

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

APPLICATIONS APPROVED PRIOR TO AUG. 18, 1964

Section 3(b)(1) of Pub. L. 88-443, providing that applications approved, and allotments appropriated prior to Aug. 18, 1964, shall be governed by this subchapter as in effect prior to such date, is set out as an Effective Date note under section 291 of this title.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Section 3(b)(5) of Pub. L. 88-443 provided that no application with respect to a modernization project may be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note set out under section 291 of this title.

§ 291f. Payments for construction or modernization

(a) Certification of work by Surgeon General; conditions affecting payments

Upon certification to the Surgeon General by the State agency, based upon inspection by it, that work has been performed upon a project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, or if the State so requests, the payment shall be made directly to the applicant, (2) if the Surgeon General, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to section 291g of this title, payment may, after he has given the State agency notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (3) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

(b) Additional payments in cases of amended applications

In case an amendment to an approved application is approved as provided in section 291e of this title or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

(c) Administration expenses; use of portion of allotments to defray; manner of payment

(1) At the request of any State, a portion of any allotment or allotments of such State under this part shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Sur-

geon General for the proper and efficient administration during such year of the State plan approved under this part; except that not more than 4 per centum of the total of the allotments of such State for a year, or \$100,000, whichever is less, shall be available for such purpose for such year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Surgeon General may determine.

(2) Any amount paid under paragraph (1) of this subsection to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under this part not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1970.

(July 1, 1944, ch. 373, title VI, § 606, as added Pub. L. 88-443, § 3(a), Aug. 18, 1964, 78 Stat. 454; amended Pub. L. 91-296, title I, § 112, June 30, 1970, 84 Stat. 340.)

PRIOR PROVISIONS

A prior section 291f, act July 1, 1944, ch. 373, title VI, § 623, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 554, 62 Stat. 536; Oct. 25, 1949, ch. 722, § 3(a), 63 Stat. 899, related to State plans, their submission, and their requirements, prior to the general amendment of this subchapter by Pub. L. 88-443. See section 291d of this title.

Provisions similar to those comprising subsec. (a) of this section were contained in former section 291h(b), acts July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 3(b), 63 Stat. 899, prior to the general amendment of this subchapter by Pub. L. 88-443.

AMENDMENTS

1970—Subsec. (c)(1). Pub. L. 91-296, § 112(1), substituted “4 per centum” for “2 per centum” and “\$100,000 for \$50,000”.

Subsec. (c)(2). Pub. L. 91-296, § 112(2), substituted “June 30, 1970” for “June 30, 1964”.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 112 of Pub. L. 91-296 provided that the amendment made by that section is effective with respect to expenditures under a State plan approved under this subchapter which are made for administration of such plan during any fiscal year beginning after June 30, 1970.

TRANSFER OF FUNCTIONS

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§ 291g. Withholding of payments; noncompliance with requirements

Whenever the Surgeon General, after reasonable notice and opportunity for hearing to the State agency designated as provided in section 291d(a)(1) of this title, finds—

(a) that the State agency is not complying substantially with the provisions required by section 291d of this title to be included in its State plan; or

(b) that any assurance required to be given in an application filed under section 291e of this title is not being or cannot be carried out; or

(c) that there is a substantial failure to carry out plans and specifications approved by the Surgeon General under section 291e of this title; or

(d) that adequate State funds are not being provided annually for the direct administration of the State plan,

the Surgeon General may forthwith notify the State agency that—

(e) no further payments will be made to the State under this part, or

(f) no further payments will be made from the allotments of such State from appropriations under any one or more subparagraphs or paragraphs of section 291a of this title, or for any project or projects, designated by the Surgeon General as being affected by the action or inaction referred to in paragraph (a), (b), (c), or (d) of this section,

as the Surgeon General may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments may be withheld, in whole or in part, until there is no longer any failure to comply (or carry out the assurance or plans and specifications or provide adequate State funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

(July 1, 1944, ch. 373, title VI, § 607, as added Pub. L. 88-443, § 3(a), Aug. 18, 1964, 78 Stat. 455.)

PRIOR PROVISIONS

A prior section 291g, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 29, 1948, ch. 728, § 1, 62 Stat. 1103; Oct. 25, 1949, ch. 722, §§ 3(b), 7, 63 Stat. 899, 901; Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Sept. 25, 1962, Pub. L. 87-688, § 4(a)(3), 76 Stat. 587, authorized allotments to States for construction, specified their amount, and provided for availability for unexpended funds, prior to the general amendment of this subchapter by Pub. L. 88-443. See section 291b of this title.

Provisions similar to those comprising this section were contained in former section 291j(a), acts July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 4, 63 Stat. 900; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466, prior to the general amendment of this subchapter by Pub. L. 88-443.

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§ 291h. Judicial review

(a) Refusal to approve application; procedure; jurisdiction of court of appeals

If the Surgeon General refuses to approve any application for a project submitted under sec-

tion 291e of this title or section 291j of this title, the State agency through which such application was submitted, or if any State is dissatisfied with his action under section 291g of this title such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Surgeon General or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Surgeon General may modify or set aside his order.

(b) Conclusiveness of Surgeon General's findings; remand; new or modified findings

The findings of the Surgeon General as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Review by Supreme Court; stay of Surgeon General's action

The judgment of the court affirming or setting aside, in whole or in part, any action of the Surgeon General 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. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Surgeon General's action.

(July 1, 1944, ch. 373, title VI, § 608, as added Pub. L. 88-443, § 3(a), Aug. 18, 1964, 78 Stat. 456.)

PRIOR PROVISIONS

A prior section 291h, act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, §§ 3(b-d), 8, 63 Stat. 899, 901; July 12, 1954, ch. 471, § 4(b), 68 Stat. 464, related to projects for construction, the application required and its contents and approval by the Surgeon General, and provided for a hearing prior to disapproval of the application, prior to the general amendment of this subchapter by Pub. L. 88-443. See section 291e of this title.

Provisions similar to those comprising this section were contained in former section 291j(b), act July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 28, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85-791, § 27, 72 Stat. 950, prior to the general amendment of this subchapter by Pub. L. 88-443.

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