such participants, the Secretary and the Director may jointly consider whether the companies—

(A) have participated in previous programs and projects of the Department of Defense, Department of Energy, or the intelligence community, including—

(i) the Trusted Integrated Circuit program of the Intelligence Advanced Research Projects Activity;

(ii) trusted and assured microelectronics projects, as administered by the Department of Defense;

(iii) the Electronics Resurgence Initiative program of the Defense Advanced Research Projects Agency; or

(iv) relevant semiconductor research programs of the Advanced Research Projects Agency–Energy;

(B) have demonstrated an ongoing commitment to performing contracts for the Department of Defense and the intelligence community;

(C) are approved by the Defense Counterintelligence and Security Agency or the Office of the Director of National Intelligence as presenting an acceptable security risk, taking into account supply chain assurance vulnerabilities, counterintelligence risks, and any risks presented by companies whose beneficial owners are located outside the United States; and

(D) are evaluated periodically for foreign ownership, control, or influence by a foreign entity of concern.

(4) Nontraditional defense contractors and commercial entities

Arrangements entered into to carry out paragraph (1) shall be in such form as the Secretary of Defense determines appropriate to encourage industry participation of nontraditional defense contractors or commercial entities and may include a contract, a grant, a cooperative agreement, a commercial agreement, the use of other transaction authority under section 2371 [2] of title 10 or another such arrangement.

(5) Implementation

Subject to the availability of appropriations for such purposes, the Secretary of Defense—

(A) shall carry out paragraph (1) jointly through the Office of the Under Secretary of Defense for Research and Engineering and the Office of the Under Secretary of Defense for Acquisition and Sustainment; and

(B) may carry out paragraph (1) in collaboration with any such other component of the Department of Defense as the Secretary of Defense considers appropriate.

(6) Other initiatives

(A) Required initiatives

Subject to the availability of appropriations for such purposes, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the National Nuclear Security Administration, as appropriate, may dedicate initiatives within the Department of Defense to carry out activities to advance radio frequency, mixed signal, radiation tolerant, and radiation hardened microelectronics that support national security and dual-use applications.

(B) Support plan required

The Secretary of Defense, in consultation with the heads of appropriate departments and agencies of the Federal Government, shall develop a plan, including assessment of resource requirements and designation of responsible officials, for the maintenance of capabilities to produce trusted and assured microelectronics to support current and legacy defense systems, other government systems essential for national security, and critical infrastructure of the United States, especially for items with otherwise limited commercial demand.

(C) Assessment of public private partnerships and activities

In conjunction with the activities carried out under this section, the Secretary of Defense shall enter into an agreement with the National Academies of Science, Engineering, and Medicine to

undertake a study to make recommendations and provide policy options for optimal public-private partnerships and partnership activities, including an analysis of establishing a semiconductor manufacturing corporation to leverage private sector technical, managerial, and investment expertise, and private capital, as well as an assessment of and response to the industrial policies of other nations to support industries in similar critical technology sectors, and deliver such study to the congressional defense committees not later than October 1, 2022.

(7) Reports

(A) Report by Secretary of Defense

Not later than 90 days after January 1, 2021, the Secretary of Defense shall submit to Congress a report on the plans of the Secretary to carry out paragraphs (1) and (6).

(B) Biennial reports by Comptroller General of the United States

Not later than one year after the date on which the Secretary submits the report required by subparagraph (A) and not less frequently than once every two years thereafter for a period of 10 years, the Comptroller General of the United States shall submit to Congress a report on the activities carried out under this subsection.

(b) National network for microelectronics research and development

(1) In general

Subject to the availability of appropriations for such purposes, the Secretary of Defense shall establish a national network for microelectronics research and development—

(A) to enable the laboratory to fabrication transition of microelectronics innovations in the United States; and

(B) to expand the global leadership in microelectronics of the United States.

(2) Activities

The national network for microelectronics research and development shall—

(A) enable cost effective exploration of new materials, devices, and architectures, and prototyping in domestic facilities to safeguard domestic intellectual property;

(B) accelerate the transition of new technologies to domestic microelectronics manufacturers; and

(C) conduct other relevant activities deemed necessary by the Secretary of Defense for accomplishing the purposes of the national network for microelectronics research and development.

(3) Selection of entities

(A) In general

In carrying out paragraph (1), the Secretary shall, through a competitive process, select two or more entities to carry out the activities described in paragraph (2) as part of the network established under paragraph (1).

(B) Geographic diversity

The Secretary shall, to the extent practicable, ensure that the entities selected under subparagraph (A) collectively represent the geographic diversity of the United States.

(Pub. L. 116–283, div. H, title XCIX, §9903, Jan. 1, 2021, 134 Stat. 4849; Pub. L. 117–81, div. A, title II, §217, Dec. 27, 2021, 135 Stat. 1596.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 224 of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (a)(2)(E), is section 224 of Pub. L. 116–92, which is set out as a note preceding section 4501 of Title 10, Armed Forces.

Section 2371 of title 10, referred to in subsec. (a)(4), was renumbered section 4021 of Title 10, Armed Forces, by Pub. L. 116–283, §1841(b)(1), as amended by Pub. L. 117–81, §1701(u)(2)(B), Dec. 27, 2021, 135 Stat. 2151.

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 117–81, §217(1), substituted "shall" for "may" in introductory provisions. Subsec. (b)(3). Pub. L. 117–81, §217(2), added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

"CONGRESSIONAL DEFENSE COMMITTEES" DEFINED

For definition of "congressional defense committees" as the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, see section 101 of Title 10, Armed Forces, as made applicable by section 3 of Pub. L. 116–283, which is listed in a table under section 101 of Title 10.

[1] *So in original.*

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

§4654. Department of Commerce study on status of microelectronics technologies in the United States industrial base

(a) In general

Beginning not later than 180 days after January 1, 2021, the Secretary, in consultation with the heads of other Federal departments and agencies, as appropriate, including the Secretary of Defense, Secretary of Homeland Security, and the Secretary of Energy, shall undertake a review, which shall include a survey, using authorities in section 4555 of title 50, to assess the capabilities of the United States industrial base to support the national defense in light of the global nature of the supply chain and significant interdependencies between the United States industrial base and the industrial bases of foreign countries with respect to the manufacture, design, and end use of microelectronics.

(b) Response to survey

To the extent authorized by section 4555 of title 50 and section [1] 702 of title 15, Code of Federal Regulations, the Secretary shall ensure all relevant potential respondents reply to the survey, including the following:

(1) Corporations, partnerships, associations, or any other organized groups domiciled and with substantial operations in the United States.

(2) Corporations, partnerships, associations, or any other organized groups with a physical presence of any kind in the United States.

(3) Foreign domiciled corporations, partnerships, associations, or any other organized groups with a physical presence of any kind in the United States.

(c) Information requested

To the extent authorized by section 4555 of title 50 and section [1] 702 of title 15, Code of Federal Regulations, the information sought from a responding entity specified in subsection (b) shall include, at minimum, information on the following with respect to the manufacture, design, or end use of microelectronics by such entity:

(1) An identification of the geographic scope of operations.

(2) Information on relevant cost structures.

(3) An identification of types of microelectronics development, manufacture, assembly, test, and packaging equipment in operation at such an entity.

(4) An identification of all relevant intellectual property, raw materials, and semi-finished goods and components sourced domestically and abroad by such an entity.

(5) Specifications of the microelectronics manufactured or designed by such an entity, descriptions of the end-uses of such microelectronics, and a description of any technical support provided to end-users of such microelectronics by such an entity.

(6) Information on domestic and export market sales by such an entity.

(7) Information on the financial performance, including income and expenditures, of such an entity.

(8) A list of all foreign and domestic subsidies, and any other financial incentives, received by such an entity in each market in which such entity operates.

(9) A list of regulatory or other informational requests about the respondents' operations, sales, or other proprietary information by the People's Republic of China entities under its direction or officials of the Chinese Communist Party, a description of the nature of each request, and the type of information provided.

(10) Information on any joint ventures, technology licensing agreements, and cooperative research or production arrangements of such an entity.

(11) A description of efforts by such an entity to evaluate and control supply chain risks.

(12) A list and description of any sales, licensing agreements, or partnerships between such an entity and the People's Liberation Army or People's Armed Police, including any business relationships with entities through which such sales, licensing agreements, or partnerships may occur.

(d) Report

(1) In general

The Secretary shall, in consultation with the heads of other appropriate Federal departments and agencies, as appropriate, including the Secretary of Defense, Secretary of Homeland Security, and Secretary of Energy, submit to Congress a report on the results of the review required by subsection (a). The report shall include the following:

(A) An assessment of the results of the review.

(B) A list of critical technology areas impacted by potential disruptions in production of microelectronics, and a detailed description and assessment of the impact of such potential disruptions on such areas.

(C) A description and assessment of gaps and vulnerabilities in the microelectronics supply chain and the national industrial supply base.

(2) Form

The report required by paragraph (1) may be submitted in classified form.

(Pub. L. 116–283, div. H, title XCIX, §9904, Jan. 1, 2021, 134 Stat. 4852.)

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

§4655. Funding for development and adoption of measurably secure semiconductors and measurably secure semiconductors supply chains

(a) Multilateral Semiconductors Security Fund

(1) Establishment of fund

The Secretary of the Treasury is authorized to establish a trust fund, to be known as the "Multilateral Semiconductors Security Fund" (in this section referred to as the "Fund"), consisting of any appropriated funds credited to the Fund for such purpose.

(2) Reporting requirement

If the Fund authorized under subsection (a)(1) is not established, 180 days after January 1, 2021, and annually thereafter until such Fund is established, the Secretary of the Treasury, in coordination with the Secretary of State, shall provide, in writing, to the appropriate committees of

Congress a rationale for not establishing the Fund.

(3) Investment of amounts

(A) Investment of amounts

If the Fund authorized under subsection (a)(1) is established, the Secretary of the Treasury shall invest such portion of the Fund as is not required to meet current withdrawals in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States.

(B) Interest and proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(4) Use of Fund

(A) In general

Subject to subparagraph (B), amounts in the Fund shall be available, as provided in advance in an appropriations Act, to the Secretary of State—

(i) to provide funding through the common funding mechanism described in subsection (b)(1) to support the development and adoption of measurably secure semiconductors and measurably secure semiconductors supply chains; and

(ii) to otherwise carry out this section.

(B) Availability contingent on international arrangement or agreement

(i) In general

Amounts in the Fund shall be available to the Secretary of State, subject to appropriation, on and after the date on which the Secretary of State enters into an arrangement or agreement with the governments of countries that are partners of the United States to participate in the common funding mechanism under paragraph (1) of subsection (b).

(ii) Consultation

Before entering into an arrangement or agreement as described clause (i), the Secretary of State, in consultation with the Secretary of Commerce, shall ensure any partner government maintains export control licensing policies on semiconductor technology substantively equivalent to the United States with respect to restrictions on such exports to the People's Republic of China.

(b) Common funding mechanism for development and adoption of measurably secure semiconductors and measurably secure semiconductors supply chains

(1) In general

The Secretary of State, in consultation with the Secretary of Commerce, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of the Treasury, the Secretary of Energy, and the Director of National Intelligence, is authorized to establish a common funding mechanism, in coordination with foreign partners, that uses amounts from the Fund to support the development and adoption of secure semiconductors and secure semiconductors supply chains, including for use in research and development collaborations among partner countries participating in the common funding mechanism. In establishing and sustaining a common funding mechanism, the Secretary of State should leverage United States funding in order to secure contributions and commitments from trusted foreign partners, including cost sharing and other cooperative measures leading to the development and adoption of secure semiconductors and secure microelectronic supply chains.

(2) Commitments

In creating and sustaining a common funding mechanism described in paragraph (1), the Secretary of State should promote efforts among foreign partners to—

(A) establish transparency requirements for any subsidies or other financial benefits (including revenue foregone) provided to semiconductors firms located in or outside such countries;

(B) establish consistent policies with respect to countries that—

(i) are not participating in the common funding mechanism; and

(ii) do not meet transparency requirements established under subparagraph (A);

(C) promote harmonized treatment of semiconductors and verification processes for items being exported to a country considered a national security risk by a country participating in the common funding mechanism;

(D) establish consistent policies and common external policies to address nonmarket economies as the behavior of such countries pertains to semiconductors;

(E) align policies on supply chain integrity and semiconductors security, including with respect to protection and enforcement of intellectual property rights; and

(F) promote harmonized foreign direct investment screening measures and export control policies with respect to semiconductors to align with national, multilateral, and plurilateral security priorities.

(c) Notifications to be provided by the Fund

(1) In general

Not later than 15 days prior to the Fund making a financial commitment associated with the provision of expenditures under subsection (a)(4)(A) in an amount in excess of $1,000,000, the Secretary of State shall submit to the appropriate committees of Congress report in writing that contains the information required by paragraph (2).

(2) Information required

The information required by this subsection includes—

(A) the amount of each such expenditure;

(B) an identification of the recipient or beneficiary; and

(C) a description of the project or activity and the purpose to be achieved by an expenditure of the Fund.

(3) Arrangements or agreements

The Secretary of State shall notify the appropriate committees of Congress not later than 30 days after entering into a new bilateral or multilateral arrangement or agreement described in subsection (a)(4)(B).

(Pub. L. 116–283, div. H, title XCIX, §9905, Jan. 1, 2021, 134 Stat. 4854; Pub. L. 118–31, div. F, title LXVII, §6707(b)(1)(B), Dec. 22, 2023, 137 Stat. 1018.)

EDITORIAL NOTES

AMENDMENTS

2023—Subsecs. (c), (d). Pub. L. 118–31 redesignated subsec. (d) as (c) and struck out former subsec. (c) which required the Secretary of State to report to Congress annually on the implementation of this section.

§4656. Advanced microelectronics research and development

(a) Subcommittee on microelectronics leadership

(1) Establishment required

The President shall establish in the National Science and Technology Council a subcommittee on matters relating to leadership and competitiveness of the United States in microelectronics technology and innovation (in this section referred to as the "Subcommittee)".

(2) Membership

The Subcommittee shall be composed of the following members:

(A) The Secretary of Defense.

(B) The Secretary of Energy.

(C) The Director of the National Science Foundation.

(D) The Secretary of Commerce.

(E) The Secretary of State.

(F) The Secretary of Homeland Security.

(G) The United States Trade Representative.

(H) The Director of National Intelligence.

(I) The heads of such other departments and agencies of the Federal Government as the President determines appropriate.

(3) Duties

The duties of the Subcommittee are as follows:

(A) National strategy on microelectronics research

(i) In general

In consultation with the advisory committee established in (b), and other appropriate stakeholders in the microelectronics industry and academia, the Subcommittee shall develop a national strategy on microelectronics research, development, manufacturing, and supply chain security to—

(I) accelerate the domestic development and production of microelectronics and strengthen the domestic microelectronics workforce; and

(II) ensure that the United States is a global leader in the field of microelectronics research and development.

(ii) Elements

The strategy developed under this subparagraph shall address—

(I) activities that may be carried out to strengthen engagement and outreach between the Department of Defense and industry, academia, international partners of the United States, and other departments and agencies of the Federal Government on issues relating to microelectronics;

(II) priorities for research and development to accelerate the advancement and adoption of innovative microelectronics and new uses of microelectronics and components, including for technologies based on organic and inorganic materials;

(III) the role of diplomacy and trade in maintaining the position of the United States as a global leader in the field of microelectronics;

(IV) the potential role of a Federal laboratory, center, or incubator exclusively focused on the research and development of microelectronics, as described in section 231(b)(15) of the National Defense Authorization Act for Fiscal Year 2017 (as added by section 276 of this Act) in carrying out the strategy and plan required under this subparagraph; and

(V) such other activities as the Subcommittee determines may be appropriate to overcome future challenges to the innovation, competitiveness, supply chain integrity, and workforce development of the United States in the field of microelectronics.

(B) Fostering coordination of research and development

The Subcommittee shall coordinate microelectronics related research, development, manufacturing, and supply chain security activities and budgets of Federal agencies and ensure such activities are consistent with the strategy required under subparagraph (A).

(C) Reporting and updates

(i) Progress briefing

Not later than one year after January 1, 2021, the President shall provide to the appropriate

committees of Congress a briefing on the progress of the Subcommittee in developing the strategy required under subparagraph (A).

(ii) Strategy update

Not less frequently than once every 5 years, the Subcommittee shall update the strategy developed under subparagraph (A) and submit the revised strategy to the appropriate committees of Congress.

(4) Sunset

The Subcommittee shall terminate on the date that is 10 years after January 1, 2021.

(b) Industrial advisory committee

(1) Establishment

The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of Energy, and the Secretary of Homeland Security, shall establish an advisory committee to be composed of not fewer than 12 members, including representatives of industry, federal laboratories, and academic institutions, who are qualified to provide advice to the United States Government on matters relating to microelectronics research, development, manufacturing, and policy.

(2) Duties

The advisory committee shall assess and provide guidance to the United States Government on—

(A) science and technology needs of the nation's domestic microelectronics industry;

(B) the extent to which the strategy developed under subsection (a)(3) is helping maintain United States leadership in microelectronics manufacturing;

(C) assessment of the research and development programs and activities authorized under this section; and

(D) opportunities for new public-private partnerships to advance microelectronics research, development, and domestic manufacturing.

(3) FACA exemption

Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) [1] shall not apply to the advisory committee established under this subsection.

(c) National semiconductor technology center

(1) Establishment

Subject to the availability of appropriations for such purpose, the Secretary of Commerce, in collaboration with the Secretary of Defense, shall establish a national semiconductor technology center to conduct research and prototyping of advanced semiconductor technology and grow the domestic semiconductor workforce to strengthen the economic competitiveness and security of the domestic supply chain. Such center shall be operated as a public private-sector consortium with participation from the private sector, the Department of Energy, and the National Science Foundation. The Secretary may make financial assistance awards, including construction awards, in support of the national semiconductor technology center.

(2) Functions

The functions of the center established under paragraph (1) shall be as follows:

(A) To conduct advanced semiconductor manufacturing, design and packaging research, and prototyping that strengthens the entire domestic ecosystem and is aligned with the strategy required under subsection (a)(3)(A) with emphasis on the following:

(i) Semiconductor advanced test, assembly, and packaging capability in the domestic ecosystem.

(ii) Materials characterization, instrumentation and testing for next generation microelectronics.

(iii) Virtualization and automation of maintenance of semiconductor machinery.
(iv) Metrology for security and supply chain verification.

(B) To establish and capitalize an investment fund, in partnership with the private sector, to support startups and collaborations between startups, academia, established companies, and new ventures, with the goal of commercializing innovations that contribute to the domestic semiconductor ecosystem, including—

(i) advanced metrology and characterization for manufacturing of microchips using 3 nanometer transistor processes or more advanced processes; and
(ii) metrology for security and supply chain verification.

(C) To work with the Secretary of Labor, the Director of the National Science Foundation, the Secretary of Energy, the private sector, institutions of higher education, and workforce training entities to incentivize and expand geographically diverse participation in graduate, undergraduate, and community college programs relevant to microelectronics, including through—

(i) the development and dissemination of curricula and research training experiences; and
(ii) the development of workforce training programs and apprenticeships in advanced microelectronic design, research, fabrication, and packaging capabilities.

(d) National Advanced Packaging Manufacturing Program

Subject to the availability of appropriations for such purpose, the Secretary of Commerce shall establish a National Advanced Packaging Manufacturing Program led by the Director of the National Institute of Standards and Technology, in coordination with the national semiconductor technology center established under subsection (c), to strengthen semiconductor advanced test, assembly, and packaging capability in the domestic ecosystem, and which shall coordinate with a Manufacturing USA institute established under subsection (f), if applicable. The Director may make financial assistance awards, including construction awards, in support of the National Advanced Packaging Manufacturing Program.

(e) Microelectronics research at the National Institute of Standards and Technology

Subject to the availability of appropriations for such purpose, the Director of the National Institute of Standards and Technology shall carry out a microelectronics research program to enable advances and breakthroughs in measurement science, standards, material characterization, instrumentation, testing, and manufacturing capabilities that will accelerate the underlying research and development for metrology of next generation microelectronics and ensure the competitiveness and leadership of the United States within this sector.

(f) Creation of a Manufacturing USA institute

Subject to the availability of appropriations for such purpose, the Director of the National Institute of Standards and Technology may establish not more than 3 Manufacturing USA Institutes described in section 278s(d) of this title that are focused on semiconductor manufacturing. The Secretary of Commerce may award financial assistance to any Manufacturing USA Institute for work relating to semiconductor manufacturing. Such institutes may emphasize the following:

(1) Research to support the virtualization and automation of maintenance of semiconductor machinery.
(2) Development of new advanced test, assembly and packaging capabilities.
(3) Developing and deploying educational and skills training curricula needed to support the industry sector and ensure the United States can build and maintain a trusted and predictable talent pipeline.

(g) Domestic production requirements

The head of any executive agency receiving funding under this section shall develop policies to require domestic production, to the extent possible, for any intellectual property resulting from microelectronics research and development conducted as a result of such funding and domestic

control requirements to protect any such intellectual property from foreign adversaries.

(h) Construction projects

Section 3212 of title 42 shall apply to a construction project that receives financial assistance under this section.

(Pub. L. 116–283, div. H, title XCIX, §9906, Jan. 1, 2021, 134 Stat. 4856; Pub. L. 117–167, div. A, §103(c), Aug. 9, 2022, 136 Stat. 1388.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 231(b)(15) of the National Defense Authorization Act for Fiscal Year 2017 (as added by section 276 of this Act), referred to in subsec. (a)(3)(A)(ii)(IV), is section 231(b)(15) of Pub. L. 114–328, as added by section 276 of Pub. L. 116–283, which is set out in a note under section 2302 of Title 10, Armed Forces.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (b)(3), is section 14 of Pub. L. 92–463, which was set out in the Appendix to Title 5, Government Organization and Employees, and was repealed and restated as section 1013 of Title 5 by Pub. L. 117–286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4204, 4361.

AMENDMENTS

2022—Subsec. (a)(3)(A)(ii)(II). Pub. L. 117–167, §103(c)(1)(A), inserted ", including for technologies based on organic and inorganic materials" after "components".

Subsec. (a)(3)(A)(ii)(V). Pub. L. 117–167, §103(c)(1)(B), substituted "supply chain integrity, and workforce development" for "supply chain integrity".

Subsec. (c)(1). Pub. L. 117–167, §103(c)(2)(A), inserted "and grow the domestic semiconductor workforce" after "prototyping of advanced semiconductor technology" and inserted at end "The Secretary may make financial assistance awards, including construction awards, in support of the national semiconductor technology center."

Subsec. (c)(2)(B). Pub. L. 117–167, §103(c)(2)(B)(i), inserted "and capitalize" before "an investment fund" in introductory provisions.

Subsec. (c)(2)(C). Pub. L. 117–167, §103(c)(2)(B)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows: "To work with the Secretary of Labor, the Director of the National Science Foundation, the Secretary of Energy, the private sector, institutions of higher education, and workforce training entities to incentivize and expand participation in graduate and undergraduate programs, and develop workforce training programs and apprenticeships, in advanced microelectronic design, research, fabrication, and packaging capabilities."

Subsec. (d). Pub. L. 117–167, §103(c)(3), substituted "a Manufacturing USA institute" for "the Manufacturing USA institute" and inserted at end "The Director may make financial assistance awards, including construction awards, in support of the National Advanced Packaging Manufacturing Program."

Subsec. (f). Pub. L. 117–167, §103(c)(4), substituted, in introductory provisions, "not more than 3 Manufacturing USA Institutes" for "a Manufacturing USA institute", "are focused on semiconductor manufacturing. The Secretary of Commerce may award financial assistance to any Manufacturing USA Institute for work relating to semiconductor manufacturing." for "is focused on semiconductor manufacturing.", and "Such institutes may emphasize" for "Such institute may emphasize".

Subsec. (h). Pub. L. 117–167, §103(c)(5), added subsec. (h).

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

§4657. Prohibition relating to foreign entities of concern

None of the funds authorized to be appropriated to carry out this chapter may be provided to a foreign entity of concern.

(Pub. L. 116–283, div. H, title XCIX, §9907, Jan. 1, 2021, 134 Stat. 4860.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this subtitle" and was translated as reading "this title", meaning title XCIX of div. H of Pub. L. 116–283, to reflect the probable intent of Congress.

§4658. Defense Production Act of 1950 efforts

(a) In general

Not later than 180 days after January 1, 2021, the President shall submit to Congress a report on a plan of action for any use of authorities available in title III of the Defense Production Act of 1950 (50 U.S.C. 4531 et seq.) to establish or enhance a domestic production capability for microelectronics technologies and related technologies, subject to—

(1) the availability of appropriations for that purpose; and

(2) a determination made under the plan pursuant to such title III that such technologies are essential to the national defense and that domestic industrial capabilities are insufficient to meet these needs.

(b) Coordination

The President shall develop the plan of action required by subsection (a) in consultation with any relevant head of a Federal agency, an advisory committee established under section 708(d) of the Defense Production Act of 1950 (50 U.S.C. 4558(d)), and appropriate stakeholders in the private sector.

(Pub. L. 116–283, div. H, title XCIX, §9908, Jan. 1, 2021, 134 Stat. 4860.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Defense Production Act of 1950, referred to in subsec. (a), is act Sept. 8, 1950, ch. 932, 64 Stat. 798, which is classified principally to chapter 55 (§4501 et seq.) of Title 50, War and National Defense. Title III of the Act is classified generally to subchapter II (§4531 et seq.) of chapter 55. For complete classification of this Act to the Code, see section 4501 of Title 50 and Tables.

§4659. Additional authorities

(a) In general

In carrying out the responsibilities of the Department of Commerce under this chapter, the Secretary may—

(1) enter into agreements, including contracts, grants and cooperative agreements, and other transactions as may be necessary and on such terms as the Secretary considers appropriate;

(2) make advance payments under agreements and other transactions authorized under paragraph (1) without regard to section 3324 of title 31;

(3) require a person or other entity to make payments to the Department of Commerce upon application and as a condition for receiving support through an award of assistance or other transaction;

(4) procure temporary and intermittent services of experts and consultants in accordance with section 3109 of title 5;

(5) notwithstanding section 3104 of title 5 or the provisions of any other law relating to the appointment, number, classification, or compensation of employees, make appointments of scientific, engineering, and professional personnel, and fix the basic pay of such personnel at a

rate to be determined by the Secretary at rates not in excess of the highest total annual compensation payable at the rate determined under section 104 of title 3, except that the Secretary shall appoint not more than 25 personnel under this paragraph;

(6) with the consent of another Federal agency, enter into an agreement with that Federal agency to use, with or without reimbursement, any service, equipment, personnel, or facility of that Federal agency; and

(7) establish such rules, regulations, and procedures as the Secretary considers appropriate.

(b) Requirement

Any funds received from a payment made by a person or entity pursuant to subsection (a)(3) shall be credited to and merged with the account from which support to the person or entity was made [1]

(c) Lead Federal agency and cooperating agencies

(1) Definition

In this subsection, the term "lead agency" has the meaning given the term in section 111 of NEPA (42 U.S.C. 4336e).

(2) Option to serve as lead agency

With respect to a covered activity that is a major Federal action under NEPA, and with respect to which the Department of Commerce is authorized or required by law to issue an authorization or take action for or relating to that covered activity, the Department of Commerce shall have the first right to serve as the lead agency with respect to that covered activity under NEPA.

(d) Categorical exclusions

(1) Establishment of categorical exclusions

Each of the following categorical exclusions is established for the National Institute of Standards and Technology with respect to a covered activity and, beginning on October 2, 2024, is available for use by the Secretary with respect to a covered activity:

(A) Categorical exclusion 17.04.d (relating to the acquisition of machinery and equipment) in the document entitled "EDA Program to Implement the National Environmental Policy Act of 1969 and Other Federal Environmental Mandates As Required" (Directive No. 17.02–2; effective date October 14, 1992).

(B) Categorical exclusion A9 in Appendix A to subpart D of part 1021 of title 10, Code of Federal Regulations, or any successor regulation.

(C) Categorical exclusions B1.24, B1.31, B2.5, and B5.1 in Appendix B to subpart D of part 1021 of title 10, Code of Federal Regulations, or any successor regulation.

(D) The categorical exclusions described in paragraphs (4) and (13) of section 50.19(b) of title 24, Code of Federal Regulations, or any successor regulation.

(E) Categorical exclusion (c)(1) in Appendix B to part 651 of title 32, Code of Federal Regulations, or any successor regulation.

(F) Categorical exclusions A2.3.8 and A2.3.14 in Appendix B to part 989 of title 32, Code of Federal Regulations, or any successor regulation.

(2) Additional categorical exclusions

Notwithstanding any other provision of law, each of the following shall be treated as a category of action categorically excluded from the requirements relating to environmental assessments and environmental impact statements under section 1501.4 of title 40, Code of Federal Regulations, or any successor regulation:

(A) The provision by the Secretary of any Federal financial assistance for a project described in section 4652 of this title, if the facility that is the subject of the project is on or adjacent to a site—

(i) that is owned or leased by the covered entity to which Federal financial assistance is provided for that project; and

(ii) on which, as of the date on which the Secretary provides that Federal financial

assistance, substantially similar construction, expansion, or modernization is being or has been carried out, such that the facility would not more than double existing developed acreage or on-site supporting infrastructure.

(B) The provision by the Secretary of Defense of any Federal financial assistance relating to—

(i) the creation, expansion, or modernization of one or more facilities described in the second sentence of section 4653(a)(1) of this title; or

(ii) carrying out section 4653(b) of this title, as in effect on October 2, 2024.

(C) Any activity undertaken by the Secretary relating to carrying out section 4656 of this title, as in effect on October 2, 2024.

(e) Incorporation of prior planning decisions

(1) Definition

In this subsection, the term "prior studies and decisions" means baseline data, planning documents, studies, analyses, decisions, and documentation that a Federal agency has completed for a project (or that have been completed under the laws and procedures of a State or Indian Tribe), including for determining the reasonable range of alternatives for that project.

(2) Reliance on prior studies and decisions

In completing an environmental review under NEPA for a covered activity, the Secretary may consider and, as appropriate, rely on or adopt prior studies and decisions, if the Secretary determines that—

(A) those prior studies and decisions meet the standards for an adequate statement, assessment, or determination under applicable procedures of the Department of Commerce implementing the requirements of NEPA;

(B) in the case of prior studies and decisions completed under the laws and procedures of a State or Indian Tribe, those laws and procedures are of equal or greater rigor than those of each applicable Federal law, including NEPA, implementing procedures of the Department of Commerce; or

(C) if applicable, the prior studies and decisions are informed by other analysis or documentation that would have been prepared if the prior studies and decisions were prepared by the Secretary under NEPA.

(f) Definitions

In this section:

(1) Covered activity

The term "covered activity" means any activity relating to the construction, expansion, or modernization of a facility, the investment in which is eligible for Federal financial assistance under section 4652 or 4656 of this title.

(2) NEPA

The term "NEPA" means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Pub. L. 116–283, div. H, title XCIX, §9909, as added Pub. L. 117–167, div. A, §103(d), Aug. 9, 2022, 136 Stat. 1389; amended Pub. L. 118–105, §2(2), Oct. 2, 2024, 138 Stat. 1588.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this division" and was translated as reading "this title", meaning title XCIX of div. H of Pub. L. 116–283, to reflect the probable intent of Congress.

The National Environmental Policy Act of 1969, referred to in subsec. (f)(2), is Pub. L. 91–190, Jan. 1,

1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2024—Subsecs. (c) to (f). Pub. L. 118–105 added subsecs. (c) to (f).

[1] *So in original. Probably should be followed by a period.*

CHAPTER 73—EXPORT ENHANCEMENT

SUBCHAPTER I—FAIR TRADE IN AUTO PARTS

SUBCHAPTER I—FAIR TRADE IN AUTO PARTS

§§4701 to 4704. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 4701 to 4704 were omitted pursuant to section 4704 which provided that the authorities under this subchapter expired on Dec. 31, 1998.

Section 4701, Pub. L. 100–418, title II, §2122, Aug. 23, 1988, 102 Stat. 1325, defined "Japanese markets".

Section 4702, Pub. L. 100–418, title II, §2123, Aug. 23, 1988, 102 Stat. 1326, established initiative on auto parts sales to Japan.

Section 4703, Pub. L. 100–418, title II, §2124, Aug. 23, 1988, 102 Stat. 1326, established Special Advisory Committee on auto parts sales in Japan.

Section 4704, Pub. L. 100–418, title II, §2125, Aug. 23, 1988, 102 Stat. 1327; Pub. L. 103–236, title V, §510(a), Apr. 30, 1994, 108 Stat. 465, provided that the authorities under this subchapter expire on Dec. 31, 1998.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–261, div. C, title XXXVIII, §3801, Oct. 17, 1998, 112 Stat. 2275, provided that title XXXVIII of div. C of Pub. L. 105–261, enacting former subchapter I–A of this chapter, could be cited as the "Fair Trade in Automotive Parts Act of 1998".

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–392, title IV, §401, Oct. 22, 1994, 108 Stat. 4099, provided that: "This title [amending section 4728 of this title] may be cited as the 'Environmental Export Promotion Act of 1994'."

SHORT TITLE

Pub. L. 100–418, title II, §2001, Aug. 23, 1988, 102 Stat. 1325, provided that: "This title [see Tables for classification] may be referred to as the 'Export Enhancement Act of 1988'."

Pub. L. 100–418, title II, §2121, Aug. 23, 1988, 102 Stat. 1325, provided that this subchapter could be referred to as the "Fair Trade in Auto Parts Act of 1988".

SUBCHAPTER I–A—FAIR TRADE IN AUTOMOTIVE PARTS

§§4705 to 4705c. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 4705 to 4705c were omitted pursuant to section 4705c which provided that the authority under this subchapter expired on Dec. 31, 2003.

Section 4705, Pub. L. 105–261, div. C, title XXXVIII, §3802, Oct. 17, 1998, 112 Stat. 2275, contained definitions.

Section 4705a, Pub. L. 105–261, div. C, title XXXVIII, §3803, Oct. 17, 1998, 112 Stat. 2276, related to re-establishment of initiative on automotive parts sales to Japan.

Section 4705b, Pub. L. 105–261, div. C, title XXXVIII, §3804, Oct. 17, 1998, 112 Stat. 2276, established Special Advisory Committee on automotive parts sales in Japanese and other Asian markets.

Section 4705c, Pub. L. 105–261, div. C, title XXXVIII, §3805, Oct. 17, 1998, 112 Stat. 2277, provided that the authority under this subchapter expire on Dec. 31, 2003.

SUBCHAPTER II—GENERAL PROVISIONS

§4711. Repealed. Pub. L. 107–228, div. A, title VI, §671(1), Sept. 30, 2002, 116 Stat. 1407

Section, Pub. L. 100–418, title II, §2202, Aug. 23, 1988, 102 Stat. 1327; Pub. L. 104–188, title I, §1954(b)(2), Aug. 20, 1996, 110 Stat. 1928, required the Secretary of State to report annually on the economic policy and trade practices of each country with which the United States has an economic or trade relationship.

§4712. Barter and countertrade

(a) Interagency group

(1) Establishment

The President shall establish an interagency group on countertrade, to be composed of representatives of such departments and agencies of the United States as the President considers appropriate. The Secretary of Commerce shall be the chairman of the interagency group.

(2) Functions

It shall be the function of the interagency group to—

(A) review and evaluate—

(i) United States policy on countertrade and offsets, in light of current trends in international countertrade and offsets and the impact of those trends on the United States economy;

(ii) the use of countertrade and offsets in United States exports and bilateral United States foreign economic assistance programs; and

(iii) the need for and the feasibility of negotiating with other countries, through the Organization for Economic Cooperation and Development and other appropriate international organizations, to reach agreements on the use of countertrade and offsets; and

(B) make recommendations to the President and the Congress on the basis of the review and evaluation referred to in subparagraph (A).

(3) Sharing of information

Other departments and agencies of the United States shall provide to the interagency group such information available to such departments and agencies as the interagency group may request, except that the requirements, including penalties for violation thereof, for preserving the confidentiality of such information which are applicable to the officials, employees, experts, or consultants of such departments and agencies shall apply in the same manner to each member of the interagency group and to any other person performing any function under this subsection.

(b) Office of Barter

(1) Establishment

There is established, within the International Trade Administration of the Department of Commerce, the Office of Barter (hereafter in this section referred to as the "Office").

(2) Director

There shall be at the head of the Office a Director, who shall be appointed by the Secretary of Commerce.

(3) Staff

The Secretary of Commerce shall transfer such staff to the Office as the Secretary determines is necessary to enable the Office to carry out its functions under this section.

(4) Functions

It shall be the function of the Office to—

(A) monitor information relating to trends in international barter;

(B) organize and disseminate information relating to international barter in a manner useful to business firms, educational institutions, export-related Federal, State, and local government agencies, and other interested persons, including publishing periodic lists of known commercial opportunities for barter transactions beneficial to United States enterprises;

(C) notify Federal agencies with operations abroad of instances where it would be beneficial to the United States for the Federal Government to barter Government-owned surplus commodities for goods and services purchased abroad by the Federal Government; and

(D) provide assistance to enterprises seeking barter and countertrade opportunities.

(Pub. L. 100–418, title II, §2205, Aug. 23, 1988, 102 Stat. 1332.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

COMPOSITION OF INTERAGENCY GROUP

For composition of Interagency Group on Countertrade, see section 2–101 of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.

SUBCHAPTER III—EXPORT PROMOTION

§4721. United States and Foreign Commercial Service

(a) Establishment

(1) In general

The Secretary of Commerce shall establish, within the International Trade Administration, the United States and Foreign Commercial Service. The Secretary shall, to the greatest extent practicable, transfer to the Commercial Service the functions and personnel of the United States and Foreign Commercial Services.

(2) Assistant Secretary of Commerce and Director General; other personnel

The head of the Commercial Service shall be the Assistant Secretary of Commerce and Director General of the Commercial Service, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary of Commerce and Director General of the Commercial Service may appoint Commercial Service Officers and such other personnel as may be necessary to carry out the activities of the Commercial Service.

(3) Coordination with foreign policy objectives

The Secretary shall take the necessary steps to ensure that the activities of the Commercial Service are carried out in a manner consistent with United States foreign policy objectives, and the Secretary shall consult regularly with the Secretary of State in order to comply with this paragraph.

(4) Authority of chief of mission

All activities of the Commercial Service shall be subject to section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(b) Statement of purpose

The Commercial Service shall place primary emphasis on the promotion of exports of goods and services from the United States, particularly by small businesses and medium-sized businesses, and on the protection of United States business interests abroad by carrying out activities such as—

(1) identifying United States businesses with the potential to export goods and services and providing such businesses with advice and information on establishing export businesses;

(2) providing United States exporters with information on economic conditions, market opportunities, the status of the intellectual property system in such country, and the legal and regulatory environment within foreign countries;

(3) providing United States exporters with information and advice on the necessary adaptation of product design and marketing strategy to meet the differing cultural and technical requirements of foreign countries;

(4) providing United States exporters with actual leads and an introduction to contacts within foreign countries;

(5) assisting United States exporters in locating reliable sources of business services in foreign countries;

(6) assisting United States exporters in their dealings with foreign governments and enterprises owned by foreign governments;

(7) assisting the coordination of the efforts of State and local agencies and private organizations which seek to promote United States business interests abroad so as to maximize their effectiveness and minimize the duplication of efforts;

(8) utilizing district and foreign offices as one-stop shops for United States exporters by providing exporters with information on all export promotion and export finance activities of the Federal Government, assisting exporters in identifying which Federal programs may be of greatest assistance, and assisting exporters in making contact with the Federal programs identified; and

(9) providing United States exporters and export finance institutions with information on all financing and insurance programs of the Export-Import Bank of the United States, the United States International Development Finance Corporation, the Trade and Development Program, and the Small Business Administration, including providing assistance in completing applications for such programs and working with exporters and export finance institutions to address any deficiencies in such applications that have been submitted.

(c) Offices

(1) In general

The Commercial Service shall conduct its activities at a headquarters office, district offices located in major United States cities, and foreign offices located in major foreign cities.

(2) Headquarters

The headquarters of the Commercial Service shall provide such managerial, administrative, research, and other services as the Secretary considers necessary to carry out the purposes of the Commercial Service.

(3) District offices

The Secretary shall establish district offices of the Commercial Service in any United States city in a region in which the Secretary determines that there is a need for Federal Government export assistance.

(4) Foreign offices

(A) The Secretary may, after consultation with the Secretary of State, establish foreign offices of the Commercial Service. These offices shall be located in foreign cities in regions in which the Secretary determines there are significant business opportunities for United States exporters.

(B) The Secretary may, in consultation with the Secretary of State, assign to the foreign offices Commercial Service Officers and such other personnel as the Secretary considers necessary. In employing Commercial Service Officers and such other personnel, the Secretary shall use the Foreign Service personnel system in accordance with the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.]. The Secretary shall designate a Commercial Officer [1] as head of each foreign office.

(C) Upon the request of the Secretary, the Secretary of State shall attach the Commercial Service Officers and other employees of each foreign office to the diplomatic mission of the United States in the country in which that foreign office is located, and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by Foreign Service personnel of comparable rank and salary.

(D) For purposes of official representation, the senior Commercial Service Officer in each country shall be considered to be the senior commercial representative of the United States in that country, and the United States chief of mission in that country shall accord that officer all privileges and responsibilities appropriate to the position of senior commercial representative of other countries.

(E) The Secretary of State is authorized, upon the request of the Secretary, to provide office space, equipment, facilities, and such other administrative and clerical services as may be required for the operation of the foreign offices. The Secretary is authorized to reimburse or advance funds to the Secretary of State for such services.

(F) The authority of the Secretary under this paragraph shall be subject to section 4802 of title 22.

(d) Rank of Commercial Service Officers in foreign missions

(1) Minister-Counselor

Notwithstanding any other provision of law, the Secretary is authorized to designate up to 16 United States missions abroad at which the senior Commercial Service Officer will be able to use the diplomatic title of Minister-Counselor. The Secretary of State shall accord the diplomatic title of Minister-Counselor to the senior Commercial Service Officer assigned to a United States mission so designated.

(2) Consul General

In any United States consulate in which a vacancy occurs in the position of Consul General, the Secretary of State, in consultation with the Secretary, shall consider filling that vacancy with a Commercial Service Officer if the primary functions of the consulate are of a commercial nature and if there are significant business opportunities for United States exporters in the region in which the consulate is located.

(e) Information dissemination

In order to carry out subsection (b)(7), to lessen the cost of distribution of information produced by the Commercial Service, and to make that information more readily available, the Secretary should establish a system for distributing that information in those areas where no district offices of the Commercial Service are located. Distributors of the information should be State export promotion agencies or private export and trade promotion associations. The distribution system should be consistent with cost recovery objectives of the Department of Commerce.

(f) Cooperation in Federal financing and insurance programs

To assist the Commercial Service in carrying out subsection (b)(9), and consistent with the provisions of section 635i–7 of title 12, the Export-Import Bank of the United States, the United States International Development Finance Corporation, the Trade and Development Program, and the Small Business Administration shall each—

(1) provide to the Commercial Service complete and current information on all of its programs and financing practices; and

(2) undertake a training program regarding such programs and practices for Commercial Service Officers who are designated by the Assistant Secretary of Commerce and Director General of the Commercial Service.

(g) Audits

The Inspector General of the Department of Commerce shall perform periodic audits of the operations of the Commercial Service, but at least once every 3 years. The Inspector General shall report to the Congress the results of each such audit. In addition to an overview of the activities and effectiveness of Commercial Service operations, the audit shall include—

(1) an evaluation of the current placement of domestic personnel and recommendations for transferring personnel among district offices;

(2) an evaluation of the current placement of foreign-based personnel and recommendations for transferring such personnel in response to newly emerging business opportunities for United States exporters; and

(3) an evaluation of the personnel system and its management, including the recruitment, assignment, promotion, and performance appraisal of personnel, the use of limited appointees, and the "time-in-class" system.

(h) Report by Secretary

Not later than 1 year after August 23, 1988, the Secretary shall submit a report to the Congress on the feasibility and desirability, the progress to date, the present status, and the 5-year outlook, of the comprehensive integration of the functions and personnel of the foreign and domestic export promotion operations within the International Trade Administration of the Department of Commerce.

(i) Omitted

(j) Definitions

For purposes of this section—

(1) the term "Secretary" means the Secretary of Commerce;

(2) the term "Commercial Service" means the United States and Foreign Commercial Service;

(3) the term "United States exporter" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State; or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(4) the term "small business" means any small business concern as defined under section 632 of this title;

(5) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(6) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Pub. L. 100–418, title II, §2301, Aug. 23, 1988, 102 Stat. 1338; Pub. L. 102–429, title II, §§202, 203, 205, Oct. 21, 1992, 106 Stat. 2201, 2204; Pub. L. 115–254, div. F, title VI, §1470(d), Oct. 5, 2018, 132 Stat. 3516.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (c)(4)(B), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, which is classified principally to chapter 52 (§3901 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

Section is comprised of section 2301 of Pub. L. 100–418. Subsec. (i) of section 2301 of Pub. L. 100–418 amended section 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

2018—Subsec. (b)(9). Pub. L. 115–254 substituted "United States International Development Finance Corporation" for "Overseas Private Investment Corporation".

Subsec. (f). Pub. L. 115–254 substituted "United States International Development Finance Corporation" for "Overseas Private Investment Corporation" in introductory provisions.

1992—Subsec. (b)(8), (9). Pub. L. 102–429, §§202, 203(a), added pars. (8) and (9).

Subsec. (d)(1). Pub. L. 102–429, §205, substituted "16" for "8".

Subsecs. (f) to (j). Pub. L. 102–429, §203(b), added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–254 effective at the end of the transition period, as defined in section 9681 of Title 22, Foreign Relations and Intercourse, see section 1470(w) of Pub. L. 115–254, set out as a note under section 905 of Title 2, The Congress.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (g) of this section relating to reporting results of audits to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section

1113 of Title 31, Money and Finance, and page 53 of House Document No. 103–7.

[1] *So in original. Probably should be "Commercial Service Officer".*

§4721a. State trade coordination

(a) Omitted

(b) Federal and State export promotion coordination plan

(1) In general

The Secretary of Commerce, acting through the Trade Promotion Coordinating Committee and in coordination with representatives of State trade promotion agencies, shall develop a comprehensive plan to integrate the resources and strategies of State trade promotion agencies into the overall Federal trade promotion program.

(2) Matters to be included

The plan required under paragraph (1) shall include the following:

(A) A description of the role of State trade promotion agencies in assisting exporters.

(B) An outline of the role of State trade promotion agencies and how it is different from Federal agencies located within or providing services within the State.

(C) A plan on how to utilize State trade promotion agencies in the Federal trade promotion program.

(D) An explanation of how Federal and State agencies will share information and resources.

(E) A description of how Federal and State agencies will coordinate education and trade events in the United States and abroad.

(F) A description of the efforts to increase efficiency and reduce duplication.

(G) A clear identification of where businesses can receive appropriate international trade information under the plan.

(3) Deadline

The plan required under paragraph (1) shall be finalized and submitted to Congress not later than 12 months after February 24, 2016.

(c) Annual Federal-State export strategy

(1) In general

The Secretary of Commerce, acting through the head of the United States Foreign and Commercial Service,[1] shall develop an annual Federal-State export strategy for each State that submits to the Secretary of Commerce its export strategy for the upcoming calendar year. In developing an annual Federal-State export strategy under this paragraph, the Secretary of Commerce shall take into account the Federal and State export promotion coordination plan developed under subsection (b).

(2) Matters to be included

The Federal-State export strategy required under paragraph (1) shall include the following:

(A) The State's export strategy and economic goals.

(B) The State's key sectors and industries of focus.

(C) Possible foreign and domestic trade events.

(D) Efforts to increase efficiencies and reduce duplication.

(3) Report

The Federal-State export strategy required under paragraph (1) shall be submitted to the Trade Promotion Coordinating Committee not later than February 1, 2017, and February 1 of each year thereafter.

(d) Coordinated metrics and information sharing

(1) In general

The Secretary of Commerce, in coordination with representatives of State trade promotion agencies, shall develop a framework to share export success information, and develop a coordinated set of reporting metrics.

(2) Report to Congress

Not later than one year after February 24, 2016, the Secretary of Commerce shall submit to Congress a report that contains the framework and reporting metrics required under paragraph (1).

(e) Omitted

(Pub. L. 114–125, title V, §505, Feb. 24, 2016, 130 Stat. 179.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Small Business Trade Enhancement Act of 2015 or the State Trade Coordination Act, and also as part of the Trade Facilitation and Trade Enforcement Act of 2015, and not as part of the Export Enhancement Act of 1988 which enacted this chapter.

Section is comprised of section 505 of Pub. L. 114–125. Subsecs. (a) and (e) of section 505 of Pub. L. 114–125 amended section 4727 of this title.

[1] So in original. Probably should be "United States and Foreign Commercial Service,".

§4722. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 100–418, title II, §2302, Aug. 23, 1988, 102 Stat. 1341, which related to Commercial Service Officers and multilateral development bank procurement, was renumbered §1803 of title XVIII of Pub. L. 95–118, by Pub. L. 101–240, title V, §541(b)(2), Dec. 19, 1989, 103 Stat. 2517, and was transferred to section 262s–2 of Title 22, Foreign Relations and Intercourse.

§4723. Market Development Cooperator Program

(a) Authority of Secretary of Commerce

In order to promote further the exportation of goods and services from the United States, the Secretary of Commerce is authorized to establish, in the International Trade Administration of the Department of Commerce, a Market Development Cooperator Program. The purpose of the program is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.

(b) Implementation of Program

The Secretary of Commerce shall carry out the Market Development Cooperator Program by entering into contracts with—

(1) nonprofit industry organizations,

(2) trade associations,

(3) State departments of trade and their regional associations, including centers for international trade development, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1),