

of service, to the position held by the employee, or a corresponding or higher position, in his or her employing agency;

“(5) an employee performing interagency rotational service shall have all the rights that would be available to the employee if the employee were detailed or assigned under a provision of law other than this section from the agency employing the employee to the agency in which the position in which the employee is serving is located; and

“(6) an employee participating in the program shall receive performance evaluations from officials in his or her employing agency that are based on input from the supervisors of the employee during his or her service in the program that are based primarily on the contribution of the employee to the work of the agency in which the employee performed such service, and these performance evaluations shall be provided the same weight in the receipt of promotions and other rewards by the employee from the employing agency as performance evaluations for service in the employing agency.

“(e) SELECTION OF INDIVIDUALS TO FILL SENIOR POSITIONS.—The head of each agency participating in the program established pursuant to subsection (c) shall ensure that, in selecting individuals to fill senior positions within an Interagency Community of Interest, the agency gives a strong preference to individuals who have performed interagency rotational service within the Interagency Community of Interest pursuant to such program.

“(f) INTERAGENCY COMMUNITY OF INTEREST DEFINED.—As used in this section, the term ‘National Security Interagency Community of Interest’ or ‘Interagency Community of Interest’ means the positions in the executive branch of the Government that, as determined by the Committee on National Security Personnel—

“(1) as a group are positions within multiple agencies of the executive branch of the Government; and

“(2) have significant responsibility for the same substantive, functional, or regional subject area related to national security or homeland security that requires integration of the positions and activities in that area across multiple agencies to ensure that the executive branch of the Government operates as a single, cohesive enterprise to maximize mission success and minimize cost.

“(g) REPORT ON PERFORMANCE MEASURES.—Not later than the end of the 2nd fiscal year after the fiscal year in which this Act is enacted, the Committee on National Security Personnel shall assess the performance measures described in subsection (c)(2)(E)(iv) and issue a report to Congress on the assessment of those performance measures.

“(h) GAO REVIEW.—Not later than the end of the 2nd fiscal year after the fiscal year in which this Act is enacted, the Comptroller General of the United States shall submit to Congress a report assessing the implementation and effectiveness of the interagency rotation program established pursuant to this section. The report required by this section shall address, at a minimum—

“(1) the extent to which the requirements of this section have been implemented by the Committee on National Security Personnel and by national security agencies;

“(2) the extent to which national security agencies have participated in the program established pursuant to this section, including whether the heads of such agencies have—

“(A) identified positions within the agencies that are National Security Interagency Communities of Interest and had employees from other agencies serve in rotational assignments in such positions; and

“(B) identified employees who are eligible for rotational assignments in National Security Interagency Communities of Interest and had such employees serve in rotational assignments in other agencies;

“(3) the extent to which employees serving in rotational assignments under the program established pursuant to this section have benefited from such assignments, including an assessment of—

“(A) the period of service;

“(B) the duties performed by the employees during such service;

“(C) the value of the training and experience gained by participating employees through such service; and

“(D) the positions (including grade level) held by employees before and after completing interagency rotational service under this section; and

“(4) the extent to which interagency rotational service under this section has improved or is expected to improve interagency integration and coordination within National Security Interagency Communities of Interest.

“(i) EXCLUSION.—This section shall not apply to any element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 90-83; LEGISLATIVE PURPOSE; INCONSISTENT PROVISIONS; CORRESPONDING PROVISIONS; SAVINGS AND SEPARABILITY OF PROVISIONS

Pub. L. 90-83, §9(a)-(g), Sept. 11, 1967, 81 Stat. 222, provided that:

“(a) The legislative purpose in enacting sections 1-8 of this Act is to restate, without substantive change, the laws replaced by those sections on the effective date of this Act. Laws effective after February 21, 1967, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.

“(b) A reference to a law replaced by sections 1-8 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

“(c) An order, rule, or regulation in effect under a law replaced by sections 1-8 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

“(d) An action taken or an offense committed under a law replaced by sections 1-8 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

“(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

“(f) The enactment of this Act does not increase or decrease the pay, allowances, compensation, or annuity of any person.

“(g) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.”

**PART I—THE AGENCIES
GENERALLY**

| Chap. | | Sec. |
|-----------------------|--|-------------|
| 1. | Organization | 101 |
| 3. | Powers | 301 |
| 5. | Administrative Procedure | 1501 |
| 6.² | The Analysis of Regulatory Functions | 601 |
| 7. | Judicial Review | 701 |
| 8. | Congressional Review of Agency Rulemaking | 801 |

¹Pub. L. 90-83 added section 500 to chapter 5 without making a corresponding change in Part analysis.

²Editorially supplied. Chapter 6 added by Pub. L. 96-354 without a corresponding amendment of Part analysis.

9. Executive Reorganization 901

AMENDMENTS

1996—Pub. L. 104-121, title II, §253, Mar. 29, 1996, 110 Stat. 874, added item for chapter 8.

CHAPTER 1—ORGANIZATION

- Sec. 101. Executive departments.
- 102. Military departments.
- 103. Government corporation.
- 104. Independent establishment.
- 105. Executive agency.

§ 101. Executive departments

The Executive departments are:

- The Department of State.
- The Department of the Treasury.
- The Department of Defense.
- The Department of Justice.
- The Department of the Interior.
- The Department of Agriculture.
- The Department of Commerce.
- The Department of Labor.
- The Department of Health and Human Services.
- The Department of Housing and Urban Development.
- The Department of Transportation.
- The Department of Energy.
- The Department of Education.
- The Department of Veterans Affairs.
- The Department of Homeland Security.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378; Pub. L. 89-670, §10(b), Oct. 15, 1966, 80 Stat. 948; Pub. L. 91-375, §6(c)(1), Aug. 12, 1970, 84 Stat. 775; Pub. L. 95-91, title VII, §710(a), Aug. 4, 1977, 91 Stat. 609; Pub. L. 96-88, title V, §508(b), Oct. 17, 1979, 93 Stat. 692; Pub. L. 100-527, §13(b), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 109-241, title IX, §902(a)(1), July 11, 2006, 120 Stat. 566.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1. | R.S. §158. Feb. 9, 1889, ch. 122, §1 (38th through 54th words), 25 Stat. 659. Feb. 14, 1903, ch. 552, §1 (83d through 99th words), 32 Stat. 825. Mar. 4, 1913, ch. 141, §1 (75th through 91st words), 37 Stat. 736. Aug. 10, 1949, ch. 412, §4 "Sec. 201(c)", 63 Stat. 579. July 31, 1956, ch. 802, §1(a), 70 Stat. 732. |
| ..... | 5 U.S.C. 2. | R.S. §159. |

The reference in former section 1 to the application of the provisions of this title, referring to title IV of the Revised Statutes, is omitted as unnecessary as the application of those provisions is stated in the text.

The statement in former section 2 that the use of the word "department" means one of the Executive departments named in former section 1 is omitted as unnecessary as the words "Executive department" are used in this title when Executive department is meant.

"The Department of Commerce" is substituted for "The Department of Commerce and Labor" on authority of the act of March 4, 1913, ch. 141, §1, 37 Stat. 736.

AMENDMENTS

2006—Pub. L. 109-241 inserted "The Department of Homeland Security."

1988—Pub. L. 100-527 inserted "The Department of Veterans Affairs."

1979—Pub. L. 96-88 substituted "Department of Health and Human Services" for "Department of Health, Education, and Welfare" and inserted "The Department of Education."

1977—Pub. L. 95-91 inserted "The Department of Energy."

1970—Pub. L. 91-375 struck out "The Post Office Department."

1966—Pub. L. 89-670 inserted "The Department of Housing and Urban Development." and "The Department of Transportation."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100-527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of Title 20, Education.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89-670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112-230, §1, Dec. 28, 2012, 126 Stat. 1616, provided that: "This Act [enacting section 7326 of this title, amending sections 1501, 1502, 1506, 7322, and 7325 of this title, repealing former section 7326 of this title, and enacting provisions set out as notes under sections 1501 and 7326 of this title] may be cited as the 'Hatch Act Modernization Act of 2012'."

Pub. L. 112-199, §1, Nov. 27, 2012, 126 Stat. 1465, provided that: "This Act [enacting section 2304 of this title, amending sections 1204, 1212, 1214, 1215, 1221, 2302, and 7703 of this title, sections 3 and 8D of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to this title, and section 133 of Title 6, Domestic Security, renumbering sections 2304 and 2305 of this title as sections 2305 and 2306, respectively, of this title and enacting provisions set out as notes under sections 1204, 2302, and 2304 of this title, section 3 of the Inspector General Act of 1978, and section 1116 of Title 31, Money and Finance] may be cited as the 'Whistleblower Protection Enhancement Act of 2012'."

Pub. L. 112-166, §1, Aug. 10, 2012, 126 Stat. 1283, provided that: "This Act [see Tables for classification] may be cited as the 'Presidential Appointment Efficiency and Streamlining Act of 2011'."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111-292, §1, Dec. 9, 2010, 124 Stat. 3165, provided that: "This Act [enacting chapter 65 and section 5711 of this title and provisions set out as a note under section 6501 of this title and amending provisions set out as a note and provisions listed in a table under section 6120 of this title] may be cited as the 'Telework Enhancement Act of 2010'."

Pub. L. 111-282, §1(a), Oct. 15, 2010, 124 Stat. 3033, provided that: "This Act [enacting chapter 102 of this title, amending sections 5102, 5541, 6304, and 6324 of this title,

enacting provisions set out as notes under sections 5102 and 10201 of this title, and amending provisions set out as notes under section 3056A of Title 18, Crimes and Criminal Procedure) may be cited as the ‘United States Secret Service Uniformed Division Modernization Act of 2010’.”

Pub. L. 111-178, §1, June 9, 2010, 124 Stat. 1262, provided that: “This Act [enacting section 5724d of this title and provisions set out as a note under section 5724d of this title] may be cited as the ‘Special Agent Samuel Hicks Families of Fallen Heroes Act’.”

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111-83, title V, §564(a), Oct. 28, 2009, 123 Stat. 2184, provided that: “This section [amending section 552 of this title] may be cited as the ‘OPEN FOIA Act of 2009’.”

Pub. L. 111-31, div. B, §100(a), June 22, 2009, 123 Stat. 1852, provided that: “This division [enacting sections 8432d and 8480 of this title, amending sections 8432, 8433, 8437 to 8439, and 8477 of this title and section 1450 of Title 10, Armed Forces, and enacting provisions set out as notes under this section and section 8439 of this title] may be cited as the ‘Federal Retirement Reform Act of 2009’.”

Pub. L. 111-31, div. B, title I, §101, June 22, 2009, 123 Stat. 1853, provided that: “This title [enacting sections 8432d and 8480 of this title, amending sections 8432, 8433, 8437 to 8439, and 8477 of this title, and enacting provisions set out as a note under section 8439 of this title] may be cited as the ‘Thrift Savings Plan Enhancement Act of 2009’.”

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-372, §1, Oct. 8, 2008, 122 Stat. 4043, provided that: “This Act [amending sections 3104, 3324, 3325, 5108, 5304, 5307 and 5376 of this title and enacting provisions set out as notes under sections 5307 and 5376 of this title] may be cited as the ‘Senior Professional Performance Act of 2008’.”

Pub. L. 110-290, §1, July 30, 2008, 122 Stat. 2914, provided that: “This Act [amending section 596 of this title] may be cited as the ‘Regulatory Improvement Act of 2007’.”

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110-175, §1, Dec. 31, 2007, 121 Stat. 2524, provided that: “This Act [amending section 552 of this title and enacting provisions set out as notes under section 552 of this title] may be cited as the ‘Openness Promotes Effectiveness in our National Government Act of 2007’ or the ‘OPEN Government Act of 2007’.”

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-435, title VIII, §801, Dec. 20, 2006, 120 Stat. 3249, provided that: “This title [enacting section 8909a of this title, amending sections 8334, 8348, and 8906 of this title, enacting provisions set out as notes under sections 8334, 8348, and 8909a of this title, and repealing provisions set out as a note preceding section 2001 of Title 39, Postal Service] may be cited as the ‘Postal Civil Service Retirement and Health Benefits Funding Amendments of 2006’.”

Pub. L. 109-356, §1(a), Oct. 16, 2006, 120 Stat. 2019, provided that: “This Act [amending sections 5102, 8951, 8981, and 9001 of this title, sections 202, 214, 215b, 216, 216a, 221, 321, and 1813 of Title 12, Banks and Banking, and section 57a of Title 15, Commerce and Trade] may be cited as the ‘2005 District of Columbia Omnibus Authorization Act’.”

SHORT TITLE OF 2004 AMENDMENTS

Pub. L. 108-496, §1, Dec. 23, 2004, 118 Stat. 4001, provided that: “This Act [enacting chapters 89A and 89B of this title, amending section 1005 of Title 39, Postal Service, and enacting provisions set out as a note under section 8951 of this title] may be cited as the ‘Federal Employee Dental and Vision Benefits Enhancement Act of 2004’.”

Pub. L. 108-469, §1(a), Dec. 21, 2004, 118 Stat. 3891, provided that: “This Act [amending sections 8351, 8432, 8433, 8439, and 8440a to 8440e of this title and enacting provisions set out as a note under section 8350 of this title] may be cited as the ‘Thrift Savings Plan Open Elections Act of 2004’.”

Pub. L. 108-411, §1(a), Oct. 30, 2004, 118 Stat. 2305, provided that: “This Act [enacting sections 4121, 5550b, 5753, and 5754 of this title, amending sections 4103, 4505a, 5302, 5304, 5305, 5314, 5334, 5361, 5363, 5365, 5377, and 6303 of this title, repealing former sections 5753 and 5754 of this title, enacting provisions set out as notes under sections 5304, 5363, 5550b, 5753, and 6303 of this title, and amending provisions set out as a note under section 5305 of this title] may be cited as the ‘Federal Workforce Flexibility Act of 2004’.”

Pub. L. 108-401, §1, Oct. 30, 2004, 118 Stat. 2255, provided that: “This Act [amending sections 591, 594, and 596 of this title] may be cited as the ‘Federal Regulatory Improvement Act of 2004’.”

Pub. L. 108-201, §1, Feb. 24, 2004, 118 Stat. 461, provided that: “This Act [enacting chapter 98 of this title, amending section 2473 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 2473 of Title 42] may be cited as the ‘NASA Flexibility Act of 2004’.”

SHORT TITLE OF 2003 AMENDMENTS

Pub. L. 108-196, §1, Dec. 19, 2003, 117 Stat. 2896, provided that: “This Act [enacting provisions set out as a note under section 3371 of this title] may be cited as the ‘Federal Law Enforcement Pay and Benefits Parity Act of 2003’.”

Pub. L. 108-123, §1, Nov. 11, 2003, 117 Stat. 1345, provided that: “This Act [amending section 5379 of this title] may be cited as the ‘Federal Employee Student Loan Assistance Act’.”

Pub. L. 108-44, §1, July 3, 2003, 117 Stat. 842, provided that: “This Act [enacting section 3114 of this title] may be cited as the ‘Accountant, Compliance, and Enforcement Staffing Act of 2003’.”

Pub. L. 108-18, §1, Apr. 23, 2003, 117 Stat. 624, provided that: “This Act [amending sections 8331, 8334, and 8348 of this title, enacting provisions set out as notes under sections 8334 and 8348 of this title and preceding section 2001 of Title 39, Postal Service, and repealing provisions set out as a note under section 8348 of this title] may be cited as the ‘Postal Civil Service Retirement System Funding Reform Act of 2003’.”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-296, title XIII, §1301, Nov. 25, 2002, 116 Stat. 2287, provided that: “This title [enacting chapter 14 of this title, subchapter II of chapter 35 of this title, and section 3319 of this title, amending sections 1103, 3111, 3304, 3393, 3592 to 3594, 4107, 5307, 7701, 7905, 8336, 8339, 8414, and 8421 of this title, sections 1115 and 1116 of Title 31, Money and Finance, and section 1902 of Title 50, War and National Defense, repealing section 3393a of this title, enacting provisions set out as notes under sections 1103, 1401, 3301, 3521, 3592, 3593, and 8336 of this title, and repealing provisions set out as notes under sections 8336 and 8414 of this title] may be cited as the ‘Chief Human Capital Officers Act of 2002’.”

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107-27, §1, Aug. 20, 2001, 115 Stat. 207, provided that: “This Act [amending sections 8335 and 8425 of this title] may be cited as the ‘Federal Firefighters Retirement Age Fairness Act’.”

PROHIBITION AGAINST CONSTRUCTION THAT WOULD RENDER APPLICABLE TO THE DEPARTMENT OF TRANSPORTATION PROVISIONS OF LAW INCONSISTENT WITH PUB. L. 89-670 CREATING THE DEPARTMENT OF TRANSPORTATION

Pub. L. 89-670, §10(c), Oct. 15, 1966, 80 Stat. 948, which provided that the amendment made to this section by section 10(b) of Pub. L. 89-670 was not to be construed

to make applicable to the Department any provision of law inconsistent with Pub. L. 89-670, was repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400.

§ 102. Military departments

The military departments are:
The Department of the Army.
The Department of the Navy.
The Department of the Air Force.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining “military departments” each time it is used in this title. See section 101(7) of title 10.

§ 103. Government corporation

For the purpose of this title—
(1) “Government corporation” means a corporation owned or controlled by the Government of the United States; and
(2) “Government controlled corporation” does not include a corporation owned by the Government of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining “Government corporation” and “Government controlled corporation” each time it is used in this title.

§ 104. Independent establishment

For the purpose of this title, “independent establishment” means—

- (1) an establishment in the executive branch (other than the United States Postal Service or the Postal Regulatory Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and
- (2) the Government Accountability Office.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379; Pub. L. 91-375, §6(c)(2), Aug. 12, 1970, 84 Stat. 775; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining “independent establishment” each time it is used in this title.

Certain agencies are not independent establishments under the definition since they are constituent agencies or parts of an independent establishment. However, these agencies would continue to be subject to the provisions of this title applicable to the independent establishment of which they are a constituent or part. Also, the definition does not expand or abridge any rights or authority possessed by these agencies as no substantive changes are intended, see section 7(a) of the bill.

AMENDMENTS

2006—Par. (1). Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

2004—Par. (2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1970—Par. (1). Pub. L. 91-375 inserted “(other than the United States Postal Service or the Postal Rate Commission)” after “executive branch”.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 105. Executive agency

For the purpose of this title, “Executive agency” means an Executive department, a Government corporation, and an independent establishment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining “Executive agency” each time it is used in this title.

CHAPTER 3—POWERS

- Sec. 301. Departmental regulations.
- 302. Delegation of authority.
- 303. Oaths to witnesses.
- 304. Subpenas.
- 305. Systematic agency review of operations.
- 306. Agency strategic plans.

AMENDMENTS

2011—Pub. L. 111-352, §13(a), Jan. 4, 2011, 124 Stat. 3882, added item 306 and struck out former item 306 “Strategic plans”.

1993—Pub. L. 103-62, §11(a), Aug. 3, 1993, 107 Stat. 295, added item 306.

§ 301. Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 22. | R.S. §161. Aug. 12, 1958, Pub. L. 85-619, 72 Stat. 547. |

The words “Executive department” are substituted for “department” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101. The words “not inconsistent with law” are omitted as surplusage as a regulation which is inconsistent with law is invalid.

The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However,

the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which provided:

“All laws, orders, regulations, and other actions relating to the National Military Establishment, the Departments of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the provisions of this Act, have the same effect as if this Act had not been enacted; but, after the effective date of this Act, any such law, order, regulation, or other action which vested functions in or otherwise related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer, or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force.”

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense” is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PLAIN WRITING IN GOVERNMENT DOCUMENTS

Pub. L. 111-274, Oct. 13, 2010, 124 Stat. 2861, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Plain Writing Act of 2010’.

“SEC. 2. PURPOSE.

“The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.

“SEC. 3. DEFINITIONS.

“In this Act:

“(1) AGENCY.—The term ‘agency’ means an Executive agency, as defined under section 105 of title 5, United States Code.

“(2) COVERED DOCUMENT.—The term ‘covered document’—

“(A) means any document that—

“(i) is necessary for obtaining any Federal Government benefit or service or filing taxes;

“(ii) provides information about any Federal Government benefit or service; or

“(iii) explains to the public how to comply with a requirement the Federal Government administers or enforces;

“(B) includes (whether in paper or electronic form) a letter, publication, form, notice, or instruction; and

“(C) does not include a regulation.

“(3) PLAIN WRITING.—The term ‘plain writing’ means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.

“SEC. 4. RESPONSIBILITIES OF FEDERAL AGENCIES.

“(a) PREPARATION FOR IMPLEMENTATION OF PLAIN WRITING REQUIREMENTS.—

“(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act [Oct. 13, 2010], the head of each agency shall—

“(A) designate 1 or more senior officials within the agency to oversee the agency implementation of this Act;

“(B) communicate the requirements of this Act to the employees of the agency;

“(C) train employees of the agency in plain writing;

“(D) establish a process for overseeing the ongoing compliance of the agency with the requirements of this Act;

“(E) create and maintain a plain writing section of the agency’s website as required under paragraph (2) that is accessible from the homepage of the agency’s website; and

“(F) designate 1 or more agency points-of-contact to receive and respond to public input on—

“(i) agency implementation of this Act; and

“(ii) the agency reports required under section 5.

“(2) WEBSITE.—The plain writing section described under paragraph (1)(E) shall—

“(A) inform the public of agency compliance with the requirements of this Act; and

“(B) provide a mechanism for the agency to receive and respond to public input on—

“(i) agency implementation of this Act; and

“(ii) the agency reports required under section 5.

“(b) REQUIREMENT TO USE PLAIN WRITING IN NEW DOCUMENTS.—Beginning not later than 1 year after the date of enactment of this Act, each agency shall use plain writing in every covered document of the agency that the agency issues or substantially revises.

“(c) GUIDANCE.—

“(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director of the Office of Management and Budget shall develop and issue guidance on implementing the requirements of this section. The Director may designate a lead agency, and may use interagency working groups to assist in developing and issuing the guidance.

“(2) INTERIM GUIDANCE.—Before the issuance of guidance under paragraph (1), agencies may follow the guidance of—

“(A) the writing guidelines developed by the Plain Language Action and Information Network; or

“(B) guidance provided by the head of the agency that is consistent with the guidelines referred to in subparagraph (A).

“SEC. 5. REPORTS TO CONGRESS.

“(a) INITIAL REPORT.—Not later than 9 months after the date of enactment of this Act [Oct. 13, 2010], the head of each agency shall publish on the plain writing section of the agency’s website a report that describes the agency plan for compliance with the requirements of this Act.

“(b) ANNUAL COMPLIANCE REPORT.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the head of each agency shall publish on the plain writing section of the agency’s website a report on agency compliance with the requirements of this Act.

“SEC. 6. JUDICIAL REVIEW AND ENFORCEABILITY.

“(a) JUDICIAL REVIEW.—There shall be no judicial review of compliance or noncompliance with any provision of this Act.

“(b) ENFORCEABILITY.—No provision of this Act shall be construed to create any right or benefit, substantive or procedural, enforceable by any administrative or judicial action.

“SEC. 7. BUDGETARY EFFECTS OF PAYGO LEGISLATION FOR THIS ACT.

“The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010 [2 U.S.C. 931 et seq.], shall be determined by reference to the latest statement titled ‘Budgetary Effects of PAYGO Legislation’ for this Act, submitted for

printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.”

SUPPORT FOR YOUTH ORGANIZATIONS

Pub. L. 109–163, div. A, title X, §1058(a), (b), Jan. 6, 2006, 119 Stat. 3442, provided that:

“(a) YOUTH ORGANIZATION DEFINED.—In this section, the term ‘youth organization’ means—

- “(1) the Boy Scouts of America;
- “(2) the Girl Scouts of the United States of America;
- “(3) the Boys Clubs of America;
- “(4) the Girls Clubs of America;
- “(5) the Young Men’s Christian Association;
- “(6) the Young Women’s Christian Association;
- “(7) the Civil Air Patrol;
- “(8) the United States Olympic Committee;
- “(9) the Special Olympics;
- “(10) Campfire USA;
- “(11) the Young Marines;
- “(12) the Naval Sea Cadets Corps;
- “(13) 4-H Clubs;
- “(14) the Police Athletic League;
- “(15) Big Brothers—Big Sisters of America;
- “(16) National Guard Challenge Program; and
- “(17) any other organization designated by the President as an organization that is primarily intended to—

- “(A) serve individuals under the age of 21 years;
- “(B) provide training in citizenship, leadership, physical fitness, service to community, and teamwork; and
- “(C) promote the development of character and ethical and moral values.

“(b) SUPPORT FOR YOUTH ORGANIZATIONS.—

“(1) CONTINUATION OF SUPPORT.—No Federal law (including any rule, regulation, directive, instruction, or order) shall be construed to limit any Federal agency from providing any form of support for a youth organization (including the Boy Scouts of America or any group officially affiliated with the Boy Scouts of America) that would result in that Federal agency providing less support to that youth organization (or any similar organization chartered under the chapter of title 36, United States Code, relating to that youth organization) than was provided during the preceding fiscal year to that youth organization. This paragraph shall be subject to the availability of appropriations.

“(2) YOUTH ORGANIZATIONS THAT CEASE TO EXIST.—Paragraph (1) shall not apply to any youth organization that ceases to exist.

“(3) WAIVERS.—The head of a Federal agency may waive the application of paragraph (1) to a youth organization with respect to each conviction or investigation described under subparagraph (A) or (B) for a period of not more than two fiscal years if—

“(A) any senior officer (including any member of the board of directors) of the youth organization is convicted of a criminal offense relating to the official duties of that officer or the youth organization is convicted of a criminal offense; or

“(B) the youth organization is the subject of a criminal investigation relating to fraudulent use or waste of Federal funds.

“(4) TYPES OF SUPPORT.—Support described in paragraph (1) includes—

- “(A) authorizing a youth organization to hold meetings, camping events, or other activities on Federal property;
- “(B) hosting any official event of a youth organization;
- “(C) loaning equipment for the use of a youth organization; and
- “(D) providing personnel services and logistical support for a youth organization.”

Pub. L. 109–148, div. A, title VIII, §8126(b), Dec. 30, 2005, 119 Stat. 2728, which contained provisions substan-

tially similar to those in Pub. L. 109–163, §1058(a), (b), set out above, was repealed by Pub. L. 109–364, div. A, title X, §1071(f)(3), Oct. 17, 2006, 120 Stat. 2402.

MINIMUM STANDARDS FOR BIRTH CERTIFICATES

Pub. L. 108–458, title VII, §7211(a)–(d), Dec. 17, 2004, 118 Stat. 3825–3827, provided that:

“(a) DEFINITION.—In this section [enacting this note and repealing provisions set out as a note below], the term ‘birth certificate’ means a certificate of birth—

- “(1) for an individual (regardless of where born)—
 - “(A) who is a citizen or national of the United States at birth; and
 - “(B) whose birth is registered in the United States; and
- “(2) that—

“(A) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

“(B) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of record, of an original certificate of birth issued by such agency or custodian of record.

“(b) STANDARDS FOR ACCEPTANCE BY FEDERAL AGENCIES.—

“(1) IN GENERAL.—Beginning 2 years after the promulgation of minimum standards under paragraph (3), no Federal agency may accept a birth certificate for any official purpose unless the certificate conforms to such standards.

“(2) STATE CERTIFICATION.—

“(A) IN GENERAL.—Each State shall certify to the Secretary of Health and Human Services that the State is in compliance with the requirements of this section.

“(B) FREQUENCY.—Certifications under subparagraph (A) shall be made at such intervals and in such a manner as the Secretary of Health and Human Services, with the concurrence of the Secretary of Homeland Security and the Commissioner of Social Security, may prescribe by regulation.

“(C) COMPLIANCE.—Each State shall ensure that units of local government and other authorized custodians of records in the State comply with this section.

“(D) AUDITS.—The Secretary of Health and Human Services may conduct periodic audits of each State’s compliance with the requirements of this section.

“(3) MINIMUM STANDARDS.—Not later than 1 year after the date of enactment of this Act [Dec. 17, 2004], the Secretary of Health and Human Services shall by regulation establish minimum standards for birth certificates for use by Federal agencies for official purposes that—

“(A) at a minimum, shall require certification of the birth certificate by the State or local government custodian of record that issued the certificate, and shall require the use of safety paper or an alternative, equally secure medium, the seal of the issuing custodian of record, and other features designed to prevent tampering, counterfeiting, or otherwise duplicating the birth certificate for fraudulent purposes;

“(B) shall establish requirements for proof and verification of identity as a condition of issuance of a birth certificate, with additional security measures for the issuance of a birth certificate for a person who is not the applicant;

“(C) shall establish standards for the processing of birth certificate applications to prevent fraud;

“(D) may not require a single design to which birth certificates issued by all States must conform; and

“(E) shall accommodate the differences between the States in the manner and form in which birth records are stored and birth certificates are produced from such records.

“(4) CONSULTATION WITH GOVERNMENT AGENCIES.—In promulgating the standards required under paragraph (3), the Secretary of Health and Human Services shall consult with—

- “(A) the Secretary of Homeland Security;
- “(B) the Commissioner of Social Security;
- “(C) State vital statistics offices; and
- “(D) other appropriate Federal agencies.

“(5) EXTENSION OF EFFECTIVE DATE.—The Secretary of Health and Human Services may extend the date specified under paragraph (1) for up to 2 years for birth certificates issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under paragraph (1) but was unable to do so.

“(c) GRANTS TO STATES.—

“(1) ASSISTANCE IN MEETING FEDERAL STANDARDS.—

“(A) IN GENERAL.—Beginning on the date a final regulation is promulgated under subsection (b)(3), the Secretary of Health and Human Services shall award grants to States to assist them in conforming to the minimum standards for birth certificates set forth in the regulation.

“(B) ALLOCATION OF GRANTS.—The Secretary shall award grants to States under this paragraph based on the proportion that the estimated average annual number of birth certificates issued by a State applying for a grant bears to the estimated average annual number of birth certificates issued by all States.

“(C) MINIMUM ALLOCATION.—Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

“(2) ASSISTANCE IN MATCHING BIRTH AND DEATH RECORDS.—

“(A) IN GENERAL.—The Secretary of Health and Human Services, in coordination with the Commissioner of Social Security and other appropriate Federal agencies, shall award grants to States, under criteria established by the Secretary, to assist States in—

- “(i) computerizing their birth and death records;
- “(ii) developing the capability to match birth and death records within each State and among the States; and
- “(iii) noting the fact of death on the birth certificates of deceased persons.

“(B) ALLOCATION OF GRANTS.—The Secretary shall award grants to qualifying States under this paragraph based on the proportion that the estimated annual average number of birth and death records created by a State applying for a grant bears to the estimated annual average number of birth and death records originated by all States.

“(C) MINIMUM ALLOCATION.—Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this section.”

IMPROVEMENTS IN IDENTIFICATION-RELATED DOCUMENTS

Pub. L. 104-208, div. C, title VI, §656, Sept. 30, 1996, 110 Stat. 3009-716, as amended by Pub. L. 106-69, title III, §355, Oct. 9, 1999, 113 Stat. 1027, which related to standards for acceptance of birth certificates by Federal agencies for any official purpose, required the Secretary of Health and Human Services to make grants to States for assistance in meeting Federal standards and in matching birth and death records and for demonstration projects, and required the Secretary to submit a report to the Congress on ways to reduce the fraudulent obtaining and use of birth certificates, was repealed by Pub. L. 108-458, title VII, §7211(e), Dec. 17, 2004, 118 Stat. 3827.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Establishment of equal employment opportunity programs by heads of Executive departments and agencies, see Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319 and Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of Title 42, The Public Health and Welfare.

§ 302. Delegation of authority

(a) For the purpose of this section, “agency” has the meaning given it by section 5721 of this title.

(b) In addition to the authority to delegate conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him—

(1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency; and

(2) by section 3702 of title 44 to authorize the publication of advertisements, notices, or proposals.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379; Pub. L. 94-183, §2(1), Dec. 31, 1975, 89 Stat. 1057.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 22a. | Aug. 2, 1946, ch. 744, §12, 60 Stat. 809. |

Clause (2) of former section 22a is omitted because of the repeal of R.S. §3683 (31 U.S.C. 675) by the Act of Sept. 12, 1950, ch. 946, §301(76), 64 Stat. 843.

The word “agency” is substituted for “department” and defined to conform to the definition of “department” in section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

In subsection (b), the words “In addition to the authority to delegate conferred by other law,” are added for clarity and in recognition of the various reorganization plans which generally have transferred all functions of the departments and agencies to the heads thereof and have authorized them to delegate the functions to subordinates.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (b)(2). Pub. L. 94-183 substituted “3702” for “324”.

§ 303. Oaths to witnesses

(a) An employee of an Executive department lawfully assigned to investigate frauds on or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States, may administer an oath to a witness attending to testify or depose in the course of the investigation.

(b) An employee of the Department of Defense lawfully assigned to investigative duties may administer oaths to witnesses in connection with an official investigation.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379; Pub. L. 94-213, Feb. 13, 1976, 90 Stat. 179.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|--|
| ..... | 5 U.S.C. 93. | R.S. §183. Mar. 2, 1901, ch. 809, §3, 31 Stat. 951. Feb. 13, 1911, ch. 43, 36 Stat. 898. |

The word “employee” is substituted for “officer or clerk” in view of the definition in section 2105. The words “Executive department” are substituted for “departments” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101. So much as related to the Armed Forces is omitted as superseded by section 636 of title 14 and section 936(b) of title 10.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (formerly 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense” is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94-213 designated existing provisions as subsec. (a) and added subsec. (b).

§ 304. Subpenas

(a) The head of an Executive department or military department or bureau thereof in which a claim against the United States is pending may apply to a judge or clerk of a court of the United States to issue a subpoena for a witness within the jurisdiction of the court to appear at a time and place stated in the subpoena before an individual authorized to take depositions to be used in the courts of the United States, to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined on the subject of the claim.

(b) If a witness, after being served with a subpoena, neglects or refuses to appear, or, appearing, refuses to testify, the judge of the district in which the subpoena issued may proceed, on proper process, to enforce obedience to the subpoena, or to punish for disobedience, in the same manner as a court of the United States may in case of process of subpoena ad testificandum issued by the court.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| (a) | 5 U.S.C. 94. | R.S. §184. |
| (b) | 5 U.S.C. 96. | R.S. §186. |

In subsection (a), the words “Executive department” are substituted for “department” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101. The word “thereof” is added to reflect the proper relationship between “department” and “bureau” as reflected in title IV of the Revised Statutes of 1878. The words “in any State, District, or Territory”

are omitted as unnecessary. The word “individual” is substituted for “officer” as the definition of “officer” in section 2104 is narrower than the word “officer” in R.S. §184 which word includes “officers” as defined in section 2104 as well as notaries public who are not “officers” under section 2104, but are “officers” as that word is used in R.S. §184.

In subsection (a), the words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense” is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 305. Systematic agency review of operations

(a) For the purpose of this section, “agency” means an Executive agency, but does not include—

- (1) a Government controlled corporation;
- (2) the Tennessee Valley Authority;
- (3) the Virgin Islands Corporation;
- (4) the Atomic Energy Commission;
- (5) the Central Intelligence Agency;
- (6) the Panama Canal Commission; or
- (7) the National Security Agency, Department of Defense.

(b) Under regulations prescribed and administered by the President, each agency shall review systematically the operations of each of its activities, functions, or organization units, on a continuing basis.

(c) The purpose of the reviews includes—

- (1) determining the degree of efficiency and economy in the operation of the agency’s activities, functions, or organization units;
- (2) identifying the units that are outstanding in those respects; and
- (3) identifying the employees whose personal efforts have caused their units to be outstanding in efficiency and economy of operations.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 380; Pub. L. 96-54, §2(a)(2), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96-70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 97-468, title VI, §615(b)(1)(A), Jan. 14, 1983, 96 Stat. 2578.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| (a) | 5 U.S.C. 1085. | Oct. 28, 1949, ch. 782, §205, 63 Stat. 957. |

HISTORICAL AND REVISION NOTES—CONTINUED

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| (b), (c) | 5 U.S.C. 1151. | Oct. 28, 1949, ch. 782, §1001, 63 Stat. 971. |

Subsection (a) is based in part on former sections 1081 and 1082, which are carried into section 5102.

In subsection (a)(1), the exception of “a Government controlled corporation” is added to preserve the application of this section to “corporations wholly owned by the United States”. This is necessary as the defined term “Executive agency” includes the defined term “Government corporation” and the latter includes both Government owned and controlled corporations. Thus the exclusion of Government controlled corporations, which are distinct from wholly owned corporations, operates to preserve the application of this section to wholly owned corporations. The exception for the Inland Waterways Corporation in former section 1082(13) is omitted on authority of the Act of July 19, 1963, Pub. L. 88-67, 77 Stat. 81. The exceptions for Production Credit Corporations and Federal Intermediate Credit Banks in former section 1082(18) and (19) are omitted as they are no longer “corporations wholly owned by the United States”. Under the Farm Credit Act of 1956, 70 Stat. 659, the Production Credit Corporations were merged in the Federal Intermediate Credit Banks, and pursuant to that Act the Federal Intermediate Credit Banks have ceased to be corporations wholly owned by the United States.

In subsection (a)(7), the words “Panama Canal Company” are substituted for “Panama Railroad Company” on authority of the Act of Sept. 26, 1950, ch. 1049, §2(a)(2), 64 Stat. 1038.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1983—Subsec. (a)(3) to (8). Pub. L. 97-468 struck out par. (3), which excluded The Alaska Railroad, and redesignated pars. (4) to (8) as (3) to (7), respectively.

1979—Subsec. (a)(7). Pub. L. 96-70 substituted “Commission” for “Company”.

Subsec. (b). Pub. L. 96-54 substituted “President” for “Director of the Bureau of the Budget”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

Pub. L. 96-54, §2(b), Aug. 14, 1979, 93 Stat. 385, provided that: “Except as otherwise expressly provided in subsection (a), the amendments made by subsection (a) [amending sections 305, 1308, 2101, 2105, 2106, 2108, 3102, 3132, 3302, 3305, 3315, 3317, 3324, 3326, 3503, 4102, 4109, 4111, 4112, 4701, 5102, 5108, 5311 to 5316, 5333 to 5335, 5347, 5504, 5514, 5516, 5521, 5545, 5550a, 5562, 5581, 5584, 5596, 5702, 5903, 5943, 6104, 6304, 6305, 6323, 6325, 7325, 7327, 7701, 7702, 8331, 8332, 8339, 8347, 8701, 8901, and 8906 of this title], shall take effect July 12, 1979, or the date of the enactment of this Act [Aug. 14, 1979], whichever is earlier.”

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Director of Office of Management and

Budget, see Ex. Ord. No. 12152, Aug. 14, 1979, 44 F.R. 48143, set out as a note under section 301 of Title 3, The President.

DISSOLUTION OF VIRGIN ISLANDS CORPORATION

Virgin Islands Corporation established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97-357, title III, §308(e), Oct. 19, 1982, 96 Stat. 1710.

§ 306. Agency strategic plans

(a) Not later than the first Monday in February of any year following the year in which the term of the President commences under section 101 of title 3, the head of each agency shall make available on the public website of the agency a strategic plan and notify the President and Congress of its availability. Such plan shall contain—

(1) a comprehensive mission statement covering the major functions and operations of the agency;

(2) general goals and objectives, including outcome-oriented goals, for the major functions and operations of the agency;

(3) a description of how any goals and objectives contribute to the Federal Government priority goals required by section 1120(a) of title 31;

(4) a description of how the goals and objectives are to be achieved, including—

(A) a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to achieve those goals and objectives; and

(B) a description of how the agency is working with other agencies to achieve its goals and objectives as well as relevant Federal Government priority goals;

(5) a description of how the goals and objectives incorporate views and suggestions obtained through congressional consultations required under subsection (d);

(6) a description of how the performance goals provided in the plan required by section 1115(a) of title 31, including the agency priority goals required by section 1120(b) of title 31, if applicable, contribute to the general goals and objectives in the strategic plan;

(7) an identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

(8) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations to be conducted.

(b) The strategic plan shall cover a period of not less than 4 years following the fiscal year in which the plan is submitted. As needed, the head of the agency may make adjustments to the strategic plan to reflect significant changes in the environment in which the agency is operating, with appropriate notification of Congress.

(c) The performance plan required by section 1115(b) of title 31 shall be consistent with the agency’s strategic plan. A performance plan

may not be submitted for a fiscal year not covered by a current strategic plan under this section.

(d) When developing or making adjustments to a strategic plan, the agency shall consult periodically with the Congress, including majority and minority views from the appropriate authorizing, appropriations, and oversight committees, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan. The agency shall consult with the appropriate committees of Congress at least once every 2 years.

(e) The functions and activities of this section shall be considered to be inherently governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.

(f) For purposes of this section the term “agency” means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the Government Accountability Office, the United States Postal Service, and the Postal Regulatory Commission.

(Added Pub. L. 111-352, §2, Jan. 4, 2011, 124 Stat. 3866.)

PRIOR PROVISIONS

A prior section 306, added Pub. L. 103-62, §3, Aug. 3, 1993, 107 Stat. 286; amended Pub. L. 106-65, div. A, title IX, §902, Oct. 5, 1999, 113 Stat. 717; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241, related to strategic plans, prior to repeal by Pub. L. 111-352, §2, Jan. 4, 2011, 124 Stat. 3866.

CHAPTER 5—ADMINISTRATIVE PROCEDURE

SUBCHAPTER I—GENERAL PROVISIONS

- | | |
|------|---|
| Sec. | |
| 500. | Administrative practice; general provisions. |
| 501. | Advertising practice; restrictions. |
| 502. | Administrative practice; Reserves and National Guardsmen. |
| 503. | Witness fees and allowances. |
| 504. | Costs and fees of parties. |

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

- | | |
|-------|--|
| 551. | Definitions. |
| 552. | Public information; agency rules, opinions, orders, records, and proceedings. |
| 552a. | Records about individuals. ¹ |
| 552b. | Open meetings. |
| 553. | Rule making. |
| 554. | Adjudications. |
| 555. | Ancillary matters. |
| 556. | Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision. |
| 557. | Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record. |
| 558. | Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses. |
| 559. | Effect on other laws; effect of subsequent statute. |

SUBCHAPTER III—NEGOTIATED RULEMAKING PROCEDURE

- | | |
|------|---|
| 561. | Purpose. |
| 562. | Definitions. |
| 563. | Determination of need for negotiated rule-making committee. |

¹ So in original. Does not conform to section catchline.

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|-------|---|
| 564. | Publication of notice; applications for membership on committees. |
| 565. | Establishment of committee. |
| 566. | Conduct of committee activity. |
| 567. | Termination of committee. |
| 568. | Services, facilities, and payment of committee member expenses. |
| 569. | Encouraging negotiated rulemaking. |
| 570. | Judicial review. |
| 570a. | Authorization of appropriations. |

SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

- | | |
|--------|--|
| 571. | Definitions. |
| 572. | General authority. |
| 573. | Neutrals. |
| 574. | Confidentiality. |
| 575. | Authorization of arbitration. |
| 576. | Enforcement of arbitration agreements. |
| 577. | Arbitrators. |
| 578. | Authority of the arbitrator. |
| 579. | Arbitration proceedings. |
| 580. | Arbitration awards. |
| 581. | Judicial review. |
| [582.] | Repealed.] |
| 583. | Support services. |
| 584. | Authorization of appropriations. |

SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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| 591. | Purposes. |
| 592. | Definitions. |
| 593. | Administrative Conference of the United States. |
| 594. | Powers and duties of the Conference. |
| 595. | Organization of the Conference. |
| 596. | Authorization of appropriations. |

AMENDMENTS

2004—Pub. L. 108-401, §2(b)(2), Oct. 30, 2004, 118 Stat. 2255, substituted “Purposes” for “Purpose” in item 591.

1996—Pub. L. 104-320, §§4(b)(2), 10(b), 11(b)(2), (d)(2), Oct. 19, 1996, 110 Stat. 3871, 3873, 3874, in item 569 substituted “Encouraging negotiated rulemaking” for “Role of the Administrative Conference of the United States and other entities”, added items 570a and 584, and struck out item 582 “Compilation of information”.

1992—Pub. L. 102-354, §4, Aug. 26, 1992, 106 Stat. 945, substituted headings of subchapters III, IV, and V and items 561 to 570, 571 to 583, and 591 to 596 for former heading of subchapter III and former items 571 to 576 relating to Administrative Conference of the United States, former heading of subchapter IV and former items 581 to 593 relating to alternative means of dispute resolution in the administrative process, and former heading of subchapter IV and former items 581 to 590 relating to negotiated rulemaking procedure.

1990—Pub. L. 101-648, §3(b), Nov. 29, 1990, 104 Stat. 4976, added heading of subchapter IV and items 581 to 590 relating to negotiated rulemaking procedure.

Pub. L. 101-552, §4(c), Nov. 15, 1990, 104 Stat. 2745, added heading of subchapter IV and items 581 to 593 [renumbered 571 to 583] relating to alternative means of dispute resolution.

1986—Pub. L. 99-470, §2(b), Oct. 14, 1986, 100 Stat. 1198, substituted “Authorization of appropriations” for “Appropriations” in item 576.

1985—Pub. L. 99-80, §6, Aug. 5, 1985, 99 Stat. 186, revised item 504 and repealed Pub. L. 96-481, title II, §203(c), Oct. 21, 1980, 94 Stat. 2327, which provided for the repeal, effective Oct. 1, 1984, of item 504.

1980—Pub. L. 96-481, title II, §203(a)(2), (c), Oct. 21, 1980, 94 Stat. 2327, added item 504 “Costs and fees of parties”, and repealed that item effective Oct. 1, 1984.

1976—Pub. L. 94-409, §3(b), Sept. 13, 1976, 90 Stat. 1246, added item 552b.

1974—Pub. L. 93-579, §4, Dec. 31, 1974, 88 Stat. 1905, added item 552a.

1967—Pub. L. 90-83, §1(1)(B), Sept. 11, 1967, 81 Stat. 195, added item 500.

Pub. L. 90-23, §2, June 5, 1967, 81 Stat. 56, substituted “Public information; agency rules, opinions, orders, records and proceedings” for “Publication of information, rules, opinions, orders, and public records” in item 552.

SUBCHAPTER I—GENERAL PROVISIONS

§ 500. Administrative practice; general provisions

(a) For the purpose of this section—

(1) “agency” has the meaning given it by section 551 of this title; and

(2) “State” means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(d) This section does not—

(1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;

(2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;

(3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or

(4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.

(e) Subsections (b)–(d) of this section do not apply to practice before the United States Patent and Trademark Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.

(f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given to the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.

(Added Pub. L. 90-83, §1(1)(A), Sept. 11, 1967, 81 Stat. 195; amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(2)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

HISTORICAL AND REVISION NOTES

| <i>Section of title 5</i> | <i>Source (U.S. Code)</i> | <i>Source (Revised Statutes at Large)</i> |
|---------------------------|---------------------------|--|
| 500(a) | 5 App.: 1014. | Nov. 8, 1965, Pub. L. 89-332, §3, 79 Stat. 1281. |
| 500(b)–(e) ... | 5 App.: 1012. | Nov. 8, 1965, Pub. L. 89-332, §1, 79 Stat. 1281. |
| 500(f) | 5 App.: 1013. | Nov. 8, 1965, Pub. L. 89-332, §2, 79 Stat. 1281. |

The definition of “State” in subsection (a)(2) is supplied for convenience and is based on the words “State, possession, territory, Commonwealth, or District of Columbia” in subsections (a) and (b) of 5 App. U.S.C. 1012.

In subsection (d), the words “This section does not” are substituted for “nothing herein shall be construed”.

In subsection (d)(3), the word “employee” is substituted for “officer or employee” to conform to the definition of “employee” in 5 U.S.C. 2105.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106-113 substituted “United States Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

§ 501. Advertising practice; restrictions

An individual, firm, or corporation practicing before an agency of the United States may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the business.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 101. | Apr. 27, 1916, ch. 89, §1, 39 Stat. 54. |

The words “may not” are substituted for “It shall be unlawful for”. The words “agency of the United States” are substituted for “any department or office of the Government”. The words “an individual in the service of the United States” are substituted for “officer of the Government” in view of the definitions in sections 2104 and 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 502. Administrative practice; Reserves and National Guardsmen

Membership in a reserve component of the armed forces or in the National Guard does not prevent an individual from practicing his civilian profession or occupation before, or in connection with, an agency of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|--------------------------------|---|
| ..... | 5 U.S.C. 30r(c) (2d sentence). | Aug. 10, 1956, ch. 1041, §29(c) (2d sentence), 70A Stat. 632. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 503. Witness fees and allowances

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

(b) A witness is entitled to the fees and allowances allowed by statute for witnesses in the courts of the United States when—

- (1) he is subpoenaed under section 304(a) of this title; or
- (2) he is subpoenaed to and appears at a hearing before an agency authorized by law to hold hearings and subpoena witnesses to attend the hearings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 95. | R.S. §185. |
| ..... | 5 U.S.C. 95a. | Aug. 2, 1946, ch. 744, §10, 60 Stat. 809. |

Former sections 95 and 95a are combined and restated for clarity and brevity. The words "or expenses in the case of Government officers and employees" are omitted as covered by section 1823 of title 28. The word "agency" is substituted for "department" and defined to conform to the definition of "department" in section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of

the agency was not substantially justified. When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

(3) The adjudicative officer of the agency may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the adjudicative officer of the agency under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis therefor. The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section.

(4) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

(b)(1) For the purposes of this section—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of \$125 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

(B) "party" means a party, as defined in section 551(3) of this title, who is (i) an individual whose net worth did not exceed \$2,000,000 at the time the adversary adjudication was initiated, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed \$7,000,000 at the time the adversary adjudication was initiated, and which had not more

than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association or for purposes of subsection (a)(4), a small entity as defined in section 601;

(C) “adversary adjudication” means (i) an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license, (ii) any appeal of a decision made pursuant to section 7103 of title 41 before an agency board of contract appeals as provided in section 7105 of title 41, (iii) any hearing conducted under chapter 38 of title 31, and (iv) the Religious Freedom Restoration Act of 1993;

(D) “adjudicative officer” means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication;

(E) “position of the agency” means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based; except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings; and

(F) “demand” means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(2) Except as otherwise provided in paragraph (1), the definitions provided in section 551 of this title apply to this section.

(c)(1) After consultation with the Chairman of the Administrative Conference of the United States, each agency shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to section 2412(d)(3) of title 28, United States Code.

(2) If a party other than the United States is dissatisfied with a determination of fees and other expenses made under subsection (a), that party may, within 30 days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court’s determination on any appeal heard under this paragraph shall be based solely on the factual record made before the agency. The court may

modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

(d) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards. Each agency shall provide the Chairman with such information as is necessary for the Chairman to comply with the requirements of this subsection.

(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986.

(Added Pub. L. 96-481, title II, §203(a)(1), (c), Oct. 21, 1980, 94 Stat. 2325, 2327; revived and amended Pub. L. 99-80, §§1, 6, Aug. 5, 1985, 99 Stat. 183, 186; Pub. L. 99-509, title VI, §6103(c), Oct. 21, 1986, 100 Stat. 1948; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-647, title VI, §6239(b), Nov. 10, 1988, 102 Stat. 3746; Pub. L. 103-141, §4(b), Nov. 16, 1993, 107 Stat. 1489; Pub. L. 104-121, title II, §231, Mar. 29, 1996, 110 Stat. 862; Pub. L. 111-350, §5(a)(1), Jan. 4, 2011, 124 Stat. 3841.)

REFERENCES IN TEXT

The Religious Freedom Restoration Act of 1993, referred to in subsec. (b)(1)(C)(iv), is Pub. L. 103-141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§2000bb 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 2000bb of Title 42 and Tables.

Section 7430 of the Internal Revenue Code of 1986, referred to in subsec. (f), is classified to section 7430 of Title 26, Internal Revenue Code.

AMENDMENTS

2011—Subsec. (b)(1)(C)(ii). Pub. L. 111-350 substituted “section 7103 of title 41” for “section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605)” and “section 7105 of title 41” for “section 8 of that Act (41 U.S.C. 607)”.

1996—Subsec. (a)(4). Pub. L. 104-121, §231(a), added par. (4).

Subsec. (b)(1)(A)(ii). Pub. L. 104-121, §231(b)(1), substituted “\$125” for “\$75”.

Subsec. (b)(1)(B). Pub. L. 104-121, §231(b)(2), inserted before semicolon at end “or for purposes of subsection (a)(4), a small entity as defined in section 601”.

Subsec. (b)(1)(F). Pub. L. 104-121, §231(b)(3)-(5), added subpar. (F).

1993—Subsec. (b)(1)(C). Pub. L. 103-141 added cl. (iv).

1988—Subsec. (f). Pub. L. 100-647 added subsec. (f).

1986—Subsec. (b)(1)(B). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

Subsec. (b)(1)(C)(iii). Pub. L. 99-509 added cl. (iii).

1985—Subsec. (a)(1). Pub. L. 99-80, §1(a)(1), (2), struck out “as a party to the proceeding” after “the position

of the agency", and inserted "Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought."

Subsec. (a)(2). Pub. L. 99-80, §1(b), inserted "When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal."

Subsec. (a)(3). Pub. L. 99-80, §1(a)(3), inserted "The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section."

Subsec. (b)(1)(B). Pub. L. 99-80, §1(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "'party' means a party, as defined in section 551(3) of this title, which is an individual, partnership, corporation, association, or public or private organization other than an agency, but excludes (i) any individual whose net worth exceeded \$1,000,000 at the time the adversary adjudication was initiated, and any sole owner of an unincorporated business, or any partnership, corporation, association, or organization whose net worth exceeded \$5,000,000 at the time the adversary adjudication was initiated, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association, and (ii) any sole owner of an unincorporated business, or any partnership, corporation, association, or organization, having more than 500 employees at the time the adversary adjudication was initiated;"

Subsec. (b)(1)(C). Pub. L. 99-80, §1(c)(2), designated existing provisions of subpar. (C) as cl. (i) thereof by inserting "(i)" before "an adjudication under", added cl. (ii), and struck out "and" after the semicolon at the end.

Subsec. (b)(1)(D), (E). Pub. L. 99-80, §1(c)(3), substituted "and" for the period at end of subpar. (D), and added subpar. (E).

Subsec. (c)(2). Pub. L. 99-80, §1(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A party dissatisfied with the fee determination made under subsection (a) may petition for leave to appeal to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. If the court denies the petition for leave to appeal, no appeal may be taken from the denial. If the court grants the petition, it may modify the determination only if it finds that the failure to make an award, or the calculation of the amount of the award, was an abuse of discretion."

Subsec. (d). Pub. L. 99-80, §1(e), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(1) Fees and other expenses awarded under this section may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made pursuant to section 2414 of title 28, United States Code.

"(2) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded under this section in such fiscal years."

1980—Pub. L. 96-481, §203(c), which provided for the repeal of this section effective Oct. 1, 1984, was itself repealed and this section was revived by section 6 of Pub. L. 99-80, set out as a note below.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-121, title II, §233, Mar. 29, 1996, 110 Stat. 864, provided that: "The amendments made by sections 331 and 332 [probably means sections 231 and 232, amending this section and section 2412 of Title 28, Judiciary and Judicial Procedure] shall apply to civil actions and adversary adjudications commenced on or after the date of the enactment of this subtitle [Mar. 29, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to proceedings commencing after Nov. 10, 1988, see section 6239(d) of Pub. L. 100-647, set out as a note under section 7430 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 effective Oct. 21, 1986, and applicable to any claim or statement made, presented or submitted on or after such date, see section 6104 of Pub. L. 99-509, set out as an Effective Date note under section 3801 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-80, §7, Aug. 5, 1985, 99 Stat. 186, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act [reviving and amending this section and section 2412(d) of Title 28, Judiciary and Judicial Procedure, and amending and repealing provisions set out as notes under those sections] shall apply to cases pending on or commenced on or after the date of the enactment of this Act [Aug. 5, 1985].

"(b) APPLICABILITY OF AMENDMENTS TO CERTAIN PRIOR CASES.—The amendments made by this Act shall apply to any case commenced on or after October 1, 1984, and finally disposed of before the date of the enactment of this Act [Aug. 5, 1985], except that in any such case, the 30-day period referred to in section 504(a)(2) of title 5, United States Code, or section 2412(d)(1)(B) of title 28, United States Code, as the case may be, shall be deemed to commence on the date of the enactment of this Act.

"(c) APPLICABILITY OF AMENDMENTS TO PRIOR BOARD OF CONTRACTS APPEALS CASES.—Section 504(b)(1)(C)(ii) of title 5, United States Code, as added by section 1(c)(2) of this Act, and section 2412(d)(2)(E) of title 28, United States Code, as added by section 2(c)(2) of this Act, shall apply to any adversary adjudication pending on or commenced on or after October 1, 1981, in which applications for fees and other expenses were timely filed and were dismissed for lack of jurisdiction."

EFFECTIVE DATE

Pub. L. 96-481, title II, §208, Oct. 21, 1980, 94 Stat. 2330, as amended by Pub. L. 99-80, §5, Aug. 5, 1985, 99 Stat. 186, provided that: "This title and the amendments made by this title [see Short Title note below] shall take effect of [on] October 1, 1981, and shall apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5, United States Code, and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date. Awards may be made for fees and other expenses incurred before October 1, 1981, in any such adversary adjudication or civil action."

Pub. L. 96-481, title II, §203(c), Oct. 21, 1980, 94 Stat. 2327, which provided that effective Oct. 1, 1984, this section is repealed, except that the provisions of this section shall continue to apply through final disposition of any adversary adjudication initiated before the date of repeal, was itself repealed by Pub. L. 99-80, §6(b)(1), Aug. 5, 1985, 99 Stat. 186.

SHORT TITLE

Pub. L. 96-481, title II, §201, Oct. 21, 1980, 94 Stat. 2325, provided that: "This title [enacting this section,

amending section 634 of Title 15, Commerce and Trade, section 2412 of Title 28, Judiciary and Judicial Procedure, Rule 37 of the Federal Rules of Civil Procedure, set out in Title 28 Appendix, and section 1988 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2412 of Title 28] may be cited as the ‘Equal Access to Justice Act.’”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (e) of this section relating to annual report to Congress on the amount of fees and other expenses, 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 153 of House Document No. 103-7.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104-52, set out as a note preceding section 591 of this title.

PROHIBITION ON USE OF ENERGY AND WATER DEVELOPMENT APPROPRIATIONS TO PAY INTERVENING PARTIES IN REGULATORY OR ADJUDICATORY PROCEEDINGS

Pub. L. 102-377, title V, § 502, Oct. 2, 1992, 106 Stat. 1342, provided that: “None of the funds in this Act or subsequent Energy and Water Development Appropriations Acts shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in such Acts.”

REVIVAL OF PREVIOUSLY REPEALED PROVISIONS

Pub. L. 99-80, § 6, Aug. 5, 1985, 99 Stat. 186, provided that:

“(a) REVIVAL OF CERTAIN EXPIRED PROVISIONS.—Section 504 of title 5, United States Code, and the item relating to that section in the table of sections of chapter 5 of title 5, United States Code, and subsection (d) of section 2412 of title 28, United States Code, shall be effective on or after the date of the enactment of this Act [Aug. 5, 1985] as if they had not been repealed by sections 203(c) and 204(c) of the Equal Access to Justice Act [Pub. L. 96-481].

“(b) REPEALS.—

“(1) Section 203(c) of the Equal Access to Justice Act [which repealed this section] is hereby repealed.

“(2) Section 204(c) of the Equal Access to Justice Act [which repealed section 2412(d) of title 28] is hereby repealed.”

CONGRESSIONAL FINDINGS AND PURPOSES

Pub. L. 96-481, title II, § 202, Oct. 21, 1980, 94 Stat. 2325, provided that:

“(a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings.

“(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.

“(c) It is the purpose of this title [see Short Title note above]—

“(1) to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States; and

“(2) to insure the applicability in actions by or against the United States of the common law and

statutory exceptions to the ‘American rule’ respecting the award of attorney fees.”

LIMITATION ON PAYMENTS

Pub. L. 96-481, title II, § 207, Oct. 21, 1980, 94 Stat. 2330, which provided that the payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this Act [probably should be “this title”, see Short Title note above] would be effective only to the extent and in such amounts as are provided in advance in appropriation Acts, was repealed by Pub. L. 99-80, § 4, Aug. 5, 1985, 99 Stat. 186.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

SHORT TITLE

The provisions of this subchapter and chapter 7 of this title were originally enacted by act June 11, 1946, ch. 324, 60 Stat. 237, popularly known as the “Administrative Procedure Act”. That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into this subchapter and chapter 7 hereof.

§ 551. Definitions

For the purpose of this subchapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix;

(2) “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) “rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices,

facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) “rule making” means agency process for formulating, amending, or repealing a rule;

(6) “order” means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) “adjudication” means agency process for the formulation of an order;

(8) “license” includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) “licensing” includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) “sanction” includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) “relief” includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) “agency proceeding” means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) “agency action” includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381; Pub. L. 94-409, §4(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 103-272, §5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111-350, §5(a)(2), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|-------------------|---|
| (1) | 5 U.S.C. 1001(a). | June 11, 1946, ch. 324, §2(a), 60 Stat. 237. |

HISTORICAL AND REVISION NOTES—CONTINUED

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|---------------------------|--|
| (2)-(13) | 5 U.S.C. 1001 (less (a)). | Aug. 8, 1946, ch. 870, §302, 60 Stat. 918. Aug. 10, 1946, ch. 951, §601, 60 Stat. 993. Mar. 31, 1947, ch. 30, §6(a), 61 Stat. 37. June 30, 1947, ch. 163, §210, 61 Stat. 201. Mar. 30, 1948, ch. 161, §301, 62 Stat. 99. June 11, 1946, ch. 324, §2 (less (a)), 60 Stat. 237. |

In paragraph (1), the sentence “Nothing in this Act shall be construed to repeal delegations of authority as provided by law,” is omitted as surplusage since there is nothing in the Act which could reasonably be so construed.

In paragraph (1)(G), the words “or naval” are omitted as included in “military”.

In paragraph (1)(H), the words “functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947” are omitted as executed. Reference to the “Selective Training and Service Act of 1940” is omitted as that Act expired Mar. 31, 1947. Reference to the “Sugar Control Extension Act of 1947” is omitted as that Act expired on Mar. 31, 1948. References to the “Housing and Rent Act of 1947, as amended” and the “Veterans’ Emergency Housing Act of 1946” have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by §111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87-256, 75 Stat. 538, since §111(c) of the Act provides that a reference in other Acts to a provision of law repealed by §111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87-256.

In paragraph (2), the words “of any character” are omitted as surplusage.

In paragraph (3), the words “and a person or agency admitted by an agency as a party for limited purposes” are substituted for “but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes”.

In paragraph (9), a comma is supplied between the words “limitation” and “amendment” to correct an editorial error of omission.

In paragraph (10)(C), the words “of any form” are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 551 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2242 of Title 7, Agriculture.

AMENDMENTS

2011—Par. (1)(H). Pub. L. 111-350 struck out “chapter 2 of title 41;” after “title 12;”.

1994—Par. (1)(H). Pub. L. 103-272 substituted “subchapter II of chapter 471 of title 49; or sections” for “or sections 1622.”

1976—Par. (14). Pub. L. 94-409 added par. (14).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94-409, set out as an Effective Date note under section 552b of this title.

STUDY AND REPORTS ON ADMINISTRATIVE SUBPOENAS

Pub. L. 106-544, §7, Dec. 19, 2000, 114 Stat. 2719, provided that:

“(a) STUDY ON USE OF ADMINISTRATIVE SUBPOENAS.—Not later than December 31, 2001, the Attorney General,

in consultation with the Secretary of the Treasury, shall complete a study on the use of administrative subpoena power by executive branch agencies or entities and shall report the findings to the Committees on the Judiciary of the Senate and the House of Representatives. Such report shall include—

“(1) a description of the sources of administrative subpoena power and the scope of such subpoena power within executive branch agencies;

“(2) a description of applicable subpoena enforcement mechanisms;

“(3) a description of any notification provisions and any other provisions relating to safeguarding privacy interests;

“(4) a description of the standards governing the issuance of administrative subpoenas; and

“(5) recommendations from the Attorney General regarding necessary steps to ensure that administrative subpoena power is used and enforced consistently and fairly by executive branch agencies.

“(b) REPORT ON FREQUENCY OF USE OF ADMINISTRATIVE SUBPOENAS.—

“(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury shall report in January of each year to the Committees on the Judiciary of the Senate and the House of Representatives on the number of administrative subpoenas issued by them under this section and the identity of the agency or component of the Department of Justice or the Department of the Treasury issuing the subpoena and imposing the charges.

“(2) EXPIRATION.—The reporting requirement of this subsection shall terminate in 3 years after the date of the enactment of this section [Dec. 19, 2000].”

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the

Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

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

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

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

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

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

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

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

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

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

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

(ii) Such agency regulations shall provide that—

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

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

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

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

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

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

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

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

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

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically

providing for setting the level of fees for particular types of records.

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

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

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. Pub. L. 98-620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

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

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

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

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary

action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall—

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

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

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

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

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

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

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

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

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

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

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction

and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

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

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

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

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

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

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

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

(II) in other cases determined by the agency.

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

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

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

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

(iv) A district court of the United States shall not have jurisdiction to review an agency denial

of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term “compelling need” means—

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

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

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

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

(7) Each agency shall—

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

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

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

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

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

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

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

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

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

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

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available

by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

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

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

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

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

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an in-

formant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

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

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

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

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

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

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

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

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

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

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

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

(i) the number of requests for records to which the agency has responded with a determination within a period up to and in-

cluding 20 days, and in 20-day increments up to and including 200 days;

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The Attorney General of the United States shall make each report which has been made

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

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

(6) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

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

(1) “agency” as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

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

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

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

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

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

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

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

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

(2) The Office of Government Information Services shall—

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

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

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

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

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

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

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

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

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

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

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

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90-23, §1, June 5, 1967, 81 Stat. 54; Pub. L. 93-502, §§1-3, Nov. 21, 1974, 88 Stat. 1561-1564; Pub. L.

94-409, §5(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95-454, title IX, §906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 98-620, title IV, §402(2), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99-570, title I, §§1802, 1803, Oct. 27, 1986, 100 Stat. 3207-48, 3207-49; Pub. L. 104-231, §§3-11, Oct. 2, 1996, 110 Stat. 3049-3054; Pub. L. 107-306, title III, §312, Nov. 27, 2002, 116 Stat. 2390; Pub. L. 110-175, §§3, 4(a), 5, 6(a)(1), (b)(1), 7(a), 8-10(a), 12, Dec. 31, 2007, 121 Stat. 2525-2530; Pub. L. 111-83, title V, §564(b), Oct. 28, 2009, 123 Stat. 2184.)

HISTORICAL AND REVISION NOTES
1966 ACT

| Derivation | U.S. Code | Revised Statutes and Statutes at Large |
|------------|----------------|---|
| ..... | 5 U.S.C. 1002. | June 11, 1946, ch. 324, §3, 60 Stat. 238. |

In subsection (b)(3), the words “formulated and” are omitted as surplusage. In the last sentence of subsection (b), the words “in any manner” are omitted as surplusage since the prohibition is all inclusive.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section 1 [of Pub. L. 90-23] amends section 552 of title 5, United States Code, to reflect Public Law 89-487.

In subsection (a)(1)(A), the words “employees (and in the case of a uniformed service, the member)” are substituted for “officer” to retain the coverage of Public Law 89-487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In the last sentence of subsection (a)(2), the words “A final order * * * may be relied on * * * only if” are substituted for “No final order * * * may be relied upon * * * unless”; and the words “a party other than an agency” and “the party” are substituted for “a private party” and “the private party”, respectively, on authority of the definition of “private party” in 5 App. U.S.C. 1002(g).

In subsection (a)(3), the words “the responsible employee, and in the case of a uniformed service, the responsible member” are substituted for “the responsible officers” to retain the coverage of Public Law 89-487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In subsection (a)(4), the words “shall maintain and make available for public inspection a record” are substituted for “shall keep a record * * * and that record shall be available for public inspection”.

In subsection (b)(5) and (7), the words “a party other than an agency” are substituted for “a private party” on authority of the definition of “private party” in 5 App. U.S.C. 1002(g).

In subsection (c), the words “This section does not authorize” and “This section is not authority” are substituted for “Nothing in this section authorizes” and “nor shall this section be authority”, respectively.

5 App. U.S.C. 1002(g), defining “private party” to mean a party other than an agency, is omitted since the words “party other than an agency” are substituted for the words “private party” wherever they appear in revised 5 U.S.C. 552.

5 App. U.S.C. 1002(h), prescribing the effective date, is omitted as unnecessary. That effective date is prescribed by section 4 of this bill.

REFERENCES IN TEXT

The date of enactment of the OPEN FOIA Act of 2009, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 111-83, which was approved Oct. 28, 2009.

CODIFICATION

Section 552 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2243 of Title 7, Agriculture.

AMENDMENTS

2009—Subsec. (b)(3). Pub. L. 111-83 added par. (3) and struck out former par. (3), which read as follows: “specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;”.

2007—Subsec. (a)(4)(A)(ii). Pub. L. 110-175, §3, inserted concluding provisions.

Subsec. (a)(4)(A)(viii). Pub. L. 110-175, §6(b)(1)(A), added cl. (viii).

Subsec. (a)(4)(E). Pub. L. 110-175, §4(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(4)(F). Pub. L. 110-175, §5, designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(6)(A). Pub. L. 110-175, §6(a)(1), inserted concluding provisions.

Subsec. (a)(6)(B)(ii). Pub. L. 110-175, §6(b)(1)(B), inserted after the first sentence “To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency.”

Subsec. (a)(7). Pub. L. 110-175, §7(a), added par. (7).

Subsec. (b). Pub. L. 110-175, §12, in concluding provisions, inserted “, and the exemption under which the deletion is made,” after “The amount of information deleted” in second sentence and after “the amount of the information deleted” in third sentence.

Subsec. (e)(1)(B)(ii). Pub. L. 110-175, §8(a)(1), inserted “the number of occasions on which each statute was relied upon,” after “subsection (b)(3).”

Subsec. (e)(1)(C). Pub. L. 110-175, §8(a)(2), inserted “and average” after “median”.

Subsec. (e)(1)(E). Pub. L. 110-175, §8(a)(3), inserted before semicolon “, based on the date on which the requests were received by the agency”.

Subsec. (e)(1)(F) to (O). Pub. L. 110-175, §8(a)(4), (5), added subpars. (F) to (M) and redesignated former subpars. (F) and (G) as (N) and (O), respectively.

Subsec. (e)(2). Pub. L. 110-175, §8(b)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 110-175, §8(b)(1), (c), redesignated par. (2) as (3) and inserted at end “In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.” Former par. (3) redesignated (4).

Subsec. (e)(4) to (6). Pub. L. 110-175, §8(b)(1), redesignated pars. (3) to (5) as (4) to (6), respectively.

Subsec. (f)(2). Pub. L. 110-175, §9, added par. (2) and struck out former par. (2) which read as follows: “‘record’ and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.”

Subsecs. (h) to (l). Pub. L. 110-175, §10(a), added subsecs. (h) to (l).

2002—Subsec. (a)(3)(A). Pub. L. 107-306, §312(1), inserted “and except as provided in subparagraph (E),” after “of this subsection,”.

Subsec. (a)(3)(E). Pub. L. 107-306, §312(2), added subpar. (E).

1996—Subsec. (a)(2). Pub. L. 104-231, §4(4), (5), in first sentence struck out “and” at end of subpar. (B) and inserted subpars. (D) and (E).

Pub. L. 104-231, §4(7), inserted after first sentence “For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.”

Pub. L. 104-231, §4(1), in second sentence substituted “staff manual, instruction, or copies of records referred to in subparagraph (D)” for “or staff manual or instruction”.

Pub. L. 104-231, §4(2), inserted before period at end of third sentence “”, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made”.

Pub. L. 104-231, §4(3), inserted after third sentence “If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.”

Pub. L. 104-231, §4(6), which directed the insertion of the following new sentence after the fifth sentence “Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.”, was executed by making the insertion after the sixth sentence, to reflect the probable intent of Congress and the addition of a new sentence by section 4(3) of Pub. L. 104-231.

Subsec. (a)(3). Pub. L. 104-231, §5, inserted subpar. (A) designation after “(3)”, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) to (D).

Subsec. (a)(4)(B). Pub. L. 104-231, §6, inserted at end “In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency’s determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).”

Subsec. (a)(6)(A)(i). Pub. L. 104-231, §8(b), substituted “20 days” for “ten days”.

Subsec. (a)(6)(B). Pub. L. 104-231, §7(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, ‘unusual circumstances’ means, but only to the extent reasonably necessary to the proper processing of the particular request—

“(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

“(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

“(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.”

Subsec. (a)(6)(C). Pub. L. 104-231, §7(c), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(6)(D). Pub. L. 104-231, §7(a), added subpar. (D).

Subsec. (a)(6)(E), (F). Pub. L. 104-231, §8(a), (c), added subpars. (E) and (F).

Subsec. (b). Pub. L. 104-231, §9, inserted at end of closing provisions “The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.”

Subsec. (e). Pub. L. 104-231, §10, amended subsec. (e) generally, revising and restating provisions relating to reports to Congress.

Subsec. (f). Pub. L. 104-231, §3, amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “For purposes of this section, the term ‘agency’ as defined in section 551(1) of this title includes any ex-

ecutive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.”

Subsec. (g). Pub. L. 104-231, §11, added subsec. (g).

1986—Subsec. (a)(4)(A). Pub. L. 99-570, §1803, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.”

Subsec. (b)(7). Pub. L. 99-570, §1802(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;”.

Subsecs. (c) to (f). Pub. L. 99-570, §1802(b), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (a)(4)(D). Pub. L. 98-620 repealed subpar. (D) which provided for precedence on the docket and expeditious disposition of district court proceedings authorized by subsec. (a).

1978—Subsec. (a)(4)(F). Pub. L. 95-454 substituted references to the Special Counsel for references to the Civil Service Commission wherever appearing and reference to his findings for reference to its findings.

1976—Subsec. (b)(3). Pub. L. 94-409 inserted provision excluding section 552b of this title from applicability of exemption from disclosure and provision setting forth conditions for statute specifically exempting disclosure.

1974—Subsec. (a)(2). Pub. L. 93-502, §1(a), substituted provisions relating to maintenance and availability of current indexes, for provisions relating to maintenance and availability of a current index, and inserted provisions relating to publication and distribution of copies of indexes or supplements thereto.

Subsec. (a)(3). Pub. L. 93-502, §1(b)(1), substituted provisions requiring requests to reasonably describe records for provisions requiring requests, for identifiable records, and struck out provisions setting forth procedures to enjoin agencies from withholding the requested records and ordering their production.

Subsec. (a)(4), (5). Pub. L. 93-502, §1(b)(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(6). Pub. L. 93-502, §1(c), added par. (6).

Subsec. (b)(1). Pub. L. 93-502, §2(a), designated existing provisions as cl. (A), substituted “authorized under criteria established by an” for “required by”, and added cl. (B).

Subsec. (b)(7). Pub. L. 93-502, §2(b), substituted provisions relating to exemption for investigatory records compiled for law enforcement purposes, for provisions relating to exemption for investigatory files compiled for law enforcement purposes.

Subsec. (b), foll. par. (9). Pub. L. 93-502, §2(c), inserted provision relating to availability of segregable portion of records.

Subsecs. (d), (e). Pub. L. 93-502, §3, added subsecs. (d) and (e).

1967—Subsec. (a). Pub. L. 90-23 substituted introductory statement requiring every agency to make available to the public certain information for former introductory provision excepting from disclosure (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating to internal management of an agency, covered in subsec. (b)(1) and (2) of this section.

Subsec. (a)(1). Pub. L. 90-23 incorporated provisions of: former subsec. (b)(1) in (A), inserting requirement of publication of names of officers as sources of information and provision for public to obtain decisions, and striking out publication requirement for delegations by the agency of final authority; former subsec. (b)(2), introductory part, in (B); former subsec. (b)(2), concluding part, in (C), inserting publication requirement for rules of procedure and descriptions of forms available or the places at which forms may be obtained; former subsec. (b)(3), introductory part, in (D), inserting requirement of general applicability of substantive rules and interpretations, added clause (E), substituted exemption of any person from failure to resort to any matter or from being adversely affected by any matter required to be published in the Federal Register but not so published for former subsec. (b)(3), concluding part, excepting from publication rules addressed to and served upon named persons in accordance with laws and final sentence reading “A person may not be required to resort to organization or procedure not so published” and inserted provision deeming matter, which is reasonably available, as published in the Federal Register when such matter is incorporated by reference in the Federal Register with the approval of its Director.

Subsec. (a)(2). Pub. L. 90-23 incorporated provisions of former subsec. (c), provided for public copying of records, struck out requirement of agency publication of final opinions or orders and authority for secrecy and withholding of opinions and orders required for good cause to be held confidential and not cited as precedents, latter provision now superseded by subsec. (b) of this section, designated existing subsec. (c) as clause (A), including provision for availability of concurring and dissenting opinions, inserted provisions for availability of policy statements and interpretations in clause (B) and staff manuals and instructions in clause (C), deletion of personal identifications from records to protect personal privacy with written justification therefor, and provision for indexing and prohibition of use of records not indexed against any private party without actual and timely notice of the terms thereof.

Subsec. (a)(3). Pub. L. 90-23 incorporated provisions of former subsec. (d) and substituted provisions requiring identifiable agency records to be made available to any person upon request and compliance with rules as to time, place, and procedure for inspection, and payment of fees and provisions for Federal district court proceedings de novo for enforcement by contempt of non-compliance with court's orders with the burden on the agency and docket precedence for such proceedings for former provisions requiring matters of official record to be made available to persons properly and directly concerned except information held confidential for good cause shown, the latter provision superseded by subsec. (b) of this section.

Subsec. (a)(4). Pub. L. 90-23 added par. (4).

Subsec. (b). Pub. L. 90-23 added subsec. (b) which superseded provisions excepting from disclosure any function of the United States requiring secrecy in the public interest or any matter relating to internal management of an agency, formerly contained in former subsec. (a), final opinions or orders required for good cause to be held confidential and not cited as precedents, formerly contained in subsec. (c), and information held confidential for good cause found, contained in former subsec. (d) of this section.

Subsec. (c). Pub. L. 90-23 added subsec. (c).

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.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-175, §6(a)(2), Dec. 31, 2007, 121 Stat. 2526, provided that: “The amendment made by this subsection [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007].”

Pub. L. 110-175, §6(b)(2), Dec. 31, 2007, 121 Stat. 2526, provided that: “The amendment made by this subsection [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007] and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.”

Pub. L. 110-175, §7(b), Dec. 31, 2007, 121 Stat. 2527, provided that: “The amendment made by this section [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 31, 2007] and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.”

Pub. L. 110-175, §10(b), Dec. 31, 2007, 121 Stat. 2530, provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 31, 2007].”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-231, §12, Oct. 2, 1996, 110 Stat. 3054, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this Act [amending this section and enacting provisions set out as notes below] shall take effect 180 days after the date of the enactment of this Act [Oct. 2, 1996].

“(b) PROVISIONS EFFECTIVE ON ENACTMENT [sic].—Sections 7 and 8 [amending this section] shall take effect one year after the date of the enactment of this Act [Oct. 2, 1996].”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-570, title I, §1804, Oct. 27, 1986, 100 Stat. 3207-50, provided that:

“(a) The amendments made by section 1802 [amending this section] shall be effective on the date of enactment of this Act [Oct. 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

“(b)(1) The amendments made by section 1803 [amending this section] shall be effective 180 days after the date of enactment of this Act [Oct. 27, 1986], except that regulations to implement such amendments shall be promulgated by such 180th day.

“(2) The amendments made by section 1803 [amending this section] shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.”

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 OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94-409, set out as an Effective Date note under section 552b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-502, § 4, Nov. 21, 1974, 88 Stat. 1564, provided that: "The amendments made by this Act [amending this section] shall take effect on the ninetieth day beginning after the date of enactment of this Act [Nov. 21, 1974]."

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90-23, § 4, June 5, 1967, 81 Stat. 56, provided that: "This Act [amending this section] shall be effective July 4, 1967, or on the date of enactment [June 5, 1967], whichever is later."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-231, § 1, Oct. 2, 1996, 110 Stat. 3048, provided that: "This Act [amending this section and enacting provisions set out as notes under this section] may be cited as the 'Electronic Freedom of Information Act Amendments of 1996.'"

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-570, title I, § 1801, Oct. 27, 1986, 100 Stat. 3207-48, provided that: "This subtitle [subtitle N (§§ 1801-1804) of title I of Pub. L. 99-570, amending this section and enacting provisions set out as a note under this section] may be cited as the 'Freedom of Information Reform Act of 1986.'"

SHORT TITLE

This section is popularly known as the "Freedom of Information Act".

PROTECTED NATIONAL SECURITY DOCUMENTS

Pub. L. 111-83, title V, § 565, Oct. 28, 2009, 123 Stat. 2184, provided that:

"(a) SHORT TITLE.—This section may be cited as the 'Protected National Security Documents Act of 2009'.

"(b) Notwithstanding any other provision of the law to the contrary, no protected document, as defined in subsection (c), shall be subject to disclosure under section 552 of title 5, United States Code[,] or any proceeding under that section.

"(c) DEFINITIONS.—In this section:

"(1) PROTECTED DOCUMENT.—The term 'protected document' means any record—

"(A) for which the Secretary of Defense has issued a certification, as described in subsection (d), stating that disclosure of that record would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States; and

"(B) that is a photograph that—

"(i) was taken during the period beginning on September 11, 2001, through January 22, 2009; and

"(ii) relates to the treatment of individuals engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside of the United States.

"(2) PHOTOGRAPH.—The term 'photograph' encompasses all photographic images, whether originals or copies, including still photographs, negatives, digital images, films, video tapes, and motion pictures.

"(d) CERTIFICATION.—

"(1) IN GENERAL.—For any photograph described under subsection (c)(1), the Secretary of Defense shall

issue a certification if the Secretary of Defense determines that disclosure of that photograph would endanger citizens of the United States, members of the United States Armed Forces, or employees of the United States Government deployed outside the United States.

"(2) CERTIFICATION EXPIRATION.—A certification and a renewal of a certification issued pursuant to subsection (d)(3) shall expire 3 years after the date on which the certification or renewal, [sic] is issued by the Secretary of Defense.

"(3) CERTIFICATION RENEWAL.—The Secretary of Defense may issue—

"(A) a renewal of a certification at any time; and

"(B) more than 1 renewal of a certification.

"(4) NOTICE TO CONGRESS.—The Secretary of Defense shall provide Congress a timely notice of the Secretary's issuance of a certification and of a renewal of a certification.

"(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude the voluntary disclosure of a protected document.

"(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act [Oct. 28, 2009] and apply to any protected document."

FINDINGS

Pub. L. 110-175, § 2, Dec. 31, 2007, 121 Stat. 2524, provided that: "Congress finds that—

"(1) the Freedom of Information Act [probably means Pub. L. 89-487 which amended section 1002 of former Title 5, Executive Departments and Government Officers and Employees, see Historical and Revision notes above] was signed into law on July 4, 1966, because the American people believe that—

"(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

"(B) such consent is not meaningful unless it is informed consent; and

"(C) as Justice Black noted in his concurring opinion in *Barr v. Matteo* (360 U.S. 564 (1959)), "The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.;"

"(2) the American people firmly believe that our system of government must itself be governed by a presumption of openness;

"(3) the Freedom of Information Act establishes a 'strong presumption in favor of disclosure' as noted by the United States Supreme Court in *United States Department of State v. Ray* (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act;

"(4) 'disclosure, not secrecy, is the dominant objective of the Act,' as noted by the United States Supreme Court in *Department of Air Force v. Rose* (425 U.S. 352 (1976));

"(5) in practice, the Freedom of Information Act has not always lived up to the ideals of that Act; and

"(6) Congress should regularly review section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the 'need to know' but upon the fundamental 'right to know'."

LIMITATION ON AMOUNTS OBLIGATED OR EXPENDED FROM CLAIMS AND JUDGMENT FUND

Pub. L. 110-175, § 4(b), Dec. 31, 2007, 121 Stat. 2525, provided that: "Notwithstanding section 1304 of title 31, United States Code, no amounts may be obligated or expended from the Claims and Judgment Fund of the

United States Treasury to pay the costs resulting from fees assessed under section 552(a)(4)(E) of title 5, United States Code. Any such amounts shall be paid only from funds annually appropriated for any authorized purpose for the Federal agency against which a claim or judgment has been rendered.”

NONDISCLOSURE OF CERTAIN PRODUCTS OF COMMERCIAL SATELLITE OPERATIONS

Pub. L. 108-375, div. A, title IX, §914, Oct. 28, 2004, 118 Stat. 2029, provided that:

“(a) MANDATORY DISCLOSURE REQUIREMENTS INAPPLICABLE.—The requirements to make information available under section 552 of title 5, United States Code, shall not apply to land remote sensing information.

“(b) LAND REMOTE SENSING INFORMATION DEFINED.—In this section, the term ‘land remote sensing information’—

“(1) means any data that—

“(A) are collected by land remote sensing; and

“(B) are prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license issued pursuant to the Land Remote Sensing Policy Act of 1992 ([former] 15 U.S.C. 5601 et seq.) [now 51 U.S.C. 60101 et seq.]; and

“(2) includes any imagery and other product that is derived from such data and which is prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license described in paragraph (1)(B).

“(c) STATE OR LOCAL GOVERNMENT DISCLOSURES.—Land remote sensing information provided by the head of a department or agency of the United States to a State, local, or tribal government may not be made available to the general public under any State, local, or tribal law relating to the disclosure of information or records.

“(d) SAFEGUARDING INFORMATION.—The head of each department or agency of the United States having land remote sensing information within that department or agency or providing such information to a State, local, or tribal government shall take such actions, commensurate with the sensitivity of that information, as are necessary to protect that information from disclosure other than in accordance with this section and other applicable law.

“(e) ADDITIONAL DEFINITION.—In this section, the term ‘land remote sensing’ has the meaning given such term in section 3 of the Land Remote Sensing Policy Act of 1992 ([former] 15 U.S.C. 5602) [now 51 U.S.C. 60101].

“(f) DISCLOSURE TO CONGRESS.—Nothing in this section shall be construed to authorize the withholding of information from the appropriate committees of Congress.”

DISCLOSURE OF ARSON, EXPLOSIVE, OR FIREARM RECORDS

Pub. L. 108-7, div. J, title VI, §644, Feb. 20, 2003, 117 Stat. 473, provided that: “No funds appropriated under this Act or any other Act with respect to any fiscal year shall be available to take any action based upon any provision of 5 U.S.C. 552 with respect to records collected or maintained pursuant to 18 U.S.C. 846(b), 923(g)(3) or 923(g)(7), or provided by Federal, State, local, or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing of a firearm, except that such records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed under 5 U.S.C. 552 prior to the date of the enactment of this Act [Feb. 20, 2003].”

DISCLOSURE OF INFORMATION ON JAPANESE IMPERIAL GOVERNMENT

Pub. L. 106-567, title VIII, Dec. 27, 2000, 114 Stat. 2864, as amended by Pub. L. 108-199, div. H, §163, Jan. 23, 2004,

118 Stat. 452; Pub. L. 109-5, §1, Mar. 25, 2005, 119 Stat. 19, provided that:

“SEC. 801. SHORT TITLE.

“This title may be cited as the ‘Japanese Imperial Government Disclosure Act of 2000’.

“SEC. 802. DESIGNATION.

“(a) DEFINITIONS.—In this section:

“(1) AGENCY.—The term ‘agency’ has the meaning given such term under section 551 of title 5, United States Code.

“(2) INTERAGENCY GROUP.—The term ‘Interagency Group’ means the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group established under subsection (b).

“(3) JAPANESE IMPERIAL GOVERNMENT RECORDS.—The term ‘Japanese Imperial Government records’ means classified records or portions of records that pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the experimentation on, and persecution of, any person because of race, religion, national origin, or political opinion, during the period beginning September 18, 1931, and ending on December 31, 1948, under the direction of, or in association with—

“(A) the Japanese Imperial Government;

“(B) any government in any area occupied by the military forces of the Japanese Imperial Government;

“(C) any government established with the assistance or cooperation of the Japanese Imperial Government; or

“(D) any government which was an ally of the Japanese Imperial Government.

“(4) RECORD.—The term ‘record’ means a Japanese Imperial Government record.

“(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

“(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act [Dec. 27, 2000], the President shall designate the Working Group established under the Nazi War Crimes Disclosure Act (Public Law 105-246; 5 U.S.C. 552 note) to also carry out the purposes of this title with respect to Japanese Imperial Government records, and that Working Group shall remain in existence for 6 years after the date on which this title takes effect. Such Working Group is redesignated as the ‘Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group’.

“(2) MEMBERSHIP.—[Amended Pub. L. 105-246, set out as a note below.]

“(c) FUNCTIONS.—Not later than 1 year after the date of the enactment of this Act [Dec. 27, 2000], the Interagency Group shall, to the greatest extent possible consistent with section 803—

“(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Japanese Imperial Government records of the United States;

“(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

“(3) submit a report to Congress, including the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Permanent Select Committee on Intelligence of the House of Representatives, and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

“(d) FUNDING.—There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

“SEC. 803. REQUIREMENT OF DISCLOSURE OF RECORDS.

“(a) RELEASE OF RECORDS.—Subject to subsections (b), (c), and (d), the Japanese Imperial Government

Records Interagency Working Group shall release in their entirety Japanese Imperial Government records.

“(b) EXEMPTIONS.—An agency head may exempt from release under subsection (a) specific information, that would—

“(1) constitute an unwarranted invasion of personal privacy;

“(2) reveal the identity of a confidential human source, or reveal information about an intelligence source or method when the unauthorized disclosure of that source or method would damage the national security interests of the United States;

“(3) reveal information that would assist in the development or use of weapons of mass destruction;

“(4) reveal information that would impair United States cryptologic systems or activities;

“(5) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

“(6) reveal United States military war plans that remain in effect;

“(7) reveal information that would impair relations between the United States and a foreign government, or undermine ongoing diplomatic activities of the United States;

“(8) reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services are authorized in the interest of national security;

“(9) reveal information that would impair current national security emergency preparedness plans; or

“(10) violate a treaty or other international agreement.

“(c) APPLICATIONS OF EXEMPTIONS.—

“(1) IN GENERAL.—In applying the exemptions provided in paragraphs (2) through (10) of subsection (b), there shall be a presumption that the public interest will be served by disclosure and release of the records of the Japanese Imperial Government. The exemption may be asserted only when the head of the agency that maintains the records determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Permanent Select Committee on Intelligence of the House of Representatives.

“(2) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption provided in paragraphs (2) through (9) of subsection (b) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

“(d) RECORDS RELATED TO INVESTIGATIONS OR PROSECUTIONS.—This section shall not apply to records—

“(1) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

“(2) solely in the possession, custody, or control of the Office of Special Investigations.

“SEC. 804. EXPEDITED PROCESSING OF REQUESTS FOR JAPANESE IMPERIAL GOVERNMENT RECORDS.

“For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any person who was persecuted in the manner described in section 802(a)(3) and who requests a Japanese Imperial Government record shall be deemed to have a compelling need for such record.

“SEC. 805. EFFECTIVE DATE.

“The provisions of this title shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 27, 2000].”

NAZI WAR CRIMES DISCLOSURE

Pub. L. 105-246, Oct. 8, 1998, 112 Stat. 1859, as amended by Pub. L. 106-567, § 802(b)(2), Dec. 27, 2000, 114 Stat. 2865, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Nazi War Crimes Disclosure Act’.

“SEC. 2. ESTABLISHMENT OF NAZI WAR CRIMINAL RECORDS INTERAGENCY WORKING GROUP.

“(a) DEFINITIONS.—In this section the term—

“(1) ‘agency’ has the meaning given such term under section 551 of title 5, United States Code;

“(2) ‘Interagency Group’ means the Nazi War Criminal Records Interagency Working Group [redesignated Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group, see section 802(b)(1) of Pub. L. 106-567, set out above] established under subsection (b);

“(3) ‘Nazi war criminal records’ has the meaning given such term under section 3 of this Act; and

“(4) ‘record’ means a Nazi war criminal record.

“(b) ESTABLISHMENT OF INTERAGENCY GROUP.—

“(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Oct. 8, 1998], the President shall establish the Nazi War Criminal Records Interagency Working Group, which shall remain in existence for 3 years after the date the Interagency Group is established.

“(2) MEMBERSHIP.—The President shall appoint to the Interagency Group individuals whom the President determines will most completely and effectively carry out the functions of the Interagency Group within the time limitations provided in this section, including the Director of the Holocaust Museum, the Historian of the Department of State, the Archivist of the United States, the head of any other agency the President considers appropriate, and no more than 4 other persons who shall be members of the public, of whom 3 shall be persons appointed under the provisions of this Act in effect on October 8, 1998. [sic] The head of an agency appointed by the President may designate an appropriate officer to serve on the Interagency Group in lieu of the head of such agency.

“(3) INITIAL MEETING.—Not later than 90 days after the date of enactment of this Act, the Interagency Group shall hold an initial meeting and begin the functions required under this section.

“(c) FUNCTIONS.—Not later than 1 year after the date of enactment of this Act [Oct. 8, 1998], the Interagency Group shall, to the greatest extent possible consistent with section 3 of this Act—

“(1) locate, identify, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration, all classified Nazi war criminal records of the United States;

“(2) coordinate with agencies and take such actions as necessary to expedite the release of such records to the public; and

“(3) submit a report to Congress, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives, describing all such records, the disposition of such records, and the activities of the Interagency Group and agencies under this section.

“(d) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

“SEC. 3. REQUIREMENT OF DISCLOSURE OF RECORDS REGARDING PERSONS WHO COMMITTED NAZI WAR CRIMES.

“(a) NAZI WAR CRIMINAL RECORDS.—For purposes of this Act, the term ‘Nazi war criminal records’ means classified records or portions of records that—

“(1) pertain to any person with respect to whom the United States Government, in its sole discretion, has grounds to believe ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with—

“(A) the Nazi government of Germany;

“(B) any government in any area occupied by the military forces of the Nazi government of Germany;

“(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

“(D) any government which was an ally of the Nazi government of Germany; or

“(2) pertain to any transaction as to which the United States Government, in its sole discretion, has grounds to believe—

“(A) involved assets taken from persecuted persons during the period beginning on March 23, 1933, and ending on May 8, 1945, by, under the direction of, on behalf of, or under authority granted by the Nazi government of Germany or any nation then allied with that government; and

“(B) such transaction was completed without the assent of the owners of those assets or their heirs or assigns or other legitimate representatives.

“(b) RELEASE OF RECORDS.—

“(1) IN GENERAL.—Subject to paragraphs (2), (3), and (4), the Nazi War Criminal Records Interagency Working Group shall release in their entirety Nazi war criminal records that are described in subsection (a).

“(2) EXCEPTION FOR PRIVACY, ETC.—An agency head may exempt from release under paragraph (1) specific information, that would—

“(A) constitute a clearly unwarranted invasion of personal privacy;

“(B) reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

“(C) reveal information that would assist in the development or use of weapons of mass destruction;

“(D) reveal information that would impair United States cryptologic systems or activities;

“(E) reveal information that would impair the application of state-of-the-art technology within a United States weapon system;

“(F) reveal actual United States military war plans that remain in effect;

“(G) reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

“(H) reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

“(I) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

“(J) violate a treaty or international agreement.

“(3) APPLICATION OF EXEMPTIONS.—

“(A) IN GENERAL.—In applying the exemptions listed in subparagraphs (B) through (J) of paragraph (2), there shall be a presumption that the public interest in the release of Nazi war criminal records will be served by disclosure and release of the records. Assertion of such exemption may only be made when the agency head determines that disclosure and release would be harmful to a specific interest identified in the exemption. An agency

head who makes such a determination shall promptly report it to the committees of Congress with appropriate jurisdiction, including the Committee on the Judiciary of the Senate and the Committee on Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives. The exemptions set forth in paragraph (2) shall constitute the only authority pursuant to which an agency head may exempt records otherwise subject to release under paragraph (1).

“(B) APPLICATION OF TITLE 5.—A determination by an agency head to apply an exemption listed in subparagraphs (B) through (I) of paragraph (2) shall be subject to the same standard of review that applies in the case of records withheld under section 552(b)(1) of title 5, United States Code.

“(4) LIMITATION ON APPLICATION.—This subsection shall not apply to records—

“(A) related to or supporting any active or inactive investigation, inquiry, or prosecution by the Office of Special Investigations of the Department of Justice; or

“(B) solely in the possession, custody, or control of that office.

“(c) INAPPLICABILITY OF NATIONAL SECURITY ACT OF 1947 EXEMPTION.—Section 701(a) of the National Security Act of 1947 (50 U.S.C. 431[(a)]) shall not apply to any operational file, or any portion of any operational file, that constitutes a Nazi war criminal record under section 3 of this Act.

“SEC. 4. EXPEDITED PROCESSING OF FOIA REQUESTS FOR NAZI WAR CRIMINAL RECORDS.

“(a) EXPEDITED PROCESSING.—For purposes of expedited processing under section 552(a)(6)(E) of title 5, United States Code, any requester of a Nazi war criminal record shall be deemed to have a compelling need for such record.

“(b) REQUESTER.—For purposes of this section, the term ‘requester’ means any person who was persecuted in the manner described under section 3(a)(1) of this Act who requests a Nazi war criminal record.

“SEC. 5. EFFECTIVE DATE.

“This Act and the amendments made by this Act shall take effect on the date that is 90 days after the date of enactment of this Act [Oct. 8, 1998].”

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE;
PUBLIC ACCESS TO INFORMATION IN ELECTRONIC FORMAT

Section 2 of Pub. L. 104-231 provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;

“(2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;

“(3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;

“(4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;

“(5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and

“(6) Government agencies should use new technology to enhance public access to agency records and information.

“(b) PURPOSES.—The purposes of this Act [see Short Title of 1996 Amendment note above] are to—

- “(1) foster democracy by ensuring public access to agency records and information;
- “(2) improve public access to agency records and information;
- “(3) ensure agency compliance with statutory time limits; and
- “(4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.”

FREEDOM OF INFORMATION ACT EXEMPTION FOR
CERTAIN OPEN SKIES TREATY DATA

Pub. L. 103-236, title V, §533, Apr. 30, 1994, 108 Stat. 480, provided that:

“(a) IN GENERAL.—Data with respect to a foreign country collected by sensors during observation flights conducted in connection with the Treaty on Open Skies, including flights conducted prior to entry into force of the treaty, shall be exempt from disclosure under the Freedom of Information Act—

- “(1) if the country has not disclosed the data to the public; and
- “(2) if the country has not, acting through the Open Skies Consultative Commission or any other diplomatic channel, authorized the United States to disclose the data to the public.

“(b) STATUTORY CONSTRUCTION.—This section constitutes a specific exemption within the meaning of section 552(b)(3) of title 5, United States Code.

“(c) DEFINITIONS.—For the purposes of this section—

- “(1) the term ‘Freedom of Information Act’ means the provisions of section 552 of title 5, United States Code;
- “(2) the term ‘Open Skies Consultative Commission’ means the commission established pursuant to Article X of the Treaty on Open Skies; and
- “(3) the term ‘Treaty on Open Skies’ means the Treaty on Open Skies, signed at Helsinki on March 24, 1992.”

CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 13526, §3.6, Dec. 29, 2009, 75 F.R. 718, set out as a note under section 435 of Title 50, War and National Defense.

EXECUTIVE ORDER NO. 12174

Ex. Ord. No. 12174, Nov. 30, 1979, 44 F.R. 69609, which related to minimizing Federal paperwork, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

EX. ORD. NO. 12600. PREDISCLASURE NOTIFICATION PROCEDURES FOR CONFIDENTIAL COMMERCIAL INFORMATION

Ex. Ord. No. 12600, June 23, 1987, 52 F.R. 23781, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclasure notification procedures under the Freedom of Information Act [5 U.S.C. 552] concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

SECTION 1. The head of each Executive department and agency subject to the Freedom of Information Act [5 U.S.C. 552] shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act [FOIA], 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice re-

quires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

SEC. 2. For purposes of this Order, the following definitions apply:

(a) “Confidential commercial information” means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) “Submitter” means any person or entity who provides confidential commercial information to the government. The term “submitter” includes, but is not limited to, corporations, state governments, and foreign governments.

SEC. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

- (i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or
- (ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

- (i) designated pursuant to this subsection; or
- (ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

SEC. 4. When notification is made pursuant to section 1, each agency’s procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

SEC. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter’s objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

SEC. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency’s procedures shall require that the submitter be promptly notified.

SEC. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar pro-

cedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

SEC. 8. The notice requirements of this Order need not be followed if:

(a) The agency determines that the information should not be disclosed;

(b) The information has been published or has been officially made available to the public;

(c) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act [5 U.S.C. 552], and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

SEC. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

SEC. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

EX. ORD. NO. 13110. NAZI WAR CRIMES AND JAPANESE IMPERIAL GOVERNMENT RECORDS INTERAGENCY WORKING GROUP

Ex. Ord. No. 13110, Jan. 11, 1999, 64 F.R. 2419, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Nazi War Crimes Disclosure Act (Public Law 105-246) (the "Act") [5 U.S.C. 552 note], it is hereby ordered as follows:

SECTION 1. *Establishment of Working Group.* There is hereby established the Nazi War Criminal Records Interagency Working Group [now Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group] (Working Group). The function of the Group shall be to locate, inventory, recommend for declassification, and make available to the public at the National Archives and Records Administration all classified Nazi war criminal records of the United States, subject to certain designated exceptions as provided in the Act. The Working Group shall coordinate with agencies and take such actions as necessary to expedite the release of such records to the public.

SEC. 2. *Schedule.* The Working Group should complete its work to the greatest extent possible and report to the Congress within 1 year.

SEC. 3. *Membership.* (a) The Working Group shall be composed of the following members:

(1) Archivist of the United States (who shall serve as Chair of the Working Group);

(2) Secretary of Defense;

(3) Attorney General;

(4) Director of Central Intelligence;

(5) Director of the Federal Bureau of Investigation;

(6) Director of the United States Holocaust Memorial Museum;

(7) Historian of the Department of State; and

(8) Three other persons appointed by the President.

(b) The Senior Director for Records and Access Management of the National Security Council will serve as the liaison to and attend the meetings of the Working Group. Members of the Working Group who are full-time Federal officials may serve on the Working Group through designees.

SEC. 4. *Administration.* (a) To the extent permitted by law and subject to the availability of appropriations, the National Archives and Records Administration shall provide the Working Group with funding, administrative services, facilities, staff, and other support services necessary for the performance of the functions of the Working Group.

(b) The Working Group shall terminate 3 years from the date of this Executive order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13392. IMPROVING AGENCY DISCLOSURE OF INFORMATION

Ex. Ord. No. 13392, Dec. 14, 2005, 70 F.R. 75373, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.*

(a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) [5 U.S.C. 552] has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.

(b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the agency's response.

(c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency's FOIA program does not produce such results, it should be reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

(d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

SEC. 2. *Agency Chief FOIA Officers.*

(a) *Designation.* The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of

that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) *General Duties.* The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(i) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency's Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA, including the extent to which the agency meets the milestones in the agency's plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

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

(v) facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) *FOIA Requester Service Center and FOIA Public Liaisons.* In order to ensure appropriate communication with FOIA requesters:

(i) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency's website, including contact information for its FOIA Public Liaisons. In

the case of an agency without a website, the agency shall publish the information on the Firstgov.gov website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the Federal Register; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency's implementation of other means (such as tracking numbers for requests, or an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

SEC. 3. Review, Plan, and Report.

(a) *Review.* Each agency's Chief FOIA Officer shall conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(i) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency's administration of the FOIA, including the agency's expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency's:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(B) practices with respect to requests for expedited processing; and

(C) implementation of multi-track processing if used by such agency;

(iv) review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in section 552(a)(2) of title 5, United States Code; and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) *Plan.*

(i) Each agency's Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan, which shall be submitted to the head of the agency for approval, shall address the agency's implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency's Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency's success in the implementation of the plan.

(c) *Agency Reports to the Attorney General and OMB Director.*

(i) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency's plan under section 3(b) of this order. The agency shall publish a copy of the agency's report on the agency's website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the Federal Register.

(ii) The head of each agency shall include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its plan under section 3(b) of this order and on the agency's performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under section 552(e) of title 5, United States Code.

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency's failure to meet the milestone;

(C) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President's Management Council.

SEC. 4. *Attorney General.*

(a) *Report.* The Attorney General, using the reports submitted by the agencies under subsection 3(c)(i) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later than 10 months from the date of this order, a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies' implementation of the FOIA and of their plans under section 3(b) of this order.

(b) *Guidance.* The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

SEC. 5. *OMB Director.* The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

SEC. 6. *Definitions.* As used in this order:

(a) the term "agency" has the same meaning as the term "agency" under section 552(f)(1) of title 5, United States Code; and

(b) the term "record" has the same meaning as the term "record" under section 552(f)(2) of title 5, United States Code.

SEC. 7. *General Provisions.*

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

(b) This order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to,

and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

FREEDOM OF INFORMATION ACT

Memorandum of President of the United States, Jan. 21, 2009, 74 F.R. 4683, provided:

Memorandum for the Heads of Executive Departments and Agencies

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the Federal Register. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the Federal Register.

This memorandum 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.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e)¹ of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

¹ See References in Text note below.

(3) the term “maintain” includes maintain, collect, use, or disseminate;

(4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term “statistical record” means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term “routine use” means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term “matching program”—

(A) means any computerized comparison of—

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

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

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

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

(B) but does not include—

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

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

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

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal

Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

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

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

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

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

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

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

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

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

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

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

(12) the term “Federal benefit program” means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government,

providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

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

(b) **CONDITIONS OF DISCLOSURE.**—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

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

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

(c) **ACCOUNTING OF CERTAIN DISCLOSURES.**—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) **ACCESS TO RECORDS.**—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date

on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for non-compliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a

non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United

States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of com-

petent jurisdiction, may act on behalf of the individual.

(i)(1) **CRIMINAL PENALTIES.**—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) **GENERAL EXEMPTIONS.**—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) **SPECIFIC EXEMPTIONS.**—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) **ARCHIVAL RECORDS.**—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules

established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

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

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

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

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

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

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice

periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

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

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

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

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

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

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

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

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

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

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

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

(ii) be available upon request to the public.

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

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

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

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

(ii) each party to the agreement certifies to the Board in writing that the program has

been conducted in compliance with the agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or

both, are not being met by such recipient agency.

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

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

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT.—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.²

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the ini-

tial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(V) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(W) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.

(Added Pub. L. 93-579, §3, Dec. 31, 1974, 88 Stat. 1897; amended Pub. L. 94-183, §2(2), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 97-365, §2, Oct. 25, 1982, 96 Stat. 1749; Pub. L. 97-375, title II, §201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 97-452, §2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98-477, §2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98-497, title I, §107(g), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 100-503, §§2-6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507-2514; Pub. L. 101-508, title VII,

² So in original. Probably should be "cost-effective."

§ 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388–334; Pub. L. 103–66, title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611; Pub. L. 104–193, title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 104–226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 104–316, title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 105–34, title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub. L. 105–362, title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 106–170, title IV, § 402(a)(2), Dec. 17, 1999, 113 Stat. 1908; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–148, title VI, § 6402(b)(2), Mar. 23, 2010, 124 Stat. 756; Pub. L. 111–203, title X, § 1082, July 21, 2010, 124 Stat. 2080.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99–570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), (vii), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 404, 464, and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 604, 664, and 1320b–7, respectively, of Title 42, The Public Health and Welfare.

For effective date of this section, referred to in subssecs. (k)(2), (5), (7), (l)(2), (3), and (m), see Effective Date note below.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub. L. 93–579, which was set out below and was repealed by section 6(c) of Pub. L. 100–503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title note below.

The Consumer Financial Protection Act of 2010, referred to in subsec. (w), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§ 5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

CODIFICATION

Section 552a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2244 of Title 7, Agriculture.

AMENDMENTS

2010—Subsec. (a)(8)(B)(ix). Pub. L. 111–148 added cl. (ix).

Subsec. (w). Pub. L. 111–203 added subsec. (w).

2004—Subsec. (b)(10). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

1999—Subsec. (a)(8)(B)(viii). Pub. L. 106–170 added cl. (viii).

1998—Subsec. (u)(6), (7). Pub. L. 105–362 redesignated par. (7) as (6), substituted “paragraph (3)(D)” for “paragraphs (3)(D) and (6)”, and struck out former par. (6) which read as follows: “The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.”

1997—Subsec. (a)(8)(B)(vii). Pub. L. 105–34 added cl. (vii).

1996—Subsec. (a)(8)(B)(iv)(III). Pub. L. 104–193 substituted “section 404(e), 464,” for “section 464”.

Subsec. (a)(8)(B)(v) to (vii). Pub. L. 104–226 inserted “or” at end of cl. (v), struck out “or” at end of cl. (vi), and struck out cl. (vii) which read as follows: “matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;”.

Subsecs. (b)(12), (m)(2). Pub. L. 104–316 substituted “3711(e)” for “3711(f)”.

1993—Subsec. (a)(8)(B)(vii). Pub. L. 103–66 added cl. (vii).

1990—Subsec. (p). Pub. L. 101–508 amended subsec. (p) generally, restating former pars. (1) and (3) as par. (1), adding provisions relating to Data Integrity Boards, and restating former pars. (2) and (4) as (2) and (3), respectively.

1988—Subsec. (a)(8) to (13). Pub. L. 100–503, § 5, added pars. (8) to (13).

Subsec. (e)(12). Pub. L. 100–503, § 3(a), added par. (12).

Subsec. (f). Pub. L. 100–503, § 7, substituted “biennially” for “annually” in last sentence.

Subsecs. (o) to (q). Pub. L. 100–503, § 2(2), added subssecs. (o) to (q). Former subssecs. (o) to (q) redesignated (r) to (t), respectively.

Subsec. (r). Pub. L. 100–503, § 3(b), inserted “and matching programs” in heading and amended text generally. Prior to amendment, text read as follows: “Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.”

Pub. L. 100–503, § 2(1), redesignated former subsec. (o) as (r).

Subsec. (s). Pub. L. 100–503, § 8, substituted “Biennial” for “Annual” in heading, “biennially submit” for “annually submit” in introductory provisions, “preceding 2 years” for “preceding year” in par. (1), and “such years” for “such year” in par. (2).

Pub. L. 100–503, § 2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub. L. 100–503, § 2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub. L. 100–503, § 4, added subsec. (u).

Subsec. (v). Pub. L. 100–503, § 6(a), added subsec. (v).

1984—Subsec. (b)(6). Pub. L. 98–497, § 107(g)(1), substituted “National Archives and Records Administration” for “National Archives of the United States”, and “Archivist of the United States or the designee of the Archivist” for “Administrator of General Services or his designee”.

Subsec. (l)(1). Pub. L. 98–497, § 107(g)(2), substituted “Archivist of the United States” for “Administrator of General Services” in two places.

Subsec. (q). Pub. L. 98–477 designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (b)(12). Pub. L. 97–452 substituted “section 3711(f) of title 31” for “section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))”.

Subsec. (m)(2). Pub. L. 97–452 substituted “section 3711(f) of title 31” for “section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))”.

1982—Subsec. (b)(12). Pub. L. 97–365, § 2(a), added par. (12).

Subsec. (e)(4). Pub. L. 97–375, § 201(a), substituted “upon establishment or revision” for “at least annually” after “Federal Register”.

Subsec. (m). Pub. L. 97–365, § 2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 97–375, § 201(b), substituted provisions requiring annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to submit to the

Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicate efforts to administer fully this section.

1975—Subsec. (g)(5). Pub. L. 94-183 substituted “to September 27, 1975” for “to the effective date of this section”.

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.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note under section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title X, § 1082, July 21, 2010, 124 Stat. 2080, provided that the amendment made by section 1082 is effective on July 21, 2010.

Pub. L. 111-203, title X, § 1100H, July 21, 2010, 124 Stat. 2113, provided that: “Except as otherwise provided in this subtitle [subtitle H (§§ 1081–1100H) of title X of Pub. L. 111-203, see Tables for classification] and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 [amending section 8G of Pub. L. 95-452, set out in the Appendix to this title, and enacting provisions set out as a note under section 8G of Pub. L. 95-452] and 1082 [amending this section and enacting provisions set out as a note under this section], shall become effective on the designated transfer date.”

[The term “designated transfer date” is defined in section 5481(9) of Title 12, Banks and Banking, as the date established under section 5582 of Title 12, which is July 21, 2011.]

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to individuals whose period of confinement in an institution commences on or after the first day of the fourth month beginning after December 1999, see section 402(a)(4) of Pub. L. 106-170, set out as a note under section 402 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to levies issued after Aug. 5, 1997, see section 1026(c) of Pub. L. 105-34, set out as a note under section 6103 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended,

set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103-66, set out as a note under section 1395y of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-503, § 10, Oct. 18, 1988, 102 Stat. 2514, as amended by Pub. L. 101-56, § 2, July 19, 1989, 103 Stat. 149, provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall take effect 9 months after the date of enactment of this Act [Oct. 18, 1988].

“(b) EXCEPTIONS.—The amendment made by sections 3(b), 6, 7, and 8 of this Act [amending this section and repealing provisions set out as a note below] shall take effect upon enactment.

“(c) EFFECTIVE DATE DELAYED FOR EXISTING PROGRAMS.—In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code, as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if—

“(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

“(2) such identification is—

“(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

“(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

EFFECTIVE DATE

Pub. L. 93-579, § 8, Dec. 31, 1974, 88 Stat. 1910, provided that: “The provisions of this Act [enacting this section and provisions set out as notes under this section] shall be effective on and after the date of enactment [Dec. 31, 1974], except that the amendments made by sections 3 and 4 [enacting this section and amending analysis preceding section 500 of this title] shall become effective 270 days following the day on which this Act is enacted.”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-508, title VII, § 7201(a), Nov. 5, 1990, 104 Stat. 1388-334, provided that: “This section [amending this section and enacting provisions set out as notes below] may be cited as the ‘Computer Matching and Privacy Protection Amendments of 1990’.”

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-56, § 1, July 19, 1989, 103 Stat. 149, provided that: “This Act [amending section 10 of Pub. L. 100-503, set out as a note above] may be cited as the ‘Computer Matching and Privacy Protection Act Amendments of 1989’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-503, § 1, Oct. 18, 1988, 102 Stat. 2507, provided that: “This Act [amending this section, enacting

provisions set out as notes above and below, and repealing provisions set out as a note below] may be cited as the ‘Computer Matching and Privacy Protection Act of 1988’.”

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-579, § 1, Dec. 31, 1974, 88 Stat. 1896, provided: “That this Act [enacting this section and provisions set out as notes under this section] may be cited as the ‘Privacy Act of 1974’.”

SHORT TITLE

This section is popularly known as the “Privacy Act”.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (s) of this section, 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 31 of House Document No. 103-7.

DELEGATION OF FUNCTIONS

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title 44, Public Printing and Documents.

PUBLICATION OF GUIDANCE UNDER SUBSECTION (p)(1)(A)(ii)

Pub. L. 101-508, title VII, § 7201(b)(2), Nov. 5, 1990, 104 Stat. 1388-334, provided that: “Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act.”

LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT

Pub. L. 101-508, title VII, § 7201(c), Nov. 5, 1990, 104 Stat. 1388-335, provided that: “Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2 [probably means section 7201(b)(1) of Pub. L. 101-508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of—

- “(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or
- “(2) 30 days after the date of publication of guidance under section 2(b) [probably means section 7201(b)(2) of Pub. L. 101-508, set out as a note above].”

EFFECTIVE DATE DELAYED FOR CERTAIN EDUCATION BENEFITS COMPUTER MATCHING PROGRAMS

Pub. L. 101-366, title II, § 206(d), Aug. 15, 1990, 104 Stat. 442, provided that:

“(1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 and chapter 106 of title 10, United States Code, the amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 [Pub. L. 100-503] (other than the amendments made by section 10(b) of that Act) [see Effective Date of 1988 Amendment note above] shall take effect on October 1, 1990.

“(2) For purposes of this subsection, the term ‘matching program’ has the same meaning provided in section 552a(a)(8) of title 5, United States Code.”

IMPLEMENTATION GUIDANCE FOR 1988 AMENDMENTS

Pub. L. 100-503, § 6(b), Oct. 18, 1988, 102 Stat. 2513, provided that: “The Director shall, pursuant to section

552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note below] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988].”

CONSTRUCTION OF 1988 AMENDMENTS

Pub. L. 100-503, § 9, Oct. 18, 1988, 102 Stat. 2514, provided that: “Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall be construed to authorize—

- “(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;
- “(2) the direct linking of computerized systems of records maintained by Federal agencies;
- “(3) the computer matching of records not otherwise authorized by law; or
- “(4) the disclosure of records for computer matching except to a Federal, State, or local agency.”

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Pub. L. 93-579, § 2, Dec. 31, 1974, 88 Stat. 1896, provided that:

“(a) The Congress finds that—

- “(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;
- “(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;
- “(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;
- “(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and
- “(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

“(b) The purpose of this Act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

- “(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;
- “(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;
- “(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;
- “(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;
- “(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and
- “(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual’s rights under this Act.”

PRIVACY PROTECTION STUDY COMMISSION

Pub. L. 93-579, §5, Dec. 31, 1974, 88 Stat. 1905, as amended by Pub. L. 95-38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub. L. 93-579.

GUIDELINES AND REGULATIONS FOR MAINTENANCE OF PRIVACY AND PROTECTION OF RECORDS OF INDIVIDUALS

Pub. L. 93-579, §6, Dec. 31, 1974, 88 Stat. 1909, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub. L. 100-503, §6(c), Oct. 18, 1988, 102 Stat. 2513.

DISCLOSURE OF SOCIAL SECURITY NUMBER

Pub. L. 93-579, §7, Dec. 31, 1974, 88 Stat. 1909, provided that:

“(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.

“(2) the [The] provisions of paragraph (1) of this subsection shall not apply with respect to—

“(A) any disclosure which is required by Federal statute, or

“(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

“(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.”

AUTHORIZATION OF APPROPRIATIONS TO PRIVACY PROTECTION STUDY COMMISSION

Pub. L. 93-579, §9, Dec. 31, 1974, 88 Stat. 1910, as amended by Pub. L. 94-394, Sept. 3, 1976, 90 Stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 1977.

EX. ORD. No. 9397. NUMBERING SYSTEM FOR FEDERAL ACCOUNTS RELATING TO INDIVIDUAL PERSONS

Ex. Ord. No. 9397, Nov. 22, 1943, 8 F.R. 16095, as amended by Ex. Ord. No. 13478, §2, Nov. 18, 2008, 73 F.R. 70239, provided:

WHEREAS certain Federal agencies from time to time require in the administration of their activities a system of numerical identification of accounts of individual persons; and

WHEREAS some seventy million persons have heretofore been assigned account numbers pursuant to the Social Security Act; and

WHEREAS a large percentage of Federal employees have already been assigned account numbers pursuant to the Social Security Act; and

WHEREAS it is desirable in the interest of economy and orderly administration that the Federal Govern-

ment move towards the use of a single, unduplicated numerical identification system of accounts and avoid the unnecessary establishment of additional systems:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

1. Hereafter any Federal department, establishment, or agency may, whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize the Social Security Act account numbers assigned pursuant to title 20, section 422.103 of the Code of Federal Regulations and pursuant to paragraph 2 of this order.

2. The Social Security Administration shall provide for the assignment of an account number to each person who is required by any Federal agency to have such a number but who has not previously been assigned such number by the Administration. The Administration may accomplish this purpose by (a) assigning such numbers to individual persons, (b) assigning blocks of numbers to Federal agencies for reassignment to individual persons, or (c) making such other arrangements for the assignment of numbers as it may deem appropriate.

3. The Social Security Administration shall furnish, upon request of any Federal agency utilizing the numerical identification system of accounts provided for in this order, the account number pertaining to any person with whom such agency has an account or the name and other identifying data pertaining to any account number of any such person.

4. The Social Security Administration and each Federal agency shall maintain the confidential character of information relating to individual persons obtained pursuant to the provisions of this order.

5. There shall be transferred to the Social Security Administration, from time to time, such amounts as the Director of the Office of Management and Budget shall determine to be required for reimbursement by any Federal agency for the services rendered by the Administration pursuant to the provisions of this order.

6. This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

7. 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, instrumentalities, or entities, its officers, employees, or agents, or any other person.

8. This order shall be published in the Federal Register.

CLASSIFIED NATIONAL SECURITY INFORMATION

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 13526, §3.6, Dec. 29, 2009, 75 F.R. 718, set out as a note under section 435 of Title 50, War and National Defense.

§ 552b. Open meetings

(a) For purposes of this section—

(1) the term “agency” means any agency, as defined in section 552(e)¹ of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term “meeting” means the deliberations of at least the number of individual agency members required to take action on

¹ See References in Text note below.

behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would—

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action,

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to

paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be re-

tained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an

agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1-year period.

(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

(Added Pub. L. 94-409, §3(a), Sept. 13, 1976, 90 Stat. 1241; amended Pub. L. 104-66, title III, §3002, Dec. 21, 1995, 109 Stat. 734.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99-570.

180 days after the date of enactment of this section, referred to in subsec. (g), means 180 days after the date of enactment of Pub. L. 94-409, which was approved Sept. 13, 1976.

AMENDMENTS

1995—Subsec. (j). Pub. L. 104-66 amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: "Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency)."

EFFECTIVE DATE

Pub. L. 94-409, §6, Sept. 13, 1976, 90 Stat. 1248, provided that:

"(a) Except as provided in subsection (b) of this section, the provisions of this Act [see Short Title note set out below] shall take effect 180 days after the date of its enactment [Sept. 13, 1976].

"(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment [Sept. 13, 1976]."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-409, §1, Sept. 13, 1976, 90 Stat. 1241, provided: "That this Act [enacting this section, amending sections 551, 552, 556, and 557 of this title, section 10 of Pub. L. 92-463, set out in the Appendix to this title, and section 410 of Title 39, and enacting provisions set out as notes under this section] may be cited as the 'Government in the Sunshine Act'."

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 report required by subsec. (j) of this section is listed on page 151), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104-52, set out as a note preceding section 591 of this title.

DECLARATION OF POLICY AND STATEMENT OF PURPOSE

Pub. L. 94-409, §2, Sept. 13, 1976, 90 Stat. 1241, provided that: "It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act [see Short Title note set out above] to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities."

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

- (1) a military or foreign affairs function of the United States; or
- (2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

- (1) a statement of the time, place, and nature of public rule making proceedings;
- (2) reference to the legal authority under which the rule is proposed; and
- (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

- (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or
- (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretative rules and statements of policy; or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1003. | June 11, 1946, ch. 324, §4, 60 Stat. 238. |

In subsection (a)(1), the words "or naval" are omitted as included in "military".

In subsection (b), the word "when" is substituted for "in any situation in which".

In subsection (c), the words "for oral presentation" are substituted for "to present the same orally in any manner". The words "sections 556 and 557 of this title apply instead of this subsection" are substituted for "the requirements of sections 1006 and 1007 of this title shall apply in place of the provisions of this subsection".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 553 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2245 of Title 7, Agriculture.

EXECUTIVE ORDER NO. 12044

Ex. Ord. No. 12044, Mar. 23, 1978, 43 F.R. 12661, as amended by Ex. Ord. No. 12221, June 27, 1980, 45 F.R. 44249, which related to the improvement of Federal regulations, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

- (1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
- (2) the selection or tenure of an employee, except a¹ administrative law judge appointed under section 3105 of this title;
- (3) proceedings in which decisions rest solely on inspections, tests, or elections;
- (4) the conduct of military or foreign affairs functions;
- (5) cases in which an agency is acting as an agent for a court; or
- (6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

- (1) the time, place, and nature of the hearing;
- (2) the legal authority and jurisdiction under which the hearing is to be held; and

¹ So in original.

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 384; Pub. L. 95-251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1004. | June 11, 1946, ch. 324, §5, 60 Stat. 239. |

In subsection (a)(2), the word “employee” is substituted for “officer or employee of the United States” in view of the definition of “employee” in section 2105.

In subsection (a)(4), the word “naval” is omitted as included in “military”.

In subsection (a)(5), the word “or” is substituted for “and” since the exception is applicable if any one of the factors are involved.

In subsection (a)(6), the word “worker” is substituted for “employee”, since the latter is defined in section 2105 as meaning Federal employees.

In subsection (b), the word “When” is substituted for “In instances in which”.

In subsection (c)(2), the comma after the word “hearing” is omitted to correct an editorial error.

In subsection (d), the words “The employee” and “such an employee” are substituted in the first two sentences for “The same officers” and “such officers” in view of the definition of “employee” in section 2105. The word “officer” is omitted in the third and fourth sentences as included in “employee” as defined in section 2105. The prohibition in the third and fourth sentences is restated in positive form. In paragraph (C) of the last sentence, the words “in any manner” are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 554 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2246 of Title 7, Agriculture.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-251 substituted “administrative law judge” for “hearing examiner”.

§ 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a non-public investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance

with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 385.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1005. | June 11, 1946, ch. 324, § 6, 60 Stat. 240. |

In subsection (b), the words "is entitled" are substituted for "shall be accorded the right". The word "officers" is omitted as included in "employees" in view of the definition of "employee" in section 2105. The words "With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time" are substituted for "with reasonable dispatch" and "except that due regard shall be had for the convenience and necessity of the parties or their representatives". The prohibition in the last sentence is restated in positive form and the words "This subsection does not" are substituted for "Nothing herein shall be construed either to".

In subsection (c), the words "in any manner or for any purpose" are omitted as surplusage.

In subsection (e), the word "brief" is substituted for "simple". The words "of the grounds for denial" are substituted for "of procedural or other grounds" for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 555 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2247 of Title 7, Agriculture.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

- (1) the agency;
- (2) one or more members of the body which comprises the agency; or
- (3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time dis-

qualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

- (1) administer oaths and affirmations;
- (2) issue subpoenas authorized by law;
- (3) rule on offers of proof and receive relevant evidence;
- (4) take depositions or have depositions taken when the ends of justice would be served;
- (5) regulate the course of the hearing;
- (6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;
- (7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;
- (8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;
- (9) dispose of procedural requests or similar matters;
- (10) make or recommend decisions in accordance with section 557 of this title; and
- (11) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties.

When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 386; Pub. L. 94-409, §4(c), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95-251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 101-552, §4(a), Nov. 15, 1990, 104 Stat. 2737.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1006. | June 11, 1946, ch. 324, §7, 60 Stat. 241. |

In subsection (b), the words "hearing examiners" are substituted for "examiners" in paragraph (3) for clarity. The prohibition in the second sentence is restated in positive form and the words "This subchapter does not" are substituted for "but nothing in this chapter shall be deemed to". The words "employee" and "employees" are substituted for "officer" and "officers" in view of the definition of "employee" in section 2105. The sentence "A presiding or participating employee may at any time disqualify himself." is substituted for the words "Any such officer may at any time withdraw if he deems himself disqualified."

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (c)(6). Pub. L. 101-552, §4(a)(1), inserted before semicolon at end "or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter".

Subsec. (c)(7) to (11). Pub. L. 101-552, §4(a)(2), added pars. (7) and (8) and redesignated former pars. (7) and (8) and redesignated former pars. (7) to (9) as (9) to (11), respectively.

1978—Subsec. (b)(3). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners".

1976—Subsec. (d). Pub. L. 94-409 inserted provisions relating to consideration by agency of a violation under section 557(d) of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94-409, set out as an Effective Date note under section 552b of this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF AGRICULTURE

Functions vested by this subchapter in hearing examiners employed by Department of Agriculture not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Agriculture by 1953 Reorg. Plan No. 2, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF COMMERCE

Functions vested by this subchapter in hearing examiners employed by Department of Commerce not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Commerce by 1950 Reorg. Plan No. 5, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE INTERIOR

Functions vested by this subchapter in hearing examiners employed by Department of the Interior not included in functions of officers, agencies, and employees

of that Department transferred to Secretary of the Interior by 1950 Reorg. Plan No. 3, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF JUSTICE

Functions vested by this subchapter in hearing examiners employed by Department of Justice not included in functions of officers, agencies, and employees of that Department transferred to Attorney General by 1950 Reorg. Plan No. 2, §1, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF LABOR

Functions vested by this subchapter in hearing examiners employed by Department of Labor not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Labor by 1950 Reorg. Plan No. 6, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE TREASURY

Functions vested by this subchapter in hearing examiners employed by Department of the Treasury not included in functions of officers, agencies, and employees of that Department transferred to Secretary of the Treasury by 1950 Reorg. Plan. No. 26, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to this title.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decision; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the

decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

- (1) proposed findings and conclusions; or
- (2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and
- (3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

- (A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and
- (B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

- (i) all such written communications;
- (ii) memoranda stating the substance of all such oral communications; and
- (iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency

may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 387; Pub. L. 94-409, § 4(a), Sept. 13, 1976, 90 Stat. 1246.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1007. | June 11, 1946, ch. 324, §8, 60 Stat. 242. |

In subsection (b), the word "employee" is substituted for "officer" and "officers" in view of the definition of "employee" in section 2105. The word "either" is added after the word "requires" in the first sentence to eliminate the need for parentheses. The words "the presiding employee or an employee qualified to preside at hearings under section 556 of this title" are substituted for "such officers" in the last sentence. The word "initial" is omitted before "decision", the final word in the first sentence and the sixth word of the fourth sentence, to avoid confusion between the "initial decision" of the presiding employee and the "initial decision" of the agency.

In subsection (c), the word "employees" is substituted for "officers" in view of the definition of "employee" in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 557 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2207 of Title 7, Agriculture.

Section 557a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2208 of Title 7.

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-409 added subsec. (d).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94-409, set out as an Effective Date note under section 552b of this title.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those

in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1008. | June 11, 1946, ch. 324, § 9, 60 Stat. 242. |

In subsection (b), the prohibition is restated in positive form.

In subsection (c), the words “within a reasonable time” are substituted for “with reasonable dispatch”. The last two sentences are restated for conciseness and clarity and to restate the prohibition in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 558 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2209 of Title 7, Agriculture.

§ 559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388; Pub. L. 90-623, § 1(1), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 95-251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title VIII, § 801(a)(3)(B)(iii), Oct. 13, 1978, 92 Stat. 1221.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1011. | June 11, 1946, ch. 324, § 12, 60 Stat. 244. |

In the first and last sentences, the words “This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5362, and 7521, and the provisions of section 5335(a)(B) of this title that relate to hearing examiners” are substituted for “this Act” to reflect the codification of the Act in this title. The words “to diminish the constitutional rights of any person or” are omitted as surplusage as there is nothing in the Act that can reasonably be construed to diminish those rights and because a statute may not operate in derogation of the Constitution.

The third sentence of former section 1011 is omitted as covered by technical section 7. The sixth sentence of former section 1011 is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “5372” for “5362” wherever appearing.

Pub. L. 95-251 substituted “administrative law judges” for “hearing examiners” wherever appearing.

1968—Pub. L. 90-623 inserted “of this title” after “7521” wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on first day of first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

SUBCHAPTER III—NEGOTIATED RULEMAKING PROCEDURE

PRIOR PROVISIONS

A prior subchapter III (§ 571 et seq.) was redesignated subchapter V (§ 591 et seq.) of this chapter.

AMENDMENTS

1992—Pub. L. 102-354, § 3(a)(1), Aug. 26, 1992, 106 Stat. 944, redesignated subchapter IV of this chapter relating to negotiated rulemaking procedure as this subchapter.

§ 561. Purpose

The purpose of this subchapter is to establish a framework for the conduct of negotiated rulemaking, consistent with section 553 of this title, to encourage agencies to use the process when it enhances the informal rulemaking process. Nothing in this subchapter should be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or with other innovative rulemaking procedures otherwise authorized by law.

(Added Pub. L. 101-648, § 3(a), Nov. 29, 1990, 104 Stat. 4970, § 581; renumbered § 561, Pub. L. 102-354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 581 of this title as this section.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Pub. L. 101-648, § 5, Nov. 29, 1990, 104 Stat. 4976, as amended by Pub. L. 102-354, § 5(a)(2), Aug. 26, 1992, 106 Stat. 945, which provided that subchapter III of chapter 5 of title 5 and the table of sections corresponding to

such subchapter, were repealed, effective 6 years after Nov. 29, 1990, except for then pending proceedings, was repealed by Pub. L. 104-320, §11(a), Oct. 19, 1996, 110 Stat. 3873.

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-354, §1, Aug. 26, 1992, 106 Stat. 944, provided that: "This Act [amending sections 565, 568, 569, 571, 577, 580, 581, and 593 of this title, section 10 of Title 9, Arbitration, and section 173 of Title 29, Labor, renumbering sections 571 to 576, 581 to 590, and 581 to 593 as 591 to 596, 561 to 570, and 571 to 583, respectively, of this title, and amending provisions set out as notes under this section and section 571 of this title] may be cited as the 'Administrative Procedure Technical Amendments Act of 1991'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-648, §1, Nov. 29, 1990, 104 Stat. 4969, provided that: "This Act [enacting this subchapter] may be cited as the 'Negotiated Rulemaking Act of 1990'."

CONGRESSIONAL FINDINGS

Pub. L. 101-648, §2, Nov. 29, 1990, 104 Stat. 4969, provided that: "The Congress makes the following findings:

"(1) Government regulation has increased substantially since the enactment of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].

"(2) Agencies currently use rulemaking procedures that may discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions and to engage in expensive and time-consuming litigation over agency rules.

"(3) Adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.

"(4) Negotiated rulemaking, in which the parties who will be significantly affected by a rule participate in the development of the rule, can provide significant advantages over adversarial rulemaking.

"(5) Negotiated rulemaking can increase the acceptability and improve the substance of rules, making it less likely that the affected parties will resist enforcement or challenge such rules in court. It may also shorten the amount of time needed to issue final rules.

"(6) Agencies have the authority to establish negotiated rulemaking committees under the laws establishing such agencies and their activities and under the Federal Advisory Committee Act (5 U.S.C. App.). Several agencies have successfully used negotiated rulemaking. The process has not been widely used by other agencies, however, in part because such agencies are unfamiliar with the process or uncertain as to the authority for such rulemaking."

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 101-648, §4, Nov. 29, 1990, 104 Stat. 4976, as amended by Pub. L. 102-354, §5(a)(1), Aug. 26, 1992, 106 Stat. 945, authorized additional appropriations to Administrative Conference of the United States to carry out Pub. L. 101-648 in fiscal years 1991, 1992, and 1993.

§ 562. Definitions

For the purposes of this subchapter, the term—

(1) "agency" has the same meaning as in section 551(1) of this title;

(2) "consensus" means unanimous concurrence among the interests represented on a ne-

gotiated rulemaking committee established under this subchapter, unless such committee—

(A) agrees to define such term to mean a general but not unanimous concurrence; or

(B) agrees upon another specified definition;

(3) "convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking;

(4) "facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule;

(5) "interest" means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner;

(6) "negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee;

(7) "negotiated rulemaking committee" or "committee" means an advisory committee established by an agency in accordance with this subchapter and the Federal Advisory Committee Act to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;

(8) "party" has the same meaning as in section 551(3) of this title;

(9) "person" has the same meaning as in section 551(2) of this title;

(10) "rule" has the same meaning as in section 551(4) of this title; and

(11) "rulemaking" means "rule making" as that term is defined in section 551(5) of this title.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4970, § 582; renumbered §562, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in par. (7), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 582 of this title as this section.

§ 563. Determination of need for negotiated rulemaking committee

(a) DETERMINATION OF NEED BY THE AGENCY.—An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule, if the head of the agency determines that the use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the head of the agency shall consider whether—

(1) there is a need for a rule;

(2) there are a limited number of identifiable interests that will be significantly affected by the rule;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

(A) can adequately represent the interests identified under paragraph (2); and

(B) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(6) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

(b) USE OF CONVENER.—

(1) PURPOSES OF CONVENER.—An agency may use the services of a convener to assist the agency in—

(A) identifying persons who will be significantly affected by a proposed rule, including residents of rural areas; and

(B) conducting discussions with such persons to identify the issues of concern to such persons, and to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking.

(2) DUTIES OF CONVENER.—The convener shall report findings and may make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule, including residents of rural areas. The report and any recommendations of the convener shall be made available to the public upon request.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4970, §583; renumbered §563, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 583 of this title as this section.

NEGOTIATED RULEMAKING COMMITTEES

Pub. L. 104-320, §11(e), Oct. 19, 1996, 110 Stat. 3874, provided that: “The Director of the Office of Management and Budget shall—

“(1) within 180 days of the date of the enactment of this Act [Oct. 19, 1996], take appropriate action to expedite the establishment of negotiated rulemaking committees and committees established to resolve disputes under the Administrative Dispute Resolution Act [Pub. L. 101-552, see Short Title note set out under section 571 of this title], including, with respect to negotiated rulemaking committees, eliminating any redundant administrative requirements related to filing a committee charter under section 9 of the Federal Advisory Committee Act (5 U.S.C. App.) and providing public notice of such committee under section 564 of title 5, United States Code; and

“(2) within one year of the date of the enactment of this Act, submit recommendations to Congress for any necessary legislative changes.”

§ 564. Publication of notice; applications for membership on committees

(a) PUBLICATION OF NOTICE.—If, after considering the report of a convener or conducting its

own assessment, an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Federal Register and, as appropriate, in trade or other specialized publications, a notice which shall include—

(1) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(2) a description of the subject and scope of the rule to be developed, and the issues to be considered;

(3) a list of the interests which are likely to be significantly affected by the rule;

(4) a list of the persons proposed to represent such interests and the person or persons proposed to represent the agency;

(5) a proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of a proposed rule for notice and comment;

(6) a description of administrative support for the committee to be provided by the agency, including technical assistance;

(7) a solicitation for comments on the proposal to establish the committee, and the proposed membership of the negotiated rulemaking committee; and

(8) an explanation of how a person may apply or nominate another person for membership on the committee, as provided under subsection (b).

(b) APPLICATIONS FOR MEMBERSHIP OR¹ COMMITTEE.—Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice under subsection (a)(4) may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule. Each application or nomination shall include—

(1) the name of the applicant or nominee and a description of the interests such person shall represent;

(2) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;

(3) a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and

(4) the reasons that the persons specified in the notice under subsection (a)(4) do not adequately represent the interests of the person submitting the application or nomination.

(c) PERIOD FOR SUBMISSION OF COMMENTS AND APPLICATIONS.—The agency shall provide for a period of at least 30 calendar days for the submission of comments and applications under this section.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4971, §584; renumbered §564, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 584 of this title as this section.

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

§ 565. Establishment of committee

(a) ESTABLISHMENT.—

(1) DETERMINATION TO ESTABLISH COMMITTEE.—If after considering comments and applications submitted under section 564, the agency determines that a negotiated rulemaking committee can adequately represent the interests that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee. In establishing and administering such a committee, the agency shall comply with the Federal Advisory Committee Act with respect to such committee, except as otherwise provided in this subchapter.

(2) DETERMINATION NOT TO ESTABLISH COMMITTEE.—If after considering such comments and applications, the agency decides not to establish a negotiated rulemaking committee, the agency shall promptly publish notice of such decision and the reasons therefor in the Federal Register and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the negotiating¹ rulemaking committee to represent such interests with respect to the proposed rule.

(b) MEMBERSHIP.—The agency shall limit membership on a negotiated rulemaking committee to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. Each committee shall include at least one person representing the agency.

(c) ADMINISTRATIVE SUPPORT.—The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4972, §585; renumbered §565 and amended Pub. L. 102-354, §3(a)(2), (3), Aug. 26, 1992, 106 Stat. 944.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102-354, §3(a)(2), renumbered section 585 of this title as this section.

Subsec. (a)(1). Pub. L. 102-354, §3(a)(3), substituted “section 564” for “section 584”.

§ 566. Conduct of committee activity

(a) DUTIES OF COMMITTEE.—Each negotiated rulemaking committee established under this subchapter shall consider the matter proposed by the agency for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule.

(b) REPRESENTATIVES OF AGENCY ON COMMITTEE.—The person or persons representing the

agency on a negotiated rulemaking committee shall participate in the deliberations and activities of the committee with the same rights and responsibilities as other members of the committee, and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(c) SELECTING FACILITATOR.—Notwithstanding section 10(e) of the Federal Advisory Committee Act, an agency may nominate either a person from the Federal Government or a person from outside the Federal Government to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the nominee of the agency for facilitator, the agency shall submit a substitute nomination. If a committee does not approve any nominee of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or otherwise chair the committee.

(d) DUTIES OF FACILITATOR.—A facilitator approved or selected by a negotiated rulemaking committee shall—

(1) chair the meetings of the committee in an impartial manner;

(2) impartially assist the members of the committee in conducting discussions and negotiations; and

(3) manage the keeping of minutes and records as required under section 10(b) and (c) of the Federal Advisory Committee Act, except that any personal notes and materials of the facilitator or of the members of a committee shall not be subject to section 552 of this title.

(e) COMMITTEE PROCEDURES.—A negotiated rulemaking committee established under this subchapter may adopt procedures for the operation of the committee. No provision of section 553 of this title shall apply to the procedures of a negotiated rulemaking committee.

(f) REPORT OF COMMITTEE.—If a committee reaches a consensus on a proposed rule, at the conclusion of negotiations the committee shall transmit to the agency that established the committee a report containing the proposed rule. If the committee does not reach a consensus on a proposed rule, the committee may transmit to the agency a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations, or materials.

(g) RECORDS OF COMMITTEE.—In addition to the report required by subsection (f), a committee shall submit to the agency the records required under section 10(b) and (c) of the Federal Advisory Committee Act.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4973, §586; renumbered §566, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REFERENCES IN TEXT

Section 10 of the Federal Advisory Committee Act, referred to in subsecs. (c), (d)(3), and (g), is section 10

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

of Pub. L. 92-463, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 586 of this title as this section.

§ 567. Termination of committee

A negotiated rulemaking committee shall terminate upon promulgation of the final rule under consideration, unless the committee's charter contains an earlier termination date or the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4974, §587; renumbered §567, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 587 of this title as this section.

§ 568. Services, facilities, and payment of committee member expenses

(a) SERVICES OF CONVENERS AND FACILITATORS.—

(1) IN GENERAL.—An agency may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for a negotiated rulemaking committee under this subchapter, or may use the services of a Government employee to act as a convener or a facilitator for such a committee.

(2) DETERMINATION OF CONFLICTING INTERESTS.—An agency shall determine whether a person under consideration to serve as convener or facilitator of a committee under paragraph (1) has any financial or other interest that would preclude such person from serving in an impartial and independent manner.

(b) SERVICES AND FACILITIES OF OTHER ENTITIES.—For purposes of this subchapter, an agency may use the services and facilities of other Federal agencies and public and private agencies and instrumentalities with the consent of such agencies and instrumentalities, and with or without reimbursement to such agencies and instrumentalities, and may accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31. The Federal Mediation and Conciliation Service may provide services and facilities, with or without reimbursement, to assist agencies under this subchapter, including furnishing conveners, facilitators, and training in negotiated rulemaking.

(c) EXPENSES OF COMMITTEE MEMBERS.—Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation in such committee, except that an agency may, in accordance with section 7(d) of the Federal Advisory Committee Act, pay for a member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if—

(1) such member certifies a lack of adequate financial resources to participate in the committee; and

(2) the agency determines that such member's participation in the committee is nec-

essary to assure an adequate representation of the member's interest.

(d) STATUS OF MEMBER AS FEDERAL EMPLOYEE.—A member's receipt of funds under this section or section 569 shall not conclusively determine for purposes of sections 202 through 209 of title 18 whether that member is an employee of the United States Government.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4974, §588; renumbered §568 and amended Pub. L. 102-354, §3(a)(2), (4), Aug. 26, 1992, 106 Stat. 944.)

REFERENCES IN TEXT

Section 7(d) of the Federal Advisory Committee Act, referred to in subsec. (c), is section 7(d) of Pub. L. 92-463, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102-354, §3(a)(2), renumbered section 588 of this title as this section.

Subsec. (d), Pub. L. 102-354, §3(a)(4), substituted "section 569" for "section 589".

§ 569. Encouraging negotiated rulemaking

(a) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of negotiated rulemaking. An agency that is considering, planning, or conducting a negotiated rulemaking may consult with such agency or committee for information and assistance.

(b) To carry out the purposes of this subchapter, an agency planning or conducting a negotiated rulemaking may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal if that agency's acceptance and use of such gifts, devises, or bequests do not create a conflict of interest. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the head of such agency. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4975, §589; renumbered §569 and amended Pub. L. 102-354, §3(a)(2), (5), Aug. 26, 1992, 106 Stat. 944; Pub. L. 104-320, §11(b)(1), Oct. 19, 1996, 110 Stat. 3873.)

AMENDMENTS

1996—Pub. L. 104-320 in section catchline substituted "Encouraging negotiated rulemaking" for "Role of the Administrative Conference of the United States and other entities", and in text added subsecs. (a) and (b) and struck out former subsecs. (a) to (g) which related to: in subsec. (a), consultation by agencies; in subsec. (b), roster of potential conveners and facilitators; in subsec. (c), procedures to obtain conveners and facilitators; in subsec. (d), compilation of data on negotiated rulemaking and report to Congress; in subsec. (e), training in negotiated rulemaking; in subsec. (f), payment of expenses of agencies; and in subsec. (g), use of funds of the conference.

1992—Pub. L. 102-354, §3(a)(2), renumbered section 589 of this title as this section.

Subsec. (d)(2), Pub. L. 102-354, §3(a)(5)(A), substituted "section 566" for "section 586".

Subsec. (f)(2), Pub. L. 102-354, §3(a)(5)(B), substituted "section 568(c)" for "section 588(c)".

Subsec. (g). Pub. L. 102-354, §3(a)(5)(C), substituted "section 595(c)(12)" for "section 575(c)(12)".

§ 570. Judicial review

Any agency action relating to establishing, assisting, or terminating a negotiated rulemaking committee under this subchapter shall not be subject to judicial review. Nothing in this section shall bar judicial review of a rule if such judicial review is otherwise provided by law. A rule which is the product of negotiated rulemaking and is subject to judicial review shall not be accorded any greater deference by a court than a rule which is the product of other rulemaking procedures.

(Added Pub. L. 101-648, §3(a), Nov. 29, 1990, 104 Stat. 4976, §590; renumbered §570, Pub. L. 102-354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 590 of this title as this section.

§ 570a. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.

(Added Pub. L. 104-320, §11(d)(1), Oct. 19, 1996, 110 Stat. 3873.)

SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

CODIFICATION

Another subchapter IV (§581 et seq.) relating to negotiated rulemaking procedure was redesignated subchapter III (§561 et seq.) of this chapter.

AMENDMENTS

1992—Pub. L. 102-354, §3(b)(1), Aug. 26, 1992, 106 Stat. 944, transferred this subchapter so as to appear immediately after subchapter III of this chapter.

§ 571. Definitions

For the purposes of this subchapter, the term—

(1) "agency" has the same meaning as in section 551(1) of this title;

(2) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

(3) "alternative means of dispute resolution" means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(4) "award" means any decision by an arbitrator resolving the issues in controversy;

(5) "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant; except that a written agree-

ment to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) "dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) "in confidence" means, with respect to information, that the information is provided—

(A) with the expressed intent of the source that it not be disclosed; or

(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) "issue in controversy" means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement—

(A) between an agency and persons who would be substantially affected by the decision; or

(B) between persons who would be substantially affected by the decision;

(9) "neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) "party" means—

(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) "person" has the same meaning as in section 551(2) of this title; and

(12) "roster" means a list of persons qualified to provide services as neutrals.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2738, §581; renumbered §571 and amended Pub. L. 102-354, §§3(b)(2), 5(b)(1), (2), Aug. 26, 1992, 106 Stat. 944, 946; Pub. L. 104-320, §2, Oct. 19, 1996, 110 Stat. 3870.)

CODIFICATION

Section 571 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2256 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 571 was renumbered section 591 of this title.

AMENDMENTS

1996—Par. (3). Pub. L. 104-320, §2(1), struck out "in lieu of an adjudication as defined in section 551(7) of this title," after "any procedure that is used", struck out "settlement negotiations," after "but not limited to," and substituted "arbitration, and use of ombuds" for "and arbitration".

Par. (8). Pub. L. 104-320, §2(2), substituted "decision;" for "decision," at end of subpar. (B), and struck out closing provisions which read as follows: "except that such term shall not include any matter specified under section 2302 or 7121(c) of this title;"

1992—Pub. L. 102-354, §3(b)(2), renumbered section 581 of this title as this section.

Par. (3). Pub. L. 102-354, §5(b)(1), inserted comma after “including”.

Par. (8). Pub. L. 102-354, §5(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: “‘issue in controversy’ means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement between the agency and persons who would be substantially affected by the decision but shall not extend to matters specified under the provisions of sections 2302 and 7121(c) of title 5;”.

TERMINATION DATE; SAVINGS PROVISION

Pub. L. 101-552, §11, Nov. 15, 1990, 104 Stat. 2747, as amended by Pub. L. 104-106, div. D, title XLIII, §4321(i)(5), Feb. 10, 1996, 110 Stat. 676, which provided that the authority of agencies to use dispute resolution proceedings under this Act [see Short Title note below] was to terminate on Oct. 1, 1995, except with respect to pending proceedings, was repealed by Pub. L. 104-320, §9, Oct. 19, 1996, 110 Stat. 3872.

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-320, §1, Oct. 19, 1996, 110 Stat. 3870, provided that: “This Act [enacting sections 570a and 584 of this title, amending this section, sections 569, 573 to 575, 580, 581, and 583 of this title, section 2304 of Title 10, Armed Forces, section 1491 of Title 28, Crimes and Criminal Procedure, section 173 of Title 29, Labor, section 3556 of Title 31, Money and Finance, and sections 253 and 605 of Title 41, Public Contracts, repealing section 582 of this title, enacting provisions set out as notes under section 563 of this title, section 1491 of Title 28, and section 3556 of Title 31, amending provisions set out as notes under this section, and repealing provisions set out as notes under this section and section 561 of this title] may be cited as the ‘Administrative Dispute Resolution Act of 1996’.”

SHORT TITLE

Pub. L. 101-552, §1, Nov. 15, 1990, 104 Stat. 2736, provided that: “This Act [enacting this subchapter, amending section 556 of this title, section 10 of Title 9, Arbitration, section 2672 of Title 28, Judiciary and Judicial Procedure, section 173 of Title 29, Labor, section 3711 of Title 31, Money and Finance, and sections 605 and 607 of Title 41, Public Contracts, and enacting provisions set out as notes under this section] may be cited as the ‘Administrative Dispute Resolution Act.’”

CONGRESSIONAL FINDINGS

Pub. L. 101-552, §2, Nov. 15, 1990, 104 Stat. 2736, provided that: “The Congress finds that—

“(1) administrative procedure, as embodied in chapter 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;

“(2) administrative proceedings have become increasingly formal, costly, and lengthy resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes;

“(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;

“(4) such alternative means can lead to more creative, efficient, and sensible outcomes;

“(5) such alternative means may be used advantageously in a wide variety of administrative programs;

“(6) explicit authorization of the use of well-tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

“(7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques; and

“(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public.”

PROMOTION OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Pub. L. 101-552, §3, Nov. 15, 1990, 104 Stat. 2736, as amended by Pub. L. 104-320, §4(a), Oct. 19, 1996, 110 Stat. 3871, provided that:

“(a) PROMULGATION OF AGENCY POLICY.—Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall—

“(1) consult with the agency designated by, or the interagency committee designated or established by, the President under section 573 of title 5, United States Code, to facilitate and encourage agency use of alternative dispute resolution under subchapter IV of chapter 5 of such title; and

“(2) examine alternative means of resolving disputes in connection with—

“(A) formal and informal adjudications;

“(B) rulemakings;

“(C) enforcement actions;

“(D) issuing and revoking licenses or permits;

“(E) contract administration;

“(F) litigation brought by or against the agency; and

“(G) other agency actions.

“(b) DISPUTE RESOLUTION SPECIALISTS.—The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for the implementation of—

“(1) the provisions of this Act [see Short Title note above] and the amendments made by this Act; and

“(2) the agency policy developed under subsection (a).

“(c) TRAINING.—Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

“(d) PROCEDURES FOR GRANTS AND CONTRACTS.—

“(1) Each agency shall review each of its standard agreements for contracts, grants, and other assistance and shall determine whether to amend any such standard agreements to authorize and encourage the use of alternative means of dispute resolution.

“(2)(A) Within 1 year after the date of the enactment of this Act [Nov. 15, 1990], the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act [see Short Title note above] and the amendments made by this Act.

“(B) For purposes of this section, the term ‘Federal Acquisition Regulation’ means the single system of Government-wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 405(a)) [now 41 U.S.C. 1121(a) to (c)(1)].”

USE OF NONATTORNEYS

Pub. L. 101-552, §9, Nov. 15, 1990, 104 Stat. 2747, provided that:

“(a) REPRESENTATION OF PARTIES.—Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act [see Short Title note above], shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine—

“(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

“(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

“(b) REPRESENTATION AND ASSISTANCE BY NON-ATTORNEYS.—A person who is not an attorney may provide representation or assistance to any individual in a claim or dispute with an agency, if—

“(1) such claim or dispute concerns an administrative program identified under subsection (a);

“(2) such agency determines that the proceeding or procedure does not necessitate representation or assistance by an attorney under subsection (a)(2); and

“(3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

“(c) DISQUALIFICATION OF REPRESENTATION OR ASSISTANCE.—Any agency that adopts regulations under subchapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to—

“(1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and

“(2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons.”

DEFINITIONS

Pub. L. 101-552, §10, Nov. 15, 1990, 104 Stat. 2747, as amended by Pub. L. 102-354, §5(b)(6), Aug. 26, 1992, 106 Stat. 946, provided that: “As used in this Act [see Short Title note above], the terms ‘agency’, ‘administrative program’, and ‘alternative means of dispute resolution’ have the meanings given such terms in section 571 of title 5, United States Code (enacted as section 581 of title 5, United States Code, by section 4(b) of this Act, and redesignated as section 571 of such title by section 3(b) of the Administrative Procedure Technical Amendments Act of 1991 [Pub. L. 102-354]).”

§ 572. General authority

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if—

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light

of changed circumstances, and a dispute resolution proceeding would interfere with the agency’s fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2739, § 582; renumbered §572, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

CODIFICATION

Section 572 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2257 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 572 was renumbered section 592 of this title.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 582 of this title as this section.

§ 573. Neutrals

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

(c) The President shall designate an agency or designate or establish an interagency committee to facilitate and encourage agency use of dispute resolution under this subchapter. Such agency or interagency committee, in consultation with other appropriate Federal agencies and professional organizations experienced in matters concerning dispute resolution, shall—

(1) encourage and facilitate agency use of alternative means of dispute resolution; and

(2) develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.

(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with any person for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2739, § 583; renumbered §573, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944; amended Pub. L. 104-320, §7(b), Oct. 19, 1996, 110 Stat. 3872.)

CODIFICATION

Section 573 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2258 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 573 was renumbered section 593 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-320, § 7(b)(1), added subsec. (c) and struck out former subsec. (c) which related to power of Administrative Conference of the United States to establish and utilize standards for neutrals and to enter into contracts for services of neutrals.

Subsec. (e). Pub. L. 104-320, § 7(b)(2), struck out “on a roster established under subsection (c)(2) or a roster maintained by other public or private organizations, or individual” after “contract with any person”.

1992—Pub. L. 102-354 renumbered section 583 of this title as this section.

§ 574. Confidentiality

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless—

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health or safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless—

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the dispute resolution proceeding consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health and safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d)(1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(2) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may

not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2740, §584; renumbered §574, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944; amended Pub. L. 104-320, §3, Oct. 19, 1996, 110 Stat. 3870.)

CODIFICATION

Section 574 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2255 of Title 7, Agriculture.

Section 574a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2226 of Title 7.

PRIOR PROVISIONS

A prior section 574 was renumbered section 594 of this title.

AMENDMENTS

1996—Subsecs. (a), (b). Pub. L. 104-320, §3(a), in introductory provisions struck out “any information concerning” after “be required to disclose”.

Subsec. (b)(7). Pub. L. 104-320, §3(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows: “the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding”.

Subsec. (d). Pub. L. 104-320, §3(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 104-320, §3(d), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “This section shall not be considered a statute specifically exempting disclosure under section 552(b)(3) of this title.”

1992—Pub. L. 102-354 renumbered section 584 of this title as this section.

§ 575. Authorization of arbitration

(a)(1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to—

(A) submit only certain issues in controversy to arbitration; or

(B) arbitration on the condition that the award must be within a range of possible outcomes.

(2) The arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing. Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.

(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

(b) An officer or employee of an agency shall not offer to use arbitration for the resolution of issues in controversy unless such officer or employee—

(1) would otherwise have authority to enter into a settlement concerning the matter; or

(2) is otherwise specifically authorized by the agency to consent to the use of arbitration.

(c) Prior to using binding arbitration under this subchapter, the head of an agency, in consultation with the Attorney General and after taking into account the factors in section 572(b),

shall issue guidance on the appropriate use of binding arbitration and when an officer or employee of the agency has authority to settle an issue in controversy through binding arbitration.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §585; renumbered §575, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944; amended Pub. L. 104-320, §8(c), Oct. 19, 1996, 110 Stat. 3872.)

CODIFICATION

Section 575 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2259 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 575 was renumbered section 595 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104-320, §8(c)(1), (2), substituted “The” for “Any” and inserted at end “Each such arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.”

Subsec. (b). Pub. L. 104-320, §8(c)(3), in introductory provisions substituted “shall not offer to use arbitration for the resolution of issues in controversy unless” for “may offer to use arbitration for the resolution of issues in controversy, if”, and in par. (1) substituted “would otherwise have authority” for “has authority”.

Subsec. (c). Pub. L. 104-320, §8(c)(4), added subsec. (c).
1992—Pub. L. 102-354 renumbered section 585 of this title as this section.

§ 576. Enforcement of arbitration agreements

An agreement to arbitrate a matter to which this subchapter applies is enforceable pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §586; renumbered §576, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

CODIFICATION

Section 576 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2260 of Title 7, Agriculture, and subsequently repealed by Pub. L. 107-171, title X, §10418(a)(3), May 13, 2002, 116 Stat. 507.

PRIOR PROVISIONS

A prior section 576 was renumbered section 596 of this title.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 586 of this title as this section.

§ 577. Arbitrators

(a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

(b) The arbitrator shall be a neutral who meets the criteria of section 573 of this title.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §587; renumbered §577 and amended Pub. L. 102-354, §3(b)(2), (3), Aug. 26, 1992, 106 Stat. 944, 945.)

AMENDMENTS

1992—Pub. L. 102-354, §3(b)(2), renumbered section 587 of this title as this section.

Subsec. (b). Pub. L. 102-354, §3(b)(3), substituted “section 573” for “section 583”.

§ 578. Authority of the arbitrator

An arbitrator to whom a dispute is referred under this subchapter may—

- (1) regulate the course of and conduct arbitral hearings;
- (2) administer oaths and affirmations;
- (3) compel the attendance of witnesses and production of evidence at the hearing under the provisions of section 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and
- (4) make awards.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §588; renumbered §578, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 588 of this title as this section.

§ 579. Arbitration proceedings

(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

(b) Any party wishing a record of the hearing shall—

- (1) be responsible for the preparation of such record;
- (2) notify the other parties and the arbitrator of the preparation of such record;
- (3) furnish copies to all identified parties and the arbitrator; and
- (4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c)(1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(d) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in viola-

tion of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless—

- (1) the parties agree to some other time limit; or
- (2) the agency provides by rule for some other time limit.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2742, §589; renumbered §579, Pub. L. 102-354, §3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 589 of this title as this section.

§ 580. Arbitration awards

(a)(1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) The prevailing parties shall file the award with all relevant agencies, along with proof of service on all parties.

(b) The award in an arbitration proceeding shall become final 30 days after it is served on all parties. Any agency that is a party to the proceeding may extend this 30-day period for an additional 30-day period by serving a notice of such extension on all other parties before the end of the first 30-day period.

(c) A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of title 9. No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(d) An award entered under this subchapter in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding, whether conducted under this subchapter, by an agency, or in a court, or in any other arbitration proceeding.

(Added Pub. L. 101-552, §4(b), Nov. 15, 1990, 104 Stat. 2743, §590; renumbered §580 and amended Pub. L. 102-354, §§3(b)(2), 5(b)(3), Aug. 26, 1992, 106 Stat. 944, 946; Pub. L. 104-320, §8(a), Oct. 19, 1996, 110 Stat. 3872.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-320, §8(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “The head of any agency that is a party to an arbitration proceeding conducted under this subchapter is authorized to terminate the arbitration proceeding or vacate any award issued pursuant to the proceeding before the award becomes final by serv-

ing on all other parties a written notice to that effect, in which case the award shall be null and void. Notice shall be provided to all parties to the arbitration proceeding of any request by a party, nonparty participant or other person that the agency head terminate the arbitration proceeding or vacate the award. An employee or agent engaged in the performance of investigative or prosecuting functions for an agency may not, in that or a factually related case, advise in a decision under this subsection to terminate an arbitration proceeding or to vacate an arbitral award, except as witness or counsel in public proceedings.”

Subsecs. (d), (e). Pub. L. 104-320, § 8(a)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsecs. (f), (g). Pub. L. 104-320, § 8(a)(1), struck out subsecs. (f) and (g) which read as follows:

“(f) An arbitral award that is vacated under subsection (c) shall not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

“(g) If an agency head vacates an award under subsection (c), a party to the arbitration (other than the United States) may within 30 days of such action petition the agency head for an award of fees and other expenses (as defined in section 504(b)(1)(A) of this title) incurred in connection with the arbitration proceeding. The agency head shall award the petitioning party those fees and expenses that would not have been incurred in the absence of such arbitration proceeding, unless the agency head or his or her designee finds that special circumstances make such an award unjust. The procedures for reviewing applications for awards shall, where appropriate, be consistent with those set forth in subsection (a)(2) and (3) of section 504 of this title. Such fees and expenses shall be paid from the funds of the agency that vacated the award.”

1992—Pub. L. 102-354, § 3(b)(2), renumbered section 590 of this title as this section.

Subsec. (g). Pub. L. 102-354, § 5(b)(3), substituted “fees and other expenses” for “attorney fees and expenses”.

§ 581. Judicial Review¹

(a) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

(b) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 10(b)² of title 9.

(Added Pub. L. 101-552, § 4(b), Nov. 15, 1990, 104 Stat. 2744, § 591; renumbered § 581 and amended Pub. L. 102-354, § 3(b)(2), (4), Aug. 26, 1992, 106 Stat. 944, 945; Pub. L. 104-320, § 8(b), Oct. 19, 1996, 110 Stat. 3872.)

REFERENCES IN TEXT

Section 10(b) of title 9, referred to in subsec. (b), was redesignated section 10(c) of title 9 by Pub. L. 107-169, § 1(4), May 7, 2002, 116 Stat. 132.

PRIOR PROVISIONS

A prior section 581 was renumbered section 571 of this title.

Another prior section 581 was renumbered section 561 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-320, which directed that section 581(d) of this title be amended by striking “(1)”

¹ So in original. Probably should not be capitalized.

² See References in Text note below.

after “(b)” and by striking par. (2), was executed to subsec. (b) of this section to reflect the probable intent of Congress. Prior to amendment, par. (2) read as follows: “A decision by the head of an agency under section 580 to terminate an arbitration proceeding or vacate an arbitral award shall be committed to the discretion of the agency and shall not be subject to judicial review.”

1992—Pub. L. 102-354, § 3(b)(2), renumbered section 591 of this title as this section.

Subsec. (b)(2). Pub. L. 102-354, § 3(b)(4), substituted “section 580” for “section 590”.

§ 582. Repealed. Pub. L. 104-320, § 4(b)(1), Oct. 19, 1996, 110 Stat. 3871

Section, added Pub. L. 101-552, § 4(b), Nov. 15, 1990, 104 Stat. 2744, § 592; renumbered § 582, Pub. L. 102-354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944, related to compilation of data on use of alternative means of dispute resolution in conducting agency proceedings.

§ 583. Support services

For the purposes of this subchapter, an agency may use (with or without reimbursement) the services and facilities of other Federal agencies, State, local, and tribal governments, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals. An agency may accept voluntary and uncompensated services for purposes of this subchapter without regard to the provisions of section 1342 of title 31.

(Added Pub. L. 101-552, § 4(b), Nov. 15, 1990, 104 Stat. 2745, § 593; renumbered § 583, Pub. L. 102-354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944; amended Pub. L. 104-320, § 5, Oct. 19, 1996, 110 Stat. 3871.)

PRIOR PROVISIONS

Prior sections 583 to 590 were renumbered sections 573 to 580 of this title, respectively.

Other prior sections 583 to 590 were renumbered sections 563 to 570 of this title, respectively.

AMENDMENTS

1996—Pub. L. 104-320 inserted “State, local, and tribal governments,” after “other Federal agencies.”

1992—Pub. L. 102-354 renumbered section 593 of this title as this section.

§ 584. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.

(Added Pub. L. 104-320, § 10(a), Oct. 19, 1996, 110 Stat. 3873.)

SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

AMENDMENTS

1992—Pub. L. 102-354, § 2(1), Aug. 26, 1992, 106 Stat. 944, redesignated subchapter III of this chapter as this subchapter.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

Pub. L. 104-52, title IV, Nov. 19, 1995, 109 Stat. 480, provided: “For necessary expenses of the Administrative Conference of the United States, established under subchapter V of chapter 5 of title 5, United States Code, \$600,000: *Provided*, That these funds shall only be available for the purposes of the prompt and orderly termination of the Administrative Conference of the United States by February 1, 1996.”

§ 591. Purposes

The purposes of this subchapter are—

(1) to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;

(2) to promote more effective public participation and efficiency in the rulemaking process;

(3) to reduce unnecessary litigation in the regulatory process;

(4) to improve the use of science in the regulatory process; and

(5) to improve the effectiveness of laws applicable to the regulatory process.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388, §571; renumbered §591, Pub. L. 102-354, §2(2), Aug. 26, 1992, 106 Stat. 944; Pub. L. 108-401, §2(a), Oct. 30, 2004, 118 Stat. 2255.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1045(e), Aug. 30, 1964, Pub. L. 88-499, §2(e), 78 Stat. 615.

The words "this subchapter" are substituted for "this Act" to reflect the codification of the Administrative Conference Act in this subchapter.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PRIOR PROVISIONS

A prior section 591 was renumbered section 581 of this title.

AMENDMENTS

2004—Pub. L. 108-401 amended section catchline and text generally. Prior to amendment, text read as follows: "It is the purpose of this subchapter to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest."

1992—Pub. L. 102-354 renumbered section 571 of this title as this section.

§ 592. Definitions

For the purpose of this subchapter—

(1) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter, except that it does not include a military or foreign affairs function of the United States;

(2) "administrative agency" means an authority as defined by section 551(1) of this title; and

(3) "administrative procedure" means procedure used in carrying out an administrative

program and is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388, §572; renumbered §592, Pub. L. 102-354, §2(2), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1045a, Aug. 30, 1964, Pub. L. 88-499, §3, 78 Stat. 615.

In paragraph (1), the words "subchapter II of this chapter" are substituted for "the Administrative Procedure Act (5 U.S.C. 1001-1011)" to reflect the codification of the Act in this title. The word "naval" is omitted as included in "military".

In paragraph (2), the words "section 551(1) of this title" are substituted for "section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a))".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PRIOR PROVISIONS

A prior section 592 was renumbered section 582 of this title and was subsequently repealed.

AMENDMENTS

1992—Pub. L. 102-354 renumbered section 572 of this title as this section.

§ 593. Administrative Conference of the United States

(a) The Administrative Conference of the United States consists of not more than 101 nor less than 75 members appointed as set forth in subsection (b) of this section.

(b) The Conference is composed of—

(1) a full-time Chairman appointed for a 5-year term by the President, by and with the advice and consent of the Senate. The Chairman is entitled to pay at the highest rate established by statute for the chairman of an independent regulatory board or commission, and may continue to serve until his successor is appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or an individual designated by the board or commission;

(3) the head of each Executive department or other administrative agency which is designated by the President, or an individual designated by the head of the department or agency;

(4) when authorized by the Council referred to in section 595(b) of this title, one or more appointees from a board, commission, department, or agency referred to in this subsection, designated by the head thereof with, in the case of a board or commission, the approval of the board or commission;

(5) individuals appointed by the President to membership on the Council who are not otherwise members of the Conference; and

(6) not more than 40 other members appointed by the Chairman, with the approval of the Council, for terms of 2 years, except that the number of members appointed by the Chairman may at no time be less than one-third nor more than two-fifths of the total number of members. The Chairman shall select the members in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference, except the Chairman, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of this title for individuals serving without pay.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 389, §573; Pub. L. 99-470, §1, Oct. 14, 1986, 100 Stat. 1198; renumbered §593 and amended Pub. L. 102-354, §2(2), (3), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1045b. Aug. 30, 1964, Pub. L. 88-499, §4, 78 Stat. 616.

In subsection (a), the words "There is hereby established" are omitted as executed. The words "hereinafter referred to as the 'Conference'" are omitted as unnecessary as the title "Administrative Conference of the United States" is fully set out the first time it is used in each section of this chapter.

In subsection (b)(4), the words "referred to in section 575(b) of this title" are inserted for clarity.

In subsection (c), the words "by section 5703 of this title" are substituted for "by law (5 U.S.C. 73b-2)" to reflect the codification of that section in title 5.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PRIOR PROVISIONS

A prior section 593 was renumbered section 583 of this title.

AMENDMENTS

1992—Pub. L. 102-354, §2(2), renumbered section 573 of this title as this section.

Subsec. (b)(4). Pub. L. 102-354, §2(3), substituted "section 595(b)" for "section 575(b)".

1986—Subsec. (a). Pub. L. 99-470, §1(a)(1), substituted "101" for "91".

Subsec. (b)(6). Pub. L. 99-470, §1(a)(2), substituted "40" for "36".

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see note set out preceding section 591 of this title.

DEVELOPMENT OF ADMINISTRATIVE CONFERENCE

The Administrative Conference of the United States, established as a permanent body by the Administrative Conference Act, Pub. L. 88-499, Aug. 30, 1964, 78 Stat. 615, was preceded by two temporary Conferences. The first was called by President Eisenhower in 1953 and

adopted a final report which was transmitted to the President who acknowledged receipt of it on March 3, 1955. The second was established by President Kennedy by Executive Order No. 10934, Apr. 14, 1961, 26 F.R. 3233, which, by its terms, called for a final report to the President by December 31, 1962. The final report recommended a continuing Conference consisting of both government personnel and outside experts.

§ 594. Powers and duties of the Conference

To carry out the purposes of this subchapter, the Administrative Conference of the United States may—

(1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the United States, in connection therewith, as it considers appropriate;

(2) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure;

(3) collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure;

(4) enter into arrangements with any administrative agency or major organizational unit within an administrative agency pursuant to which the Conference performs any of the functions described in this section; and

(5) provide assistance in response to requests relating to the improvement of administrative procedure in foreign countries, subject to the concurrence of the Secretary of State, the Administrator of the Agency for International Development, or the Director of the United States Information Agency, as appropriate, except that—

(A) such assistance shall be limited to the analysis of issues relating to administrative procedure, the provision of training of foreign officials in administrative procedure, and the design or improvement of administrative procedure, where the expertise of members of the Conference is indicated; and

(B) such assistance may only be undertaken on a fully reimbursable basis, including all direct and indirect administrative costs.

Payment for services provided by the Conference pursuant to paragraph (4) shall be credited to the operating account for the Conference and shall remain available until expended.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 390, §574; Pub. L. 101-422, §2, Oct. 12, 1990, 104 Stat. 910; renumbered §594, Pub. L. 102-354, §2(2), Aug. 26, 1992, 106 Stat. 944; Pub. L. 102-403, Oct. 9, 1992, 106 Stat. 1968; Pub. L. 108-401, §2(b)(1), Oct. 30, 2004, 118 Stat. 2255.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1045c. Aug. 30, 1964, Pub. L. 88-499, §5, 78 Stat. 616.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2004—Pub. L. 108-401 substituted “purposes” for “purpose” in introductory provisions.

1992—Pub. L. 102-354 renumbered section 574 of this title as this section.

Par. (4). Pub. L. 102-403 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “enter into arrangements with any administrative agency or major organizational unit within an administrative agency pursuant to which the Conference performs any of the functions described in paragraphs (1), (2), and (3).”

Par. (5). Pub. L. 102-403 which directed addition of par. (5) at end of section, was executed by adding par. (5) after par. (4) and before concluding provisions, to reflect the probable intent of Congress.

1990—Pub. L. 101-422 added par. (4) and concluding provisions.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see note set out preceding section 591 of this title.

TRANSFER OF FUNCTIONS

United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of Title 22, Foreign Relations and Intercourse.

§ 595. Organization of the Conference

(a) The membership of the Administrative Conference of the United States meeting in plenary session constitutes the Assembly of the Conference. The Assembly has ultimate authority over all activities of the Conference. Specifically, it has the power to—

(1) adopt such recommendations as it considers appropriate for improving administrative procedure. A member who disagrees with a recommendation adopted by the Assembly is entitled to enter a dissenting opinion and an alternate proposal in the record of the Conference proceedings, and the opinion and proposal so entered shall accompany the Conference recommendation in a publication or distribution thereof; and

(2) adopt bylaws and regulations not inconsistent with this subchapter for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference includes a Council composed of the Chairman of the Conference, who is Chairman of the Council, and 10 other members appointed by the President, of whom not more than one-half shall be employees of Federal regulatory agencies or Executive departments. The President may designate a member of the Council as Vice Chairman. During the absence or incapacity of the Chairman, or when that office is vacant, the Vice Chairman shall serve as Chairman. The term of each member, except the Chairman, is 3 years. When the term of a member ends, he may continue to serve until a suc-

cessor is appointed. However, the service of any member ends when a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment. The Council has the power to—

(1) determine the time and place of plenary sessions of the Conference and the agenda for the sessions. The Council shall call at least one plenary session each year;

(2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(3) make recommendations to the Conference or its committees on a subject germane to the purpose of the Conference;

(4) receive and consider reports and recommendations of committees of the Conference and send them to members of the Conference with the views and recommendations of the Council;

(5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman;

(6) designate such additional officers of the Conference as it considers desirable;

(7) approve or revise the budgetary proposals of the Chairman; and

(8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman is the chief executive of the Conference. In that capacity he has the power to—

(1) make inquiries into matters he considers important for Conference consideration, including matters proposed by individuals inside or outside the Federal Government;

(2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to carry out the recommendations of the Conference;

(3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law;

(4) recommend to the Council appropriate subjects for action by the Conference;

(5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference;

(6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference;

(7) appoint and fix the pay of employees, define their duties and responsibilities, and direct and supervise their activities;

(8) rent office space in the District of Columbia;

(9) provide necessary services for the Assembly, the Council, and the committees of the Conference;

(10) organize and direct studies ordered by the Assembly or the Council, to contract for the performance of such studies with any public or private persons, firm, association, corporation, or institution under title III of the Federal Property and Administrative Services

Act of 1949, as amended (41 U.S.C. 251–260), and to use from time to time, as appropriate, experts and consultants who may be employed in accordance with section 3109 of this title at rates not in excess of the maximum rate of pay for grade GS–15 as provided in section 5332 of this title;

(11) utilize, with their consent, the services and facilities of Federal agencies and of State and private agencies and instrumentalities with or without reimbursement;

(12) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the work of the Conference. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairman. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States;

(13) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(14) on request of the head of an agency, furnish assistance and advice on matters of administrative procedure;

(15) exercise such additional authority as the Council or Assembly delegates to him; and

(16) request any administrative agency to notify the Chairman of its intent to enter into any contract with any person outside the agency to study the efficiency, adequacy, or fairness of an agency proceeding (as defined in section 551(12) of this title).

The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman, on behalf of the Conference, shall transmit to the President and Congress an annual report and such interim reports as he considers desirable.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 390, §575; Pub. L. 92–526, §1, Oct. 21, 1972, 86 Stat. 1048; Pub. L. 97–258, §3(a)(1), Sept. 13, 1982, 96 Stat. 1062; Pub. L. 101–422, §3, Oct. 12, 1990, 104 Stat. 910; renumbered §595, Pub. L. 102–354, §2(2), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|--|
| ..... | 5 U.S.C. 1045d. | Aug. 30, 1964, Pub. L. 88–499, §6, 78 Stat. 617. |

In subsection (b), the words “except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President” are omitted as executed, existing rights being preserved by technical section 8.

In subsection (b)(1), the words “the sessions” are substituted for “such meetings” for clarity as elsewhere the word “sessions” refers to sessions of the Conference and “meetings” refers to meetings of the Council.

In subsection (c)(7), the words “subject to the civil service and classification laws” are omitted as unnecessary inasmuch as appointments in the executive branch are made subject to the civil service laws and pay is fixed under classification laws unless specifically excepted. The words “and fix the pay of” are added for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(10), is act June 30, 1949, ch. 288, 63 Stat. 377. Title III of the Act was classified generally to subchapter IV (§251 et seq.) of chapter 4 of former Title 41, Public Contracts, and was substantially repealed and restated in division C (§3101 et seq.) of subtitle I of Title 41, Public Contracts, by Pub. L. 111–350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of this Act to the Code, see Short Title of 1949 Act note set out under section 101 of Title 41 and Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 575 of this title as this section.

1990—Subsec. (c)(16). Pub. L. 101–422 added par. (16).

1982—Subsec. (c)(13). Pub. L. 97–258 substituted “section 1342 of title 31” for “section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))”.

1972—Subsec. (c)(10). Pub. L. 92–526, §1(a), inserted provisions authorizing contracts for the performance of such studies with any public or private persons, etc., under title III of the Federal Property and Administrative Services Act of 1949, as amended, and substituted provisions authorizing the payment of experts and consultants in accordance with rates not in excess of the maximum rate of pay for grade GS–15 as provided in section 5332 of this title, for provisions authorizing the payment of such individuals at rates not in excess of \$100 a day.

Subsec. (c)(11) to (15). Pub. L. 92–526, §1(b), added pars. (11) to (13) and redesignated former pars. (11) and (12) as (14) and (15), respectively.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see note set out preceding section 591 of this title.

§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter not more than \$3,200,000 for fiscal year 2009, \$3,200,000 for fiscal year 2010, and \$3,200,000 for fiscal year 2011. Of any amounts appropriated under this section, not more than \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 391, §576; Pub. L. 91–164, Dec. 24, 1969, 83 Stat. 446; Pub. L. 92–526, §2, Oct. 21, 1972, 86 Stat. 1048; Pub. L. 95–293, §1(a), June 13, 1978, 92 Stat. 317; Pub. L. 97–330, Oct. 15, 1982, 96 Stat. 1618; Pub. L. 99–470, §2(a), Oct. 14, 1986, 100 Stat. 1198; Pub. L. 101–422, §1, Oct. 12, 1990, 104 Stat. 910; renumbered §596, Pub. L. 102–354, §2(2), Aug. 26, 1992, 106 Stat. 944; Pub. L. 108–401, §3, Oct. 30, 2004, 118 Stat. 2255; Pub. L. 110–290, §2, July 30, 2008, 122 Stat. 2914.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 1045e. | Aug. 30, 1964, Pub. L. 88-499, § 7, 78 Stat. 618. |

The word “hereby” is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2008—Pub. L. 110-290 amended section generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out this subchapter not more than \$3,000,000 for fiscal year 2005, \$3,100,000 for fiscal year 2006, and \$3,200,000 for fiscal year 2007. Of any amounts appropriated under this section, not more than \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”

2004—Pub. L. 108-401 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than \$2,000,000 for fiscal year 1990, \$2,100,000 for fiscal year 1991, \$2,200,000 for fiscal year 1992, \$2,300,000 for fiscal year 1993, and \$2,400,000 for fiscal year 1994. Of any amounts appropriated under this section, not more than \$1,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.”

1992—Pub. L. 102-354 renumbered section 576 of this title as this section.

1990—Pub. L. 101-422 amended section generally. Prior to amendment, section read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter not more than \$1,600,000 for fiscal year 1986 and not more than \$2,000,000 for each fiscal year thereafter up to and including fiscal year 1990. Of any amounts appropriated under this section, not more than \$1,000 may be made available in each fiscal year for official reception and entertainment expenses for foreign dignitaries.”

1986—Pub. L. 99-470 substituted “Authorization of appropriations” for “Appropriations” in section catchline and amended text generally. Prior to amendment, text read as follows: “There are authorized to be appropriated to carry out the purposes of this subchapter sums not to exceed \$2,300,000 for the fiscal year ending September 30, 1982, and not to exceed \$2,300,000 for each fiscal year thereafter up to and including the fiscal year ending September 30, 1986.”

1982—Pub. L. 97-330 substituted provisions authorizing appropriations of not to exceed \$2,300,000 for fiscal year ending Sept. 30, 1982, and not to exceed \$2,300,000 for each fiscal year thereafter up to and including fiscal year ending Sept. 30, 1986, for provisions that had authorized appropriations of not to exceed \$1,700,000 for fiscal year ending Sept. 30, 1979, \$2,000,000 for fiscal year ending Sept. 30, 1980, \$2,300,000 for fiscal year ending Sept. 30, 1981, and \$2,300,000 for fiscal year ending Sept. 30, 1982.

1978—Pub. L. 95-293 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982, of \$1,700,000, \$2,000,000, \$2,300,000, and \$2,300,000, respectively, for provisions authorizing appropriations for fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, and June 30, 1978, of \$760,000, \$805,000, \$850,000, \$900,000, and \$950,000, respectively, and provisions authorizing for each fiscal year thereafter such sums as may be necessary.

1972—Pub. L. 92-526 substituted provisions authorizing to be appropriated necessary sums not in excess of \$760,000 for fiscal year ending June 30, 1974, \$805,000 for fiscal year ending June 30, 1975, \$850,000 for fiscal year ending June 30, 1976, \$900,000 for fiscal year ending June

30, 1977, and \$950,000 for fiscal year ending June 30, 1978, and each fiscal year thereafter, for provisions authorizing to be appropriated necessary sums, not in excess of \$450,000 per annum.

1969—Pub. L. 91-164 substituted “\$450,000 per annum” for “\$250,000”.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-293, §1(b), June 13, 1978, 92 Stat. 317, provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 1977.”

CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

| | |
|------|---|
| Sec. | |
| 601. | Definitions. |
| 602. | Regulatory agenda. |
| 603. | Initial regulatory flexibility analysis. |
| 604. | Final regulatory flexibility analysis. |
| 605. | Avoidance of duplicative or unnecessary analyses. |
| 606. | Effect on other law. |
| 607. | Preparation of analyses. |
| 608. | Procedure for waiver or delay of completion. |
| 609. | Procedures for gathering comments. |
| 610. | Periodic review of rules. |
| 611. | Judicial review. |
| 612. | Reports and intervention rights. |

§ 601. Definitions

For purposes of this chapter—

(1) the term “agency” means an agency as defined in section 551(1) of this title;

(2) the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term “rule” does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency estab-

lishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term “small entity” shall have the same meaning as the terms “small business”, “small organization” and “small governmental jurisdiction” defined in paragraphs (3), (4) and (5) of this section; and

(7) the term “collection of information”—

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) RECORDKEEPING REQUIREMENT.—The term “recordkeeping requirement” means a requirement imposed by an agency on persons to maintain specified records.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1165; amended Pub. L. 104-121, title II, §241(a)(2), Mar. 29, 1996, 110 Stat. 864.)

REFERENCES IN TEXT

Section 3 of the Small Business Act, referred to in par. (3), is classified to section 632 of Title 15, Commerce and Trade.

AMENDMENTS

1996—Pars. (7), (8), Pub. L. 104-121 added pars. (7) and (8).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-121, title II, §245, Mar. 29, 1996, 110 Stat. 868, provided that: “This subtitle [subtitle D (§§241-245) of title II of Pub. L. 104-121, amending this section and sections 603 to 605, 609, 611, and 612 of this title and enacting provisions set out as a note under section 609 of this title] shall become effective on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996], except that such amendments shall not apply to interpretative rules for which a notice of proposed rulemaking was published prior to the date of enactment.”

EFFECTIVE DATE

Pub. L. 96-354, §4, Sept. 19, 1980, 94 Stat. 1170, provided that: “The provisions of this Act [enacting this chapter] shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.”

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-121, §1, Mar. 29, 1996, 110 Stat. 847, provided that: “This Act [enacting sections 801 to 808 of

this title, section 657 of Title 15, Commerce and Trade, and sections 1320b-15 and 1383e of Title 42, The Public Health and Welfare, amending this section and sections 504, 603 to 605, 609, 611, and 612 of this title, sections 665e and 901 of Title 2, The Congress, section 648 of Title 15, section 2412 of Title 28, Judiciary and Judicial Procedure, section 3101 of Title 31, Money and Finance, and sections 401, 402, 403, 405, 422, 423, 425, 902, 903, 1382, 1382c, 1383, and 1383c of Title 42, enacting provisions set out as notes under this section and sections 504, 609, and 801 of this title and sections 401, 402, 403, 405, 902, 1305, 1320b-15, and 1382 of Title 42, amending provisions set out as a note under section 631 of Title 15, and repealing provisions set out as a note under section 425 of Title 42] may be cited as the ‘Contract with America Advancement Act of 1996.’”

SHORT TITLE

Pub. L. 96-354, §1, Sept. 19, 1980, 94 Stat. 1164, provided: “That this Act [enacting this chapter] may be cited as the ‘Regulatory Flexibility Act.’”

REGULATORY ENFORCEMENT REPORTS

Pub. L. 107-198, §4, June 28, 2002, 116 Stat. 732, provided that:

“(a) DEFINITION.—In this section, the term ‘agency’ has the meaning given that term under section 551 of title 5, United States Code.

“(b) IN GENERAL.—

“(1) INITIAL REPORT.—Not later than December 31, 2003, each agency shall submit an initial report to—

“(A) the chairpersons and ranking minority members of—

“(i) the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] and the Committee on Small Business and Entrepreneurship of the Senate; and

“(ii) the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Committee on Small Business of the House of Representatives; and

“(B) the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under section 30(b) of the Small Business Act (15 U.S.C. 657(b)).

“(2) FINAL REPORT.—Not later than December 31, 2004, each agency shall submit a final report to the members and officer described under paragraph (1) (A) and (B).

“(3) CONTENT.—The initial report under paragraph (1) shall include information with respect to the 1-year period beginning on October 1, 2002, and the final report under paragraph (2) shall include information with respect to the 1-year period beginning on October 1, 2003, on each of the following:

“(A) The number of enforcement actions in which a civil penalty is assessed.

“(B) The number of enforcement actions in which a civil penalty is assessed against a small entity.

“(C) The number of enforcement actions described under subparagraphs (A) and (B) in which the civil penalty is reduced or waived.

“(D) The total monetary amount of the reductions or waivers referred to under subparagraph (C).

“(4) DEFINITIONS IN REPORTS.—Each report under this subsection shall include definitions selected at the discretion of the reporting agency of the terms ‘enforcement actions’, ‘reduction or waiver’, and ‘small entity’ as used in the report.”

ASSESSMENT OF FEDERAL REGULATIONS AND POLICIES ON FAMILIES

Pub. L. 105-277, div. A, §101(h) [title VI, §654], Oct. 21, 1998, 112 Stat. 2681-480, 2681-528, as amended by Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

“(a) PURPOSES.—The purposes of this section are to—

“(1) require agencies to assess the impact of proposed agency actions on family well-being; and

“(2) improve the management of executive branch agencies.

“(b) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ by section 105 of title 5, United States Code, except such term does not include the Government Accountability Office; and

“(2) the term ‘family’ means—

“(A) a group of individuals related by blood, marriage, adoption, or other legal custody who live together as a single household; and

“(B) any individual who is not a member of such group, but who is related by blood, marriage, or adoption to a member of such group, and over half of whose support in a calendar year is received from such group.

“(c) FAMILY POLICYMAKING ASSESSMENT.—Before implementing policies and regulations that may affect family well-being, each agency shall assess such actions with respect to whether—

“(1) the action strengthens or erodes the stability or safety of the family and, particularly, the marital commitment;

“(2) the action strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children;

“(3) the action helps the family perform its functions, or substitutes governmental activity for the function;

“(4) the action increases or decreases disposable income or poverty of families and children;

“(5) the proposed benefits of the action justify the financial impact on the family;

“(6) the action may be carried out by State or local government or by the family; and

“(7) the action establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society.

“(d) GOVERNMENTWIDE FAMILY POLICY COORDINATION AND REVIEW.—

“(1) CERTIFICATION AND RATIONALE.—With respect to each proposed policy or regulation that may affect family well-being, the head of each agency shall—

“(A) submit a written certification to the Director of the Office of Management and Budget and to Congress that such policy or regulation has been assessed in accordance with this section; and

“(B) provide an adequate rationale for implementation of each policy or regulation that may negatively affect family well-being.

“(2) OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall—

“(A) ensure that policies and regulations proposed by agencies are implemented consistent with this section; and

“(B) compile, index, and submit annually to the Congress the written certifications received pursuant to paragraph (1)(A).

“(3) OFFICE OF POLICY DEVELOPMENT.—The Office of Policy Development shall—

“(A) assess proposed policies and regulations in accordance with this section;

“(B) provide evaluations of policies and regulations that may affect family well-being to the Director of the Office of Management and Budget; and

“(C) advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in the United States.

“(e) ASSESSMENTS UPON REQUEST BY MEMBERS OF CONGRESS.—Upon request by a Member of Congress relating to a proposed policy or regulation, an agency shall conduct an assessment in accordance with subsection (c), and shall provide a certification and rationale in accordance with subsection (d).

“(f) JUDICIAL REVIEW.—This section is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.”

SMALL BUSINESS REGULATORY FAIRNESS

Pub. L. 104-121, title II, §§201-224, Mar. 29, 1996, 110 Stat. 857-862, as amended by Pub. L. 110-28, title VIII, §8302, May 25, 2007, 121 Stat. 204, provided that:

“SEC. 201. SHORT TITLE.

“This title [enacting sections 801 to 808 of this title and section 657 of Title 15, Commerce and Trade, amending this section, sections 504, 603 to 605, 609, 611, and 612 of this title, section 648 of Title 15, and section 2412 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and sections 504, 609, and 801 of this title, and amending provisions set out as a note under section 631 of Title 15] may be cited as the ‘Small Business Regulatory Enforcement Fairness Act of 1996’.

“SEC. 202. FINDINGS.

“Congress finds that—

“(1) a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

“(2) small businesses bear a disproportionate share of regulatory costs and burdens;

“(3) fundamental changes that are needed in the regulatory and enforcement culture of Federal agencies to make agencies more responsive to small business can be made without compromising the statutory missions of the agencies;

“(4) three of the top recommendations of the 1995 White House Conference on Small Business involve reforms to the way government regulations are developed and enforced, and reductions in government paperwork requirements;

“(5) the requirements of chapter 6 of title 5, United States Code, have too often been ignored by government agencies, resulting in greater regulatory burdens on small entities than necessitated by statute; and

“(6) small entities should be given the opportunity to seek judicial review of agency actions required by chapter 6 of title 5, United States Code.

“SEC. 203. PURPOSES.

“The purposes of this title are—

“(1) to implement certain recommendations of the 1995 White House Conference on Small Business regarding the development and enforcement of Federal regulations;

“(2) to provide for judicial review of chapter 6 of title 5, United States Code;

“(3) to encourage the effective participation of small businesses in the Federal regulatory process;

“(4) to simplify the language of Federal regulations affecting small businesses;

“(5) to develop more accessible sources of information on regulatory and reporting requirements for small businesses;

“(6) to create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented; and

“(7) to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities.

“SUBTITLE A—REGULATORY COMPLIANCE SIMPLIFICATION

“SEC. 211. DEFINITIONS.

“For purposes of this subtitle—

“(1) the terms ‘rule’ and ‘small entity’ have the same meanings as in section 601 of title 5, United States Code;

“(2) the term ‘agency’ has the same meaning as in section 551 of title 5, United States Code; and

“(3) the term ‘small entity compliance guide’ means a document designated and entitled as such by an agency.

“SEC. 212. COMPLIANCE GUIDES.

“(a) COMPLIANCE GUIDE.—

“(1) IN GENERAL.—For each rule or group of related rules for which an agency is required to prepare a

final regulatory flexibility analysis under section 605(b) [probably should be “section 604”] of title 5, United States Code, the agency shall publish 1 or more guides to assist small entities in complying with the rule and shall entitle such publications ‘small entity compliance guides’.

“(2) PUBLICATION OF GUIDES.—The publication of each guide under this subsection shall include—

“(A) the posting of the guide in an easily identified location on the website of the agency; and

“(B) distribution of the guide to known industry contacts, such as small entities, associations, or industry leaders affected by the rule.

“(3) PUBLICATION DATE.—An agency shall publish each guide (including the posting and distribution of the guide as described under paragraph (2))—

“(A) on the same date as the date of publication of the final rule (or as soon as possible after that date); and

“(B) not later than the date on which the requirements of that rule become effective.

“(4) COMPLIANCE ACTIONS.—

“(A) IN GENERAL.—Each guide shall explain the actions a small entity is required to take to comply with a rule.

“(B) EXPLANATION.—The explanation under subparagraph (A)—

“(i) shall include a description of actions needed to meet the requirements of a rule, to enable a small entity to know when such requirements are met; and

“(ii) if determined appropriate by the agency, may include a description of possible procedures, such as conducting tests, that may assist a small entity in meeting such requirements, except that, compliance with any procedures described pursuant to this section does not establish compliance with the rule, or establish a presumption or inference of such compliance.

“(C) PROCEDURES.—Procedures described under subparagraph (B)(ii)—

“(i) shall be suggestions to assist small entities; and

“(ii) shall not be additional requirements, or diminish requirements, relating to the rule.

“(5) AGENCY PREPARATION OF GUIDES.—The agency shall, in its sole discretion, taking into account the subject matter of the rule and the language of relevant statutes, ensure that the guide is written using sufficiently plain language likely to be understood by affected small entities. Agencies may prepare separate guides covering groups or classes of similarly affected small entities and may cooperate with associations of small entities to develop and distribute such guides. An agency may prepare guides and apply this section with respect to a rule or a group of related rules.

“(6) REPORTING.—Not later than 1 year after the date of enactment of the Fair Minimum Wage Act of 2007 [May 25, 2007], and annually thereafter, the head of each agency shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and any other committee of relevant jurisdiction describing the status of the agency’s compliance with paragraphs (1) through (5).

“(b) COMPREHENSIVE SOURCE OF INFORMATION.—Agencies shall cooperate to make available to small entities through comprehensive sources of information, the small entity compliance guides and all other available information on statutory and regulatory requirements affecting small entities.

“(c) LIMITATION ON JUDICIAL REVIEW.—An agency’s small entity compliance guide shall not be subject to judicial review, except that in any civil or administrative action against a small entity for a violation occurring after the effective date of this section, the content of the small entity compliance guide may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages.

“SEC. 213. INFORMAL SMALL ENTITY GUIDANCE.

“(a) GENERAL.—Whenever appropriate in the interest of administering statutes and regulations within the jurisdiction of an agency which regulates small entities, it shall be the practice of the agency to answer inquiries by small entities concerning information on, and advice about, compliance with such statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. In any civil or administrative action against a small entity, guidance given by an agency applying the law to facts provided by the small entity may be considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties or damages sought against such small entity.

“(b) PROGRAM.—Each agency regulating the activities of small entities shall establish a program for responding to such inquiries no later than 1 year after enactment of this section [Mar. 29, 1996], utilizing existing functions and personnel of the agency to the extent practicable.

“(c) REPORTING.—Each agency regulating the activities of small business shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on the Judiciary of the House of Representatives no later than 2 years after the date of the enactment of this section on the scope of the agency’s program, the number of small entities using the program, and the achievements of the program to assist small entity compliance with agency regulations.

“SEC. 214. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.

“(a) [Amended section 648 of Title 15, Commerce and Trade.]

“(b) Nothing in this Act [see Short Title of 1996 Amendment note, above] in any way affects or limits the ability of other technical assistance or extension programs to perform or continue to perform services related to compliance assistance.

“SEC. 215. COOPERATION ON GUIDANCE.

“Agencies may, to the extent resources are available and where appropriate, in cooperation with the States, develop guides that fully integrate requirements of both Federal and State regulations where regulations within an agency’s area of interest at the Federal and State levels impact small entities. Where regulations vary among the States, separate guides may be created for separate States in cooperation with State agencies.

“SEC. 216. EFFECTIVE DATE.

“This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996].

“SUBTITLE B—REGULATORY ENFORCEMENT REFORMS

“SEC. 221. DEFINITIONS.

“For purposes of this subtitle—

“(1) the terms ‘rule’ and ‘small entity’ have the same meanings as in section 601 of title 5, United States Code;

“(2) the term ‘agency’ has the same meaning as in section 551 of title 5, United States Code; and

“(3) the term ‘small entity compliance guide’ means a document designated as such by an agency.

“SEC. 222. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT OMBUDSMAN.

“[Enacted section 657 of Title 15, Commerce and Trade.]

“SEC. 223. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.

“(a) IN GENERAL.—Each agency regulating the activities of small entities shall establish a policy or program within 1 year of enactment of this section [Mar.

29, 1996] to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. Under appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.

“(b) CONDITIONS AND EXCLUSIONS.—Subject to the requirements or limitations of other statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to—

“(1) requiring the small entity to correct the violation within a reasonable correction period;

“(2) limiting the applicability to violations discovered through participation by the small entity in a compliance assistance or audit program operated or supported by the agency or a State;

“(3) excluding small entities that have been subject to multiple enforcement actions by the agency;

“(4) excluding violations involving willful or criminal conduct;

“(5) excluding violations that pose serious health, safety or environmental threats; and

“(6) requiring a good faith effort to comply with the law.

“(c) REPORTING.—Agencies shall report to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] and Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Small Business and Committee on Judiciary of the House of Representatives no later than 2 years after the date of enactment of this section [Mar. 29, 1996] on the scope of their program or policy, the number of enforcement actions against small entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

“SEC. 224. EFFECTIVE DATE.

“This subtitle and the amendments made by this subtitle shall take effect on the expiration of 90 days after the date of enactment of this subtitle [Mar. 29, 1996].”

EFFECTS OF DEREGULATION ON RURAL AMERICA

Pub. L. 101-574, title III, §309, Nov. 15, 1990, 104 Stat. 2831, provided that:

“(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural areas. Such study shall include, but not be limited to, a thorough analysis of the impact of deregulation on—

“(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

“(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling of flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

“(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

“(4) the availability and costs of state-of-the-art telecommunications services to small businesses located in rural areas, including voice telephone service, private (not multiparty) telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voicemail services, and 911 emergency services with automatic number identification;

“(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such ability will enhance the quality of services provided to rural residents and businesses; and

“(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

“(b) REPORT.—Not later than 12 months after the date of enactment of this title [Nov. 15, 1990], the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas.”

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 96-354 provided that:

“(a) The Congress finds and declares that—

“(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

“(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

“(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

“(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

“(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

“(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

“(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

“(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

“(b) It is the purpose of this Act [enacting this chapter] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

EXECUTIVE ORDER NO. 12291

Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, which established requirements for agencies to follow in pro-

mulgating regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER No. 12498

Ex. Ord. No. 12498, Jan. 4, 1985, 50 F.R. 1036, which established a regulatory planning process by which to develop and publish a regulatory program for each year, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER No. 12606

Ex. Ord. No. 12606, Sept. 2, 1987, 52 F.R. 34188, which provided criteria for executive departments and agencies to follow in making policies and regulations to ensure consideration of effect of those policies and regulations on autonomy and rights of the family, was revoked by Ex. Ord. No. 13045, §7, Apr. 21, 1997, 62 F.R. 19888, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER No. 12612

Ex. Ord. No. 12612, Oct. 26, 1987, 52 F.R. 41685, which set out fundamental federalism principles and policy-making criteria for executive departments and agencies to follow in formulating and implementing policies and limited the instances when executive departments and agencies could construe a Federal statute to preempt State law, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EX. ORD. No. 12630. GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS

Ex. Ord. No. 12630, Mar. 15, 1988, 53 F.R. 8859, provided: By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

SECTION 1. *Purpose.* (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and

in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

SEC. 2. *Definitions.* For the purpose of this Order: (a) "Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. "Policies that have takings implications" does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone;

or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) "Actions" refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone;

or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

SEC. 3. *General Principles.* In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use is interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

SEC. 4. *Department and Agency Action.* In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency

involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

SEC. 5. *Executive Department and Agency Implementation.* (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of the department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A "takings" award has been made or a "takings" claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

SEC. 6. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

EX. ORD. No. 12861. ELIMINATION OF ONE-HALF OF
EXECUTIVE BRANCH INTERNAL REGULATIONS

Ex. Ord. No. 12861, Sept. 11, 1993, 58 F.R. 48255, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 1111 of title 31, United States Code, and to cut 50 percent of the executive branch's internal regulations in order to streamline and improve customer service to the American people, it is hereby ordered as follows:

SECTION 1. *Regulatory Reductions.* Each executive department and agency shall undertake to eliminate not less than 50 percent of its civilian internal management regulations that are not required by law within 3 years of the effective date of this order. An agency internal management regulation, for the purposes of this order, means an agency directive or regulation that pertains to its organization, management, or personnel matters. Reductions in agency internal management regulations shall be concentrated in areas that will result in the greatest improvement in productivity, streamlining of operations, and improvement in customer service.

SEC. 2. *Coverage.* This order applies to all executive branch departments and agencies.

SEC. 3. *Implementation.* The Director of the Office of Management and Budget shall issue instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

SEC. 4. *Independent Agencies.* All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

WILLIAM J. CLINTON.

EX. ORD. No. 12866. REGULATORY PLANNING AND REVIEW

Ex. Ord. No. 12866, Sept. 30, 1993, 58 F.R. 51735, as amended by Ex. Ord. No. 13258, Feb. 26, 2002, 67 F.R. 9385; Ex. Ord. No. 13422, Jan. 18, 2007, 72 F.R. 2763; Ex. Ord. No. 13497, §1, Jan. 30, 2009, 74 F.R. 6113, provided:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, 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. *Statement of Regulatory Philosophy and Principles.*

(a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding

whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

SEC. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

SEC. 3. Definitions. For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which

the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

SEC. 4. Planning Mechanism. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and [former] 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and

tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

SEC. 5. *Existing Regulations.* In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

SEC. 6. *Centralized Review of Regulations.* The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act [see Short Title note preceding section 551 of this title], the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act [44 U.S.C. 3501 et seq.], and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal re-

view procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be

governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

SEC. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Adminis-

trator of OIRA of the President's decision with respect to the matter.

SEC. 8. Publication. Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

SEC. 9. Agency Authority. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

SEC. 10. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

SEC. 11. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

[Section 1 of Ex. Ord. No. 13497, which revoked Ex. Ords. 13258 and 13422, was executed by undoing the amendments by those Ex. Ords. to Ex. Ord. 12866, set out above.]

EXECUTIVE ORDER NO. 12875

Ex. Ord. No. 12875, Oct. 26, 1993, 58 F.R. 58093, which provided for the reduction of unfunded mandates on State, local, or tribal governments and increased flexibility for State and local waivers of statutory or regulatory requirements, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13083

Ex. Ord. No. 13083, May 14, 1998, 63 F.R. 27651, which listed fundamental federalism principles and federalism policymaking criteria to guide agencies in formulating and implementing policies and required agencies to have a process to permit State and local governments to provide input into the development of regulatory policies that have federalism implications and to streamline the State and local government waiver process, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EXECUTIVE ORDER NO. 13095

Ex. Ord. No. 13095, Aug. 5, 1998, 63 F.R. 42565, which suspended Ex. Ord. No. 13083, was revoked by Ex. Ord. No. 13132, §10(b), Aug. 4, 1999, 64 F.R. 43259, set out below.

EX. ORD. NO. 13107. IMPLEMENTATION OF HUMAN RIGHTS TREATIES

Ex. Ord. No. 13107, Dec. 10, 1998, 63 F.R. 68991, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the

United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and other relevant treaties concerned with the protection and promotion of human rights to which the United States is now or may become a party in the future, it is hereby ordered as follows:

SECTION 1. *Implementation of Human Rights Obligations.* (a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.

(b) It shall also be the policy and practice of the Government of the United States to promote respect for international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including, *inter alia*, those of the United Nations, the International Labor Organization, and the Organization of American States.

SEC. 2. *Responsibility of Executive Departments and Agencies.* (a) All executive departments and agencies (as defined in 5 U.S.C. 101-105, including boards and commissions, and hereinafter referred to collectively as "agency" or "agencies") shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order. Under this order, all such agencies shall retain their established institutional roles in the implementation, interpretation, and enforcement of Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

SEC. 3. *Human Rights Inquiries and Complaints.* Each agency shall take lead responsibility, in coordination with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility or, if the matter does not fall within its areas of responsibility, referring it to the appropriate agency for response.

SEC. 4. *Interagency Working Group on Human Rights Treaties.* (a) There is hereby established an Interagency Working Group on Human Rights Treaties for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.

(b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include:

(i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise;

(ii) coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;

(iii) coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;

(iv) developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;

(v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native Americans and Federally recognized Indian tribes, including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms;

(vi) developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;

(vii) coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been nontrivial complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings to human rights treaties, or United States practices or laws. The results and recommendations of this review shall be reviewed by the head of each participating agency;

(viii) making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States adherence to or implementation of human rights treaties and related matters; and

(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

(d) The work of the Interagency Working Group shall not supplant the work of other interagency entities, including the President's Committee on the International Labor Organization, that address international human rights issues.

SEC. 5. *Cooperation Among Executive Departments and Agencies.* All agencies shall cooperate in carrying out the provisions of this order. The Interagency Working Group shall facilitate such cooperative measures.

SEC. 6. *Judicial Review, Scope, and Administration.* (a) Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order does not supersede Federal statutes and does not impose any justiciable obligations on the executive branch.

(c) The term "treaty obligations" shall mean treaty obligations as approved by the Senate pursuant to Article II, section 2, clause 2 of the United States Constitution.

(d) To the maximum extent practicable and subject to the availability of appropriations, agencies shall carry out the provisions of this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13132. FEDERALISM

Ex. Ord. No. 13132, Aug. 4, 1999, 64 F.R. 43255, 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 guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act [of 1995, Pub. L. 104-4, see Tables for classification], it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "State and local officials" means elected officials of State and local governments or their representative national organizations.

SEC. 2. *Fundamental Federalism Principles.* In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

(b) The people of the States created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is inherent in the very structure of the Constitution and is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) The Framers recognized that the States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) The national government should be deferential to the States when taking action that affects the policy-

making discretion of the States and should act only with the greatest caution where State or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

SEC. 3. *Federalism Policymaking Criteria.* In addition to adhering to the fundamental federalism principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There shall be strict adherence to constitutional principles. Agencies shall closely examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and shall carefully assess the necessity for such action. To the extent practicable, State and local officials shall be consulted before any such action is implemented. Executive Order 12372 of July 14, 1982 ("Intergovernmental Review of Federal Programs") [31 U.S.C. 6506 note] remains in effect for the programs and activities to which it is applicable.

(b) National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

(c) With respect to Federal statutes and regulations administered by the States, the national government shall grant the States the maximum administrative discretion possible. Intrusive Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, agencies shall:

(1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States;

(2) where possible, defer to the States to establish standards;

(3) in determining whether to establish uniform national standards, consult with appropriate State and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve State prerogatives and authority; and

(4) where national standards are required by Federal statutes, consult with appropriate State and local officials in developing those standards.

SEC. 4. *Special Requirements for Preemption.* Agencies, in taking action that preempts State law, shall act in strict accordance with governing law.

(a) Agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) When an agency foresees the possibility of a conflict between State law and Federally protected inter-

ests within its area of regulatory responsibility, the agency shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.

(e) When an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.

SEC. 5. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would:

(a) directly regulate the States in ways that would either interfere with functions essential to the States' separate and independent existence or be inconsistent with the fundamental federalism principles in section 2;

(b) attach to Federal grants conditions that are not reasonably related to the purpose of the grant; or

(c) preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policy-making criteria set forth in section 3, cannot otherwise be met.

SEC. 6. *Consultation.*

(a) Each agency shall have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Within 90 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order and that designated official shall submit to the Office of Management and Budget a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with State and local officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(C) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts State law, unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with State and local officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the na-

ture of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met; and

(3) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by State and local officials.

SEC. 7. *Increasing Flexibility for State and Local Waivers.*

(a) Agencies shall review the processes under which State and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

SEC. 8. *Accountability.*

(a) In transmitting any draft final regulation that has federalism implications to the Office of Management and Budget pursuant to Executive Order 12866 of September 30, 1993 [set out above], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has federalism implications to the Office of Management and Budget, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order, the Director of the Office of Management and Budget and the Assistant to the President for Intergovernmental Affairs shall confer with State and local officials to ensure that this order is being properly and effectively implemented.

SEC. 9. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

SEC. 10. *General Provisions.*

(a) This order shall supplement but not supersede the requirements contained in Executive Order 12372 ("Intergovernmental Review of Federal Programs") [31 U.S.C. 6506 note], Executive Order 12866 ("Regulatory Planning and Review") [set out above], Executive Order 12988 ("Civil Justice Reform" [28 U.S.C. 519 note]), and OMB Circular A-19.

(b) Executive Order 12612 ("Federalism"), Executive Order 12875 ("Enhancing the Intergovernmental Partnership"), Executive Order 13083 ("Federalism"), and Executive Order 13095 ("Suspension of Executive Order 13083") are revoked.

(c) This order shall be effective 90 days after the date of this order.

SEC. 11. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13198. AGENCY RESPONSIBILITIES WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13198, Jan. 29, 2001, 66 F.R. 8497, 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 help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America's communities, it is hereby ordered as follows:

SECTION 1. *Establishment of Executive Department Centers for Faith-Based and Community Initiatives.* (a) The Attorney General, the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall each establish within their respective departments a Center for Faith-Based and Community Initiatives (Center).

(b) Each executive department Center shall be supervised by a Director, appointed by the department head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each department shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each department's Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. *Purpose of Executive Department Centers for Faith-Based and Community Initiatives.* The purpose of the executive department Centers will be to coordinate department efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

SEC. 3. *Responsibilities of Executive Department Centers for Faith-Based and Community Initiatives.* Each Center shall, to the extent permitted by law: (a) conduct, in coordination with the White House OFBCI, a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in department programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate department outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other department initiatives, including but not limited to Web and Internet resources.

SEC. 4. *Additional Responsibilities of the Department of Health and Human Services and the Department of Labor Centers.* In addition to those responsibilities described in section 3 of this order, the Department of Health and Human Services and the Department of Labor Centers shall, to the extent permitted by law: (a) conduct a comprehensive review of policies and practices affecting existing funding streams governed by so-called "Charitable Choice" legislation to assess the department's compliance with the requirements of Charitable Choice; and (b) promote and ensure compliance with existing Charitable Choice legislation by the department,

as well as its partners in State and local government, and their contractors.

SEC. 5. *Reporting Requirements.* (a) Report. Not later than 180 days after the date of this order and annually thereafter, each of the five executive department Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.

(b) Contents. The report shall include a description of the department's efforts in carrying out its responsibilities under this order, including but not limited to:

(1) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(2) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the department and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) Performance Indicators. The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for department action. Each report filed thereafter shall measure the department's performance against the objectives set forth in the initial report.

SEC. 6. *Responsibilities of All Executive Departments and Agencies.* All executive departments and agencies (agencies) shall: (a) designate an agency employee to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SEC. 7. *Administration and Judicial Review.* (a) The agencies' actions directed by this Executive Order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order does not create any right or benefit, substantive or procedural, enforceable at law or equity against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13272. PROPER CONSIDERATION OF SMALL ENTITIES IN AGENCY RULEMAKING

Ex. Ord. No. 13272, Aug. 13, 2002, 67 F.R. 53461, 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. *General Requirements.* Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) (the "Act"). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

SEC. 2. *Responsibilities of Advocacy.* Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended [set out above], Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

SEC. 3. *Responsibilities of Federal Agencies.* Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies' draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies' procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 [set out above] if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule that preceded the final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

SEC. 4. *Definitions.* Terms defined in section 601 of title 5, United States Code, including the term "agency," shall have the same meaning in this order.

SEC. 5. *Preservation of Authority.* Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85-09536 [Pub. L. 85-536] (15 U.S.C. 633(b)(1)).

SEC. 6. *Reporting.* For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

SEC. 7. *Confidentiality.* Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

SEC. 8. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13279. EQUAL PROTECTION OF THE LAWS FOR FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS

Ex. Ord. No. 13279, Dec. 12, 2002, 67 F.R. 77141, as amended by Ex. Ord. No. 13403, §2, May 12, 2006, 71 F.R. 28543; Ex. Ord. No. 13559, Nov. 17, 2010, 75 F.R. 71319, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 121(a) of title 40, United

States Code, and section 301 of title 3, United States Code, and in order to guide Federal agencies in formulating and developing policies with implications for faith-based organizations and other other [sic] neighborhood organizations, to ensure equal protection of the laws for faith-based and other neighborhood organizations, to further the national effort to expand opportunities for, and strengthen the capacity of, faith-based and other other [sic] neighborhood organizations so that they may better meet social needs in America's communities, and to ensure the economical and efficient administration and completion of Government contracts, it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) "Federal financial assistance" means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

(b) "Social service program" means a program that is administered by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

(i) child care services, protective services for children and adults, services for children and adults in foster care, adoption services, services related to the management and maintenance of the home, day care services for adults, and services to meet the special needs of children, older individuals, and individuals with disabilities (including physical, mental, or emotional disabilities);

(ii) transportation services;

(iii) job training and related services, and employment services;

(iv) information, referral, and counseling services;

(v) the preparation and delivery of meals and services related to soup kitchens or food banks;

(vi) health support services;

(vii) literacy and mentoring programs;

(viii) services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of, domestic violence; and

(ix) services related to the provision of assistance for housing under Federal law.

(c) "Policies that have implications for faith-based and other neighborhood organizations" refers to all policies, programs, and regulations, including official guidance and internal agency procedures, that have significant effects on faith-based organizations participating in or seeking to participate in social service programs supported with Federal financial assistance.

(d) "Agency" means a department or agency in the executive branch.

(e) "Specified agency heads" means:

(i) the Attorney General;

(ii) the Secretary of Agriculture;

(iii) the Secretary of Commerce;

(iv) the Secretary of Labor;

(v) the Secretary of Health and Human Services;

(vi) the Secretary of Housing and Urban Development;

(vii) the Secretary of Education;

(viii) the Secretary of Veterans Affairs;

(ix) the Secretary of Homeland Security;

(x) the Administrator of the Environmental Protection Agency;

(xi) the Administrator of the Small Business Administration;

(xii) the Administrator of the United States Agency for International Development; and

(xiii) the Chief Executive Officer of the Corporation for National and Community Service.

SEC. 2. Fundamental Principles. In formulating and implementing policies that have implications for faith-based and other neighborhood organizations, agencies that administer social service programs or that support (including through prime awards or sub-awards) social service programs with Federal financial assistance shall, to the extent permitted by law, be guided by the following fundamental principles:

(a) Federal financial assistance for social service programs should be distributed in the most effective and efficient manner possible.

(b) The Nation's social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.

(c) No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.

(d) All organizations that receive Federal financial assistance under social service programs should be prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(e) The Federal Government must implement Federal programs in accordance with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution, as well as other applicable law, and must monitor and enforce standards regarding the relationship between religion and government in ways that avoid excessive entanglement between religious bodies and governmental entities.

(f) Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct Federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such Federal financial assistance.

(g) Faith-based organizations should be eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social service programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character. Accordingly, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (including through a prime award or sub-award) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, faith-based organizations that receive Federal financial assistance may use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities. In

addition, a faith-based organization that applies for, or participates in, a social service program supported with Federal financial assistance may retain religious terms in its name, select its board members on a religious basis, and include religious references in its organization's mission statements and other chartering or governing documents.

(h) Each agency responsible for administering or awarding Federal financial assistance for social service programs shall offer protections for beneficiaries of such programs pursuant to the following principles:

(i) *Referral to an Alternative Provider.* If a beneficiary or prospective beneficiary of a social service program supported by Federal financial assistance objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonable time after the date of the objection, refer the beneficiary to an alternative provider.

(ii) *Agency Responsibilities.* Each agency responsible for administering a social service program or supporting a social service program with Federal financial assistance shall establish policies and procedures designed to ensure that (1) appropriate and timely referrals are made to an alternative provider; (2) all referrals are made in a manner consistent with all applicable privacy laws and regulations; (3) the organization subject to subsection (h)(i) notifies the agency of any referral; (4) such organization has established a process for determining whether the beneficiary has contacted the alternative provider; and (5) each beneficiary of a social service program receives written notice of the protections set forth in this subsection prior to enrolling in or receiving services from such program.

(i) To promote transparency and accountability, agencies that provide Federal financial assistance for social service programs shall post online, in an easily accessible manner, regulations, guidance documents, and policies that reflect or elaborate upon the fundamental principles described in this section. Agencies shall also post online a list of entities that receive Federal financial assistance for provision of social service programs, consistent with law and pursuant to guidance set forth in paragraph (c) of section 3 of this order.

(j) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of the religious affiliation of a recipient organization or lack thereof.

SEC. 3. Ensuring Uniform Implementation Across the Federal Government. In order to promote uniformity in agencies' policies that have implications for faith-based and other neighborhood organizations and in related guidance, and to ensure that those policies and guidance are consistent with the fundamental principles set forth in section 2 of this order, there is established an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships (Working Group).

(a) *Mission and Function of the Working Group.* The Working Group shall meet periodically to review and evaluate existing agency regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations. Where appropriate, specified agency heads shall, to the extent permitted by law, amend all such existing policies of their respective agencies to ensure that they are consistent with the fundamental principles set forth in section 2 of this order.

(b) *Uniform Agency Implementation.* Within 120 days of the date of this order, the Working Group shall submit a report to the President on amendments, changes, or additions that are necessary to ensure that regulations and guidance documents associated with the distribution of Federal financial assistance for social service programs are consistent with the fundamental principles set forth in section 2 of this order. The Working Group's report should include, but not be limited to, a model set of regulations and guidance documents for agencies to adopt in the following areas:

(i) prohibited uses of direct Federal financial assistance and separation requirements; (ii) protections for

religious identity; (iii) the distinction between “direct” and “indirect” Federal financial assistance; (iv) protections for beneficiaries of social service programs; (v) transparency requirements, consistent with and in furtherance of existing open government initiatives; (vi) obligations of nongovernmental and governmental intermediaries; (vii) instructions for peer reviewers and those who recruit peer reviewers; and (viii) training on these matters for government employees and for Federal, State, and local governmental and nongovernmental organizations that receive Federal financial assistance under social service programs. In developing this report and in reviewing agency regulations and guidance for consistency with section 2 of this order, the Working Group shall consult the March 2010 report and recommendations prepared by the President’s Advisory Council on Faith-Based and Neighborhood Partnerships on the topic of reforming the Office of Faith-Based and Neighborhood Partnerships.

(c) *Guidance.* The Director of the Office of Management and Budget (OMB), following receipt of a copy of the report of the Working Group, and in coordination with the Department of Justice, shall issue guidance to agencies on the implementation of this order, including in particular subsections 2(h)–(j).

(d) *Membership of the Working Group.* The Director of the Office of Faith-Based and Neighborhood Partnerships and a senior official from the OMB designated by the Director of the OMB shall serve as the Co-Chairs of the Working Group. The Co-Chairs shall convene regular meetings of the Working Group, determine its agenda, and direct its work. In addition to the Co-Chairs, the Working Group shall consist of a senior official with knowledge of policies that have implications for faith-based and other neighborhood organizations from the following agencies and offices:

- (i) the Department of State;
- (ii) the Department of Justice;
- (iii) the Department of the Interior;
- (iv) the Department of Agriculture;
- (v) the Department of Commerce;
- (vi) the Department of Labor;
- (vii) the Department of Health and Human Services;
- (viii) the Department of Housing and Urban Development;
- (ix) the Department of Education;
- (x) the Department of Veterans Affairs;
- (xi) the Department of Homeland Security;
- (xii) the Environmental Protection Agency;
- (xiii) the Small Business Administration;
- (xiv) the United States Agency for International Development;
- (xv) the Corporation for National and Community Service; and
- (xvi) other agencies and offices as the President, from time to time, may designate.

(e) *Administration of the Initiative.* The Department of Health and Human Services shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations.

SEC. 4. *Amendment of Executive Order 11246.*

Pursuant to section 121(a) of title 40, United States Code, and section 301 of title 3, United States Code, and in order to further the strong Federal interest in ensuring that the cost and progress of Federal procurement contracts are not adversely affected by an artificial restriction of the labor pool caused by the unwarranted exclusion of faith-based organizations from such contracts, section 204 of Executive Order 11246 of September 24, 1965, as amended, [42 U.S.C. 2000e note] is hereby further amended to read as follows:

“SEC. 204 (a) The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order.

(b) The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts,

or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.

(c) Section 202 of this Order shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this Order.

(d) The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this Order: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this Order.”

SEC. 5. *General Provisions.*

(a) This order supplements but does not supersede the requirements contained in Executive Orders 13198 [set out above] and 13199 [3 U.S.C. note prec. 101] of January 29, 2001.

(b) The agencies shall coordinate with the White House OFBCI concerning the implementation of this order.

(c) Nothing in this order shall be construed to require an agency to take any action that would impair the conduct of foreign affairs or the national security.

SEC. 6. *Responsibilities of Executive Departments and Agencies.* All executive departments and agencies (agencies) shall:

- (a) designate an agency employee to serve as the liaison and point of contact with the White House OFBCI; and
- (b) cooperate with the White House OFBCI and provide such information, support, and assistance to the White House OFBCI as it may request, to the extent permitted by law.

SEC. 7. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any person.

EX. ORD. NO. 13280. RESPONSIBILITIES OF THE DEPARTMENT OF AGRICULTURE AND THE AGENCY FOR INTERNATIONAL DEVELOPMENT WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13280, Dec. 12, 2002, 67 F.R. 77145, 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 help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet social needs in America’s communities, it is hereby ordered as follows:

SECTION 1. *Establishment of Centers for Faith-Based and Community Initiatives at the Department of Agriculture and the Agency for International Development.* (a) The Secretary of Agriculture and the Administrator of the Agency for International Development shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation

with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. *Purpose of Executive Branch Centers for Faith-Based and Community Initiatives.* The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social services.

SEC. 3. *Responsibilities of the Centers for Faith-Based and Community Initiatives.* Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SEC. 4. *Reporting Requirements.*

(a) *Report.* Not later than 180 days from the date of this order and annually thereafter, each of the two Centers described in section 1 of this order shall prepare and submit a report to the White House OFBCI.

(b) *Contents.* The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report, filed 180 days after the date of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

SEC. 5. *Responsibilities of the Secretary of Agriculture and the Administrator of the Agency for International Development.* The Secretary and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCI; and

(b) cooperate with the White House OFBCI and provide such information, support, and assistance to the

White House OFBCI as it may request, to the extent permitted by law.

SEC. 6. *Administration and Judicial Review.* (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13342. RESPONSIBILITIES OF THE DEPARTMENTS OF COMMERCE AND VETERANS AFFAIRS AND THE SMALL BUSINESS ADMINISTRATION WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13342, June 1, 2004, 69 F.R. 31509, 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 help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

SECTION 1. *Establishment of Centers for Faith-Based and Community Initiatives at the Departments of Commerce and Veterans Affairs and the Small Business Administration.*

(a) The Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration shall each establish within their respective agencies a Center for Faith-Based and Community Initiatives (Center).

(b) Each of these Centers shall be supervised by a Director, appointed by the agency head in consultation with the White House Office of Faith-Based and Community Initiatives (White House OFBCI).

(c) Each agency shall provide its Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) Each Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. *Purpose of Executive Branch Centers for Faith-Based and Community Initiatives.* The purpose of the agency Centers will be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SEC. 3. *Responsibilities of the Centers for Faith-Based and Community Initiatives.* Each Center shall, to the extent permitted by law:

(a) conduct, in coordination with the White House OFBCI, an agency-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the agency, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive agency effort to incorporate faith-based and other community organizations in agency programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate agency outreach efforts to disseminate information more effectively to faith-

based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SEC. 4. *Reporting Requirements.* (a) *Report.* Not later than 180 days from the date of this order and annually thereafter, each of the three Centers described in section 1 of this order shall prepare and submit a report to the President through the White House OFBCL.

(b) *Contents.* The report shall include a description of the agency's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report, filed pursuant to section 4(a) of this order, shall include annual performance indicators and measurable objectives for agency action. Each report filed thereafter shall measure the agency's performance against the objectives set forth in the initial report.

SEC. 5. *Responsibilities of the Secretaries of Commerce and Veterans Affairs and the Administrator of the Small Business Administration.* The Secretaries and the Administrator shall:

(a) designate an employee within their respective agencies to serve as the liaison and point of contact with the White House OFBCL; and

(b) cooperate with the White House OFBCL and provide such information, support, and assistance to the White House OFBCL as it may request, to the extent permitted by law.

SEC. 6. *Administration and Judicial Review.* (a) The agency actions directed by this executive order shall be carried out subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13397. RESPONSIBILITIES OF THE DEPARTMENT OF HOMELAND SECURITY WITH RESPECT TO FAITH-BASED AND COMMUNITY INITIATIVES

Ex. Ord. No. 13397, Mar. 7, 2006, 71 F.R. 12275, 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 help the Federal Government coordinate a national effort to expand opportunities for faith-based and other community organizations and to strengthen their capacity to better meet America's social and community needs, it is hereby ordered as follows:

SECTION 1. *Establishment of a Center for Faith-Based and Community Initiatives at the Department of Homeland Security.*

(a) The Secretary of Homeland Security (Secretary) shall establish within the Department of Homeland Security (Department) a Center for Faith-Based and Community Initiatives (Center).

(b) The Center shall be supervised by a Director appointed by [the] Secretary. The Secretary shall consult with the Director of the White House Office of Faith-Based and Community Initiatives (WHOFBCL Director) prior to making such appointment.

(c) The Department shall provide the Center with appropriate staff, administrative support, and other resources to meet its responsibilities under this order.

(d) The Center shall begin operations no later than 45 days from the date of this order.

SEC. 2. *Purpose of Center.* The purpose of the Center shall be to coordinate agency efforts to eliminate regulatory, contracting, and other programmatic obstacles to the participation of faith-based and other community organizations in the provision of social and community services.

SEC. 3. *Responsibilities of the Center for Faith-Based and Community Initiatives.* In carrying out the purpose set forth in section 2 of this order, the Center shall:

(a) conduct, in coordination with the WHOFBCL Director, a department-wide audit to identify all existing barriers to the participation of faith-based and other community organizations in the delivery of social and community services by the Department, including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that unlawfully discriminate against, or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs;

(b) coordinate a comprehensive departmental effort to incorporate faith-based and other community organizations in Department programs and initiatives to the greatest extent possible;

(c) propose initiatives to remove barriers identified pursuant to section 3(a) of this order, including but not limited to reform of regulations, procurement, and other internal policies and practices, and outreach activities;

(d) propose the development of innovative pilot and demonstration programs to increase the participation of faith-based and other community organizations in Federal as well as State and local initiatives; and

(e) develop and coordinate Departmental outreach efforts to disseminate information more effectively to faith-based and other community organizations with respect to programming changes, contracting opportunities, and other agency initiatives, including but not limited to Web and Internet resources.

SEC. 4. *Reporting Requirements.*

(a) *Report.* Not later than 180 days from the date of this order and annually thereafter, the Center shall prepare and submit a report to the WHOFBCL Director.

(b) *Contents.* The report shall include a description of the Department's efforts in carrying out its responsibilities under this order, including but not limited to:

(i) a comprehensive analysis of the barriers to the full participation of faith-based and other community organizations in the delivery of social and community services identified pursuant to section 3(a) of this order and the proposed strategies to eliminate those barriers; and

(ii) a summary of the technical assistance and other information that will be available to faith-based and other community organizations regarding the program activities of the agency and the preparation of applications or proposals for grants, cooperative agreements, contracts, and procurement.

(c) *Performance Indicators.* The first report shall include annual performance indicators and measurable objectives for Departmental action. Each report filed thereafter shall measure the Department's performance against the objectives set forth in the initial report.

SEC. 5. *Responsibilities of the Secretary.* The Secretary shall:

(a) designate an employee within the department to serve as the liaison and point of contact with the WHOFBCL Director; and

(b) cooperate with the WHOFBCL Director and provide such information, support, and assistance to the WHOFBCL Director as requested to implement this order.

SEC. 6. *General Provisions.* (a) This order shall be implemented subject to the availability of appropriations and to the extent permitted by law.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United

States, its agencies, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13406. PROTECTING THE PROPERTY RIGHTS OF THE AMERICAN PEOPLE

Ex. Ord. No. 13406, June 23, 2006, 71 F.R. 36973, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen the rights of the American people against the taking of their private property, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the United States to protect the rights of Americans to their private property, including by limiting the taking of private property by the Federal Government to situations in which the taking is for public use, with just compensation, and for the purpose of benefiting the general public and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken.

SEC. 2. *Implementation.* (a) The Attorney General shall:

(i) issue instructions to the heads of departments and agencies to implement the policy set forth in section 1 of this order; and

(ii) monitor takings by departments and agencies for compliance with the policy set forth in section 1 of this order.

(b) Heads of departments and agencies shall, to the extent permitted by law:

(i) comply with instructions issued under subsection (a)(i); and

(ii) provide to the Attorney General such information as the Attorney General determines necessary to carry out subsection (a)(ii).

SEC. 3. *Specific Exclusions.* Nothing in this order shall be construed to prohibit a taking of private property by the Federal Government, that otherwise complies with applicable law, for the purpose of:

(a) public ownership or exclusive use of the property by the public, such as for a public medical facility, roadway, park, forest, governmental office building, or military reservation;

(b) projects designated for public, common carrier, public transportation, or public utility use, including those for which a fee is assessed, that serve the general public and are subject to regulation by a governmental entity;

(c) conveying the property to a nongovernmental entity, such as a telecommunications or transportation common carrier, that makes the property available for use by the general public as of right;

(d) preventing or mitigating a harmful use of land that constitutes a threat to public health, safety, or the environment;

(e) acquiring abandoned property;

(f) quieting title to real property;

(g) acquiring ownership or use by a public utility;

(h) facilitating the disposal or exchange of Federal property; or

(i) meeting military, law enforcement, public safety, public transportation, or public health emergencies.

SEC. 4. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order shall be implemented in a manner consistent with Executive Order 12630 of March 15, 1988.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its

departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13497. REVOCATION OF CERTAIN EXECUTIVE ORDERS CONCERNING REGULATORY PLANNING AND REVIEW

Ex. Ord. No. 13497, Jan. 30, 2009, 74 F.R. 6113, 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 that:

SECTION 1. Executive Order 13258 of February 26, 2002, and Executive Order 13422 of January 18, 2007, concerning regulatory planning and review, which amended Executive Order 12866 of September 30, 1993, are revoked.

SEC. 2. The Director of the Office of Management and Budget and the heads of executive departments and agencies shall promptly rescind any orders, rules, regulations, guidelines, or policies implementing or enforcing Executive Order 13258 or Executive Order 13422, to the extent consistent with law.

SEC. 3. 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. 13563. IMPROVING REGULATION AND REGULATORY REVIEW

Ex. Ord. No. 13563, Jan. 18, 2011, 76 F.R. 3821, 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 improve regulation and regulatory review, it is hereby ordered as follows:

SECTION 1. *General Principles of Regulation.* (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as ac-

curately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

SEC. 2. Public Participation. (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

SEC. 3. Integration and Innovation. Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

SEC. 4. Flexible Approaches. Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

SEC. 5. Science. Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

SEC. 6. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine wheth-

er any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

SEC. 7. General Provisions. (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) 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. 13579. REGULATION AND INDEPENDENT REGULATORY AGENCIES

Ex. Ord. No. 13579, July 11, 2011, 76 F.R. 41587, 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 improve regulation and regulatory review, it is hereby ordered as follows:

SECTION 1. Policy. (a) Wise regulatory decisions depend on public participation and on careful analysis of the likely consequences of regulation. Such decisions are informed and improved by allowing interested members of the public to have a meaningful opportunity to participate in rulemaking. To the extent permitted by law, such decisions should be made only after consideration of their costs and benefits (both quantitative and qualitative).

(b) Executive Order 13563 of January 18, 2011, "Improving Regulation and Regulatory Review," directed to executive agencies, was meant to produce a regulatory system that protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." Independent regulatory agencies, no less than executive agencies, should promote that goal.

(c) Executive Order 13563 set out general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science. To the extent permitted by law, independent regulatory agencies should comply with these provisions as well.

SEC. 2. Retrospective Analyses of Existing Rules. (a) To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data and evaluations, should be released online whenever possible.

(b) Within 120 days of the date of this order, each independent regulatory agency should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

SEC. 3. General Provisions. (a) For purposes of this order, "executive agency" shall have the meaning set forth for the term "agency" in section 3(b) of Executive Order 12866 of September 30, 1993, and "independent reg-

ulatory agency” shall have the meaning set forth in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) 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. 13604. IMPROVING PERFORMANCE OF FEDERAL PERMITTING AND REVIEW OF INFRASTRUCTURE PROJECTS

Ex. Ord. No. 13604, Mar. 22, 2012, 77 F.R. 18887, 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 significantly reduce the aggregate time required to make decisions in the permitting and review of infrastructure projects by the Federal Government, while improving environmental and community outcomes, it is hereby ordered as follows:

SECTION 1. *Policy.* (a) To maintain our Nation’s competitive edge and ensure an economy built to last, the United States must have fast, reliable, resilient, and environmentally sound means of moving people, goods, energy, and information. In a global economy, we will compete for the world’s investments based in significant part on the quality of our infrastructure. Investing in the Nation’s infrastructure provides immediate and long-term economic benefits for local communities and the Nation as a whole.

The quality of our Nation’s infrastructure depends in critical part on Federal permitting and review processes, including planning, approval, and consultation processes. These processes inform decision-makers and affected communities about the potential benefits and impacts of proposed infrastructure projects, and ensure that projects are designed, built, and maintained in a manner that is consistent with protecting our public health, welfare, safety, national security, and environment. Reviews and approvals of infrastructure projects can be delayed due to many factors beyond the control of the Federal Government, such as poor project design, incomplete applications, uncertain funding, or multiple reviews and approvals by State, local, tribal, or other jurisdictions. Given these factors, it is critical that executive departments and agencies (agencies) take all steps within their authority, consistent with available resources, to execute Federal permitting and review processes with maximum efficiency and effectiveness, ensuring the health, safety, and security of communities and the environment while supporting vital economic growth.

To achieve that objective, our Federal permitting and review processes must provide a transparent, consistent, and predictable path for both project sponsors and affected communities. They must ensure that agencies set and adhere to timelines and schedules for completion of reviews, set clear permitting performance goals, and track progress against those goals. They must encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays. They must provide for transparency and accountability by utilizing cost-effective information technology to collect and disseminate information about individual projects and agency performance, so that the priorities and concerns of all our citizens are considered. They must rely upon early and active con-

sultation with State, local, and tribal governments to avoid conflicts or duplication of effort, resolve concerns, and allow for concurrent rather than sequential reviews. They must recognize the critical role project sponsors play in assuring the timely and cost-effective review of projects by providing complete information and analysis and by supporting, as appropriate, the costs associated with review. And, they must enable agencies to share priorities, work collaboratively and concurrently to advance reviews and permitting decisions, and facilitate the resolution of disputes at all levels of agency organization.

Each of these elements must be incorporated into routine agency practice to provide demonstrable improvements in the performance of Federal infrastructure permitting and review processes, including lower costs, more timely decisions, and a healthier and cleaner environment. Also, these elements must be integrated into project planning processes so that projects are designed appropriately to avoid, to the extent practicable, adverse impacts on public health, security, historic properties and other cultural resources, and the environment, and to minimize or mitigate impacts that may occur. Permitting and review process improvements that have proven effective must be expanded and institutionalized.

(b) In advancing this policy, this order expands upon efforts undertaken pursuant to Executive Order 13580 of July 12, 2011 (Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska), Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), and my memorandum of August 31, 2011 (Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review), as well as other ongoing efforts.

SEC. 2. *Steering Committee on Federal Infrastructure Permitting and Review Process Improvement.* There is established a Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Steering Committee), to be chaired by the Chief Performance Officer (CPO), in consultation with the Chair of the Council on Environmental Quality (CEQ).

(a) *Infrastructure Projects Covered by this Order.* The Steering Committee shall facilitate improvements in Federal permitting and review processes for infrastructure projects in sectors including surface transportation, aviation, ports and waterways, water resource projects, renewable energy generation, electricity transmission, broadband, pipelines, and other such sectors as determined by the Steering Committee.

(b) *Membership.* Each of the following agencies (Member Agencies) shall be represented on the Steering Committee by a Deputy Secretary or equivalent officer of the United States:

- (i) the Department of Defense;
- (ii) the Department of the Interior;
- (iii) the Department of Agriculture;
- (iv) the Department of Commerce;
- (v) the Department of Transportation;
- (vi) the Department of Energy;
- (vii) the Department of Homeland Security;
- (viii) the Environmental Protection Agency;
- (ix) the Advisory Council on Historic Preservation;
- (x) the Department of the Army; and
- (xi) such other agencies or offices as the CPO may invite to participate.

(c) *Projects of National or Regional Significance.* In furtherance of the policies of this order, the Member Agencies shall coordinate and consult with each other to select, submit to the CPO by April 30, 2012, and periodically update thereafter, a list of infrastructure projects of national or regional significance that will have their status tracked on the online Federal Infrastructure Projects Dashboard (Dashboard) created pursuant to my memorandum of August 31, 2011.

(d) *Responsibilities of the Steering Committee.* The Steering Committee shall:

- (i) develop a Federal Permitting and Review Performance Plan (Federal Plan), as described in section 3(a) of this order;

(ii) implement the Federal Plan and coordinate resolution of disputes among Member Agencies relating to implementation of the Federal Plan; and

(iii) coordinate and consult with other agencies, offices, and interagency working groups as necessary, including the President's Management Council and Performance Improvement Councils, and, with regard to use and expansion of the Dashboard, the Chief Information Officer (CIO) and Chief Technology Officer to implement this order.

(e) *Duties of the CPO.* The CPO shall:

(i) in consultation with the Chair of CEQ and Member Agencies, issue guidance on the implementation of this order;

(ii) in consultation with Member Agencies, develop and track performance metrics for evaluating implementation of the Federal Plan and Agency Plans; and

(iii) by January 31, 2013, and annually thereafter, after input from interested agencies, evaluate and report to the President on the implementation of the Federal Plan and Agency Plans, and publish the report on the Dashboard.

(f) *No Involvement in Particular Permits or Projects.* Neither the Steering Committee, nor the CPO, may direct or coordinate agency decisions with respect to any particular permit or project.

SEC. 3. *Plans for Measurable Performance Improvement.*

(a) By May 31, 2012, the Steering Committee shall, following coordination with Member Agencies and other interested agencies, develop and publish on the Dashboard a Federal Plan to significantly reduce the aggregate time required to make Federal permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment. The Federal Plan shall include, but not be limited to, the following actions to implement the policies outlined in section 1 of this order, and shall reflect the agreement of any Member Agency with respect to requirements in the Federal Plan affecting such agency:

(i) institutionalizing best practices for: enhancing Federal, State, local, and tribal government coordination on permitting and review processes (such as conducting reviews concurrently rather than sequentially to the extent practicable); avoiding duplicative reviews; and engaging with stakeholders early in the permitting process;

(ii) developing mechanisms to better communicate priorities and resolve disputes among agencies at the national and regional levels;

(iii) institutionalizing use of the Dashboard, working with the CIO to enhance the Dashboard, and utilizing other cost-effective information technology systems to share environmental and project-related information with the public, project sponsors, and permit reviewers; and

(iv) identifying timeframes and Member Agency responsibilities for the implementation of each proposed action.

(b) Each Member Agency shall:

(i) by June 30, 2012, submit to the CPO an Agency Plan identifying those permitting and review processes the Member Agency views as most critical to significantly reducing the aggregate time required to make permitting and review decisions on infrastructure projects while improving outcomes for communities and the environment, and describing specific and measurable actions the agency will take to improve these processes, including:

(1) performance metrics, including timelines or schedules for review;

(2) technological improvements, such as institutionalized use of the Dashboard and other information technology systems;

(3) other practices, such as pre-application procedures, early collaboration with other agencies, project sponsors, and affected stakeholders, and coordination with State, local, and tribal governments; and

(4) steps the Member Agency will take to implement the Federal Plan.

(ii) by July 31, 2012, following coordination with other Member Agencies and interested agencies, publish its Agency Plan on the Dashboard; and

(iii) by December 31, 2012, and every 6 months thereafter, report progress to the CPO on implementing its Agency Plan, as well as specific opportunities for additional improvements to its permitting and review procedures.

SEC. 4. *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 shall be implemented consistent with Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments) and my memorandum of November 5, 2009 (Tribal Consultation).

(d) 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. 13609. PROMOTING INTERNATIONAL REGULATORY COOPERATION

Ex. Ord. No. 13609, May 1, 2012, 77 F.R. 26413, 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 promote international regulatory cooperation, it is hereby ordered as follows:

SECTION 1. *Policy.* Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. In an increasingly global economy, international regulatory cooperation, consistent with domestic law and prerogatives and U.S. trade policy, can be an important means of promoting the goals of Executive Order 13563.

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

SEC. 2. *Coordination of International Regulatory Cooperation.* (a) The Regulatory Working Group (Working Group) established by Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), which was reaffirmed by Executive Order 13563, shall, as appropriate:

(i) serve as a forum to discuss, coordinate, and develop a common understanding among agencies of U.S. Government positions and priorities with respect to:

(A) international regulatory cooperation activities that are reasonably anticipated to lead to significant regulatory actions;

(B) efforts across the Federal Government to support significant, cross-cutting international regulatory cooperation activities, such as the work of regulatory cooperation councils; and

(C) the promotion of good regulatory practices internationally, as well as the promotion of U.S. regulatory approaches, as appropriate; and

(ii) examine, among other things:

(A) appropriate strategies for engaging in the development of regulatory approaches through international regulatory cooperation, particularly in emerging technology areas, when consistent with section 1 of this order;

(B) best practices for international regulatory cooperation with respect to regulatory development, and, where appropriate, information exchange and other regulatory tools; and

(C) factors that agencies should take into account when determining whether and how to consider other regulatory approaches under section 3(d) of this order.

(b) As Chair of the Working Group, the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) shall convene the Working Group as necessary to discuss international regulatory cooperation issues as described above, and the Working Group shall include a representative from the Office of the United States Trade Representative and, as appropriate, representatives from other agencies and offices.

(c) The activities of the Working Group, consistent with law, shall not duplicate the efforts of existing interagency bodies and coordination mechanisms. The Working Group shall consult with existing interagency bodies when appropriate.

(d) To inform its discussions, and pursuant to section 4 of Executive Order 12866, the Working Group may commission analytical reports and studies by OIRA, the Administrative Conference of the United States, or any other relevant agency, and the Administrator of OIRA may solicit input, from time to time, from representatives of business, nongovernmental organizations, and the public.

(e) The Working Group shall develop and issue guidelines on the applicability and implementation of sections 2 through 4 of this order.

(f) For purposes of this order, the Working Group shall operate by consensus.

SEC. 3. *Responsibilities of Federal Agencies.* To the extent permitted by law, and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each agency shall:

(a) if required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

(b) ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;

(c) in selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:

(i) reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and

(ii) such reforms in other circumstances as the agency deems appropriate; and

(d) for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

SEC. 4. *Definitions.* For purposes of this order:

(a) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) “International impact” is a direct effect that a proposed or final regulation is expected to have on international trade and investment, or that otherwise may be of significant interest to the trading partners of the United States.

(c) “International regulatory cooperation” refers to a bilateral, regional, or multilateral process, other than processes that are covered by section 6(a)(ii), (iii), and (v) of this order, in which national governments engage in various forms of collaboration and communication with respect to regulations, in particular a process that is reasonably anticipated to lead to the development of significant regulations.

(d) “Regulation” shall have the same meaning as “regulation” or “rule” in section 3(d) of Executive Order 12866.

(e) “Significant regulation” is a proposed or final regulation that constitutes a significant regulatory action.

(f) “Significant regulatory action” shall have the same meaning as in section 3(f) of Executive Order 12866.

SEC. 5. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof;

(ii) the coordination and development of international trade policy and negotiations pursuant to section 411 of the Trade Agreements Act of 1979 (19 U.S.C. 2451 [2541]) and section 141 of the Trade Act of 1974 (19 U.S.C. 2171);

(iii) international trade activities undertaken pursuant to section 3 of the Act of February 14, 1903 (15 U.S.C. 1512), subtitle C of the Export Enhancement Act of 1988, as amended (15 U.S.C. 4721 et seq.), and Reorganization Plan No. 3 of 1979 (19 U.S.C. 2171 note);

(iv) the authorization process for the negotiation and conclusion of international agreements pursuant to 1 U.S.C. 112b(c) and its implementing regulations (22 C.F.R. 181.4) and implementing procedures (11 FAM 720);

(v) activities in connection with subchapter II of chapter 53 of title 31 of the United States Code, title 26 of the United States Code, or Public Law 111-203 and other laws relating to financial regulation; or (vi) [sic] the functions of the Director of OMB 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. 13610. IDENTIFYING AND REDUCING REGULATORY BURDENS

Ex. Ord. No. 13610, May 10, 2012, 77 F.R. 28469, 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 modernize our regulatory system and to reduce unjustified regulatory burdens and costs, it is hereby ordered as follows:

SECTION 1. *Policy.* Regulations play an indispensable role in protecting public health, welfare, safety, and our environment, but they can also impose significant burdens and costs. During challenging economic times, we should be especially careful not to impose unjustified regulatory requirements. For this reason, it is particularly important for agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), states that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.” To promote this goal, that Executive Order requires agencies not merely to conduct a single exercise, but to engage in “periodic review of existing significant regulations.” Pursuant to section 6(b) of that Executive Order, agencies are required to develop retrospective review plans to review existing significant regulations in order to “determine whether any such regulations should be modified, streamlined, expanded, or repealed.” The purpose of this requirement is to “make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

In response to Executive Order 13563, agencies have developed and made available for public comment retrospective review plans that identify over five hundred initiatives. A small fraction of those initiatives, already finalized or formally proposed to the public, are anticipated to eliminate billions of dollars in regulatory costs and tens of millions of hours in annual paperwork burdens. Significantly larger savings are anticipated as the plans are implemented and as action is taken on additional initiatives.

As a matter of longstanding practice and to satisfy statutory obligations, many agencies engaged in periodic review of existing regulations prior to the issuance of Executive Order 13563. But further steps should be taken, consistent with law, agency resources, and regulatory priorities, to promote public participation in retrospective review, to modernize our regulatory system, and to institutionalize regular assessment of significant regulations.

SEC. 2. *Public Participation in Retrospective Review.* Members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments, have important information about the actual effects of existing regulations. For this reason, and consistent with Executive Order 13563, agencies shall invite, on a regular basis (to be determined by the agency head in consultation with the Office of Information and Regulatory Affairs (OIRA)), public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. To promote an open exchange of information, retrospective analyses of regulations, including supporting data, shall be released to the public online wherever practicable.

SEC. 3. *Setting Priorities.* In implementing and improving their retrospective review plans, and in considering retrospective review suggestions from the public, agencies shall give priority, consistent with law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. Consistent with Executive Order 13563 and Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), agencies shall give consideration to the cumulative effects of their own regulations, including cumulative burdens, and shall to the extent practicable and consistent with law give priority to reforms that would make significant progress in reducing those burdens while protecting public health, welfare, safety, and our environment.

SEC. 4. *Accountability.* Agencies shall regularly report on the status of their retrospective review efforts to OIRA. Agency reports should describe progress, anticipated accomplishments, and proposed timelines for relevant actions, with an emphasis on the priorities described in section 3 of this order. Agencies shall submit draft reports to OIRA on September 10, 2012, and on the second Monday of January and July for each year thereafter, unless directed otherwise through subsequent guidance from OIRA. Agencies shall make final

reports available to the public within a reasonable period (not to exceed three weeks from the date of submission of draft reports to OIRA).

SEC. 5. *General Provisions.* (a) For purposes of this order, “agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a 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.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) 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.

REGULATORY REFORM—WAIVER OF PENALTIES AND
REDUCTION OF REPORTS

Memorandum of President of the United States, Apr. 21, 1995, 60 F.R. 20621, provided:

Memorandum for
The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Attorney General
The Secretary of the Interior
The Secretary of Agriculture
The Secretary of Commerce
The Secretary of Labor
The Secretary of Health and Human Services
The Secretary of Housing and Urban Development
The Secretary of Transportation
The Secretary of Energy
The Secretary of Education
The Secretary of Veterans Affairs
The Administrator, Environmental Protection Agency
The Administrator, Small Business Administration
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Director, Federal Emergency Management Agency
The Administrator, National Aeronautics and Space Administration
The Director, National Science Foundation
The Acting Archivist of the United States
The Administrator of General Services
The Chair, Railroad Retirement Board
The Chairperson, Architectural and Transportation Barriers Compliance Board
The Executive Director, Pension Benefit Guaranty Corporation

On March 16, I announced that the Administration would implement new policies to give compliance officials more flexibility in dealing with small business and to cut back on paperwork. These Governmentwide policies, as well as the specific agency actions I announced, are part of this Administration’s continuing commitment to sensible regulatory reform. With your help and cooperation, we hope to move the Government toward a more flexible, effective, and user friendly approach to regulation.

A. *Actions:* This memorandum directs the designated department and agency heads to implement the policies set forth below.

1. *Authority to Waive Penalties.* (a) To the extent permitted by law, each agency shall use its discretion to modify the penalties for small businesses in the following situations. Agencies shall exercise their enforce-

ment discretion to waive the imposition of all or a portion of a penalty when the violation is corrected within a time period appropriate to the violation in question. For those violations that may take longer to correct than the period set by the agency, the agency shall use its enforcement discretion to waive up to 100 percent of the financial penalties if the amounts waived are used to bring the entity into compliance. The provisions in paragraph 1(a) of this memorandum shall apply only where there has been a good faith effort to comply with applicable regulations and the violation does not involve criminal wrongdoing or significant threat to health, safety, or the environment.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director of the Office of Management and Budget (“Director”) describing the actions it will take to implement the policies in paragraph 1(a) of this memorandum. The plan shall provide that the agency will implement the policies described in paragraph 1(a) of this memorandum on or before July 14, 1995. Plans should include information on how notification will be given to frontline workers and small businesses.

2. *Cutting Frequency of Reports.* (a) Each agency shall reduce by one-half the frequency of the regularly scheduled reports that the public is required, by rule or by policy, to provide to the Government (from quarterly to semiannually, from semiannually to annually, etc.), unless the department or agency head determines that such action is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of the agency’s program. The duty to make such determinations shall be non-delegable.

(b) Each agency shall, by June 15, 1995, submit a plan to the Director describing the actions it will take to implement the policies in paragraph 2(a), including a copy of any determination that certain reports are excluded.

B. *Application and Scope:* 1. The Director may issue further guidance as necessary to carry out the purposes of this memorandum.

2. This memorandum does not apply to matters related to law enforcement, national security, or foreign affairs, the importation or exportation of prohibited or restricted items, Government taxes, duties, fees, revenues, or receipts; nor does it apply to agencies (or components thereof) whose principal purpose is the collection, analysis, and dissemination of statistical information.

3. This memorandum is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

4. The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

[References to the Director of the Federal Emergency Management Agency should be considered to refer and apply to the Administrator of the Federal Emergency Management Agency, see section 612(c) of Pub. L. 109-295, set out as a note under section 313 of Title 6, Domestic Security.]

PLAIN LANGUAGE IN GOVERNMENT WRITING

Memorandum of President of the United States, June 1, 1998, 63 F.R. 31885, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Vice President and I have made reinventing the Federal Government a top priority of my Administration. We are determined to make the Government more responsive, accessible, and understandable in its communications with the public.

The Federal Government’s writing must be in plain language. By using plain language, we send a clear mes-

sage about what the Government is doing, what it requires, and what services it offers. Plain language saves the Government and the private sector time, effort, and money.

Plain language requirements vary from one document to another, depending on the intended audience. Plain language documents have logical organization, easy-to-read design features, and use:

- common, everyday words, except for necessary technical terms;
- “you” and other pronouns;
- the active voice; and
- short sentences.

To ensure the use of plain language, I direct you to do the following:

- By October 1, 1998, use plain language in all new documents, other than regulations, that explain how to obtain a benefit or service or how to comply with a requirement you administer or enforce. For example, these documents may include letters, forms, notices, and instructions. By January 1, 2002, all such documents created prior to October 1, 1998, must also be in plain language.
- By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the Federal Register, unless you proposed the rule before that date. You should consider rewriting existing regulations in plain language when you have the opportunity and resources to do so.

The National Partnership for Reinventing Government will issue guidance to help you comply with these directives and to explain more fully the elements of plain language. You should also use customer feedback and common sense to guide your plain language efforts.

I ask the independent agencies to comply with these directives.

This memorandum does not confer any right or benefit enforceable by law against the United States or its representatives. The Director of the Office of Management and Budget will publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

PREEMPTION

Memorandum of President of the United States, May 20, 2009, 74 F.R. 24693, provided:

Memorandum for the Heads of Executive Departments and Agencies

From our Nation’s founding, the American constitutional order has been a Federal system, ensuring a strong role for both the national Government and the States. The Federal Government’s role in promoting the general welfare and guarding individual liberties is critical, but State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

An understanding of the important role of State governments in our Federal system is reflected in longstanding practices by executive departments and agencies, which have shown respect for the traditional prerogatives of the States. In recent years, however, notwithstanding Executive Order 13132 of August 4, 1999 (Federalism), executive departments and agencies have sometimes announced that their regulations preempt State law, including State common law, without explicit preemption by the Congress or an otherwise sufficient basis under applicable legal principles.

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many

instances it is appropriate for them to apply to themselves rules and principles that reflect these circumstances and values. As Justice Brandeis explained more than 70 years ago, “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

To ensure that executive departments and agencies include statements of preemption in regulations only when such statements have a sufficient legal basis:

1. Heads of departments and agencies should not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation.

2. Heads of departments and agencies should not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.

3. Heads of departments and agencies should review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption. Where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory authorities. Heads of departments and agencies should consult as necessary with the Attorney General and the Office of Management and Budget’s Office of Information and Regulatory Affairs to determine how the requirements of this memorandum apply to particular situations.

This memorandum 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.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

REGULATORY COMPLIANCE

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3825, provided:

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to enhancing effectiveness and efficiency in Government. Pursuant to the Memorandum on Transparency and Open Government, issued on January 21, 2009, executive departments and agencies (agencies) have been working steadily to promote accountability, encourage collaboration, and provide information to Americans about their Government’s activities.

To that end, much progress has been made toward strengthening our democracy and improving how Government operates. In the regulatory area, several agencies, such as the Department of Labor and the Environmental Protection Agency, have begun to post online (at ogesdw.dol.gov and www.epa-echo.gov), and to make readily accessible to the public, information concerning their regulatory compliance and enforcement activities, such as information with respect to administrative inspections, examinations, reviews, warnings, citations, and revocations (but excluding law enforcement or otherwise sensitive information about ongoing enforcement actions).

Greater disclosure of regulatory compliance information fosters fair and consistent enforcement of important regulatory obligations. Such disclosure is a critical step in encouraging the public to hold the Government and regulated entities accountable. Sound regulatory enforcement promotes the welfare of Americans in many ways, by increasing public safety, improving working conditions, and protecting the air we breathe and the water we drink. Consistent regulatory enforcement also levels the playing field among regulated entities, ensuring that those that fail to comply with the law do not have an unfair advantage over their law-abiding competitors. Greater agency disclosure of compliance and enforcement data will provide Americans with information they need to make informed decisions. Such disclosure can lead the Government to hold itself more accountable, encouraging agencies to identify and address enforcement gaps.

Accordingly, I direct the following:

First, agencies with broad regulatory compliance and administrative enforcement responsibilities, within 120 days of this memorandum, to the extent feasible and permitted by law, shall develop plans to make public information concerning their regulatory compliance and enforcement activities accessible, downloadable, and searchable online. In so doing, agencies should prioritize making accessible information that is most useful to the general public and should consider the use of new technologies to allow the public to have access to real-time data. The independent agencies are encouraged to comply with this directive.

Second, the Federal Chief Information Officer and the Chief Technology Officer shall work with appropriate counterparts in each agency to make such data available online in searchable form, including on centralized platforms such as data.gov, in a manner that facilitates easy access, encourages cross-agency comparisons, and engages the public in new and creative ways of using the information.

Third, the Federal Chief Information Officer and the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and their counterparts in each agency, shall work to explore how best to generate and share enforcement and compliance information across the Government, consistent with law. Such data sharing can assist with agencies’ risk-based approaches to enforcement: A lack of compliance in one area by a regulated entity may indicate a need for examination and closer attention by another agency. Efforts to share data across agencies, where appropriate and permitted by law, may help to promote flexible and coordinated enforcement regimes.

This memorandum 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. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of OMB is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

REGULATORY FLEXIBILITY, SMALL BUSINESS, AND JOB CREATION

Memorandum of President of the United States, Jan. 18, 2011, 76 F.R. 3827, provided:

Memorandum for the Heads of Executive Departments and Agencies

Small businesses play an essential role in the American economy; they help to fuel productivity, economic growth, and job creation. More than half of all Americans working in the private sector either are employed by a small business or own one. During a recent 15-year period, small businesses created more than 60 percent of all new jobs in the Nation.

Although small businesses and new companies provide the foundations for economic growth and job creation, they have faced severe challenges as a result of the recession. One consequence has been the loss of significant numbers of jobs.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, establishes a deep national commitment to achieving statutory goals without imposing unnecessary burdens on the public. The RFA emphasizes the importance of recognizing “differences in the scale and resources of regulated entities” and of considering “alternative regulatory approaches . . . which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions.” 5 U.S.C. 601 note.

To promote its central goals, the RFA imposes a series of requirements designed to ensure that agencies produce regulatory flexibility analyses that give careful consideration to the effects of their regulations on small businesses and explore significant alternatives in order to minimize any significant economic impact on small businesses. Among other things, the RFA requires that when an agency proposing a rule with such impact is required to provide notice of the proposed rule, it must also produce an initial regulatory flexibility analysis that includes discussion of significant alternatives. Significant alternatives include the use of performance rather than design standards; simplification of compliance and reporting requirements for small businesses; establishment of different timetables that take into account the resources of small businesses; and exemption from coverage for small businesses.

Consistent with the goal of open government, the RFA also encourages public participation in and transparency about the rulemaking process. Among other things, the statute requires agencies proposing rules with a significant economic impact on small businesses to provide an opportunity for public comment on any required initial regulatory flexibility analysis, and generally requires agencies promulgating final rules with such significant economic impact to respond, in a final regulatory flexibility analysis, to comments filed by the Chief Counsel for Advocacy of the Small Business Administration.

My Administration is firmly committed to eliminating excessive and unjustified burdens on small businesses, and to ensuring that regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses. Executive Order 12866 of September 30, 1993, as amended, states, “Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.”

In the current economic environment, it is especially important for agencies to design regulations in a cost-effective manner consistent with the goals of promoting economic growth, innovation, competitiveness, and job creation.

Accordingly, I hereby direct executive departments and agencies and request independent agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. As the RFA recognizes, such flexibility may take many forms, including:

- extended compliance dates that take into account the resources available to small entities;
 - performance standards rather than design standards;
 - simplification of reporting and compliance requirements (as, for example, through streamlined forms and electronic filing options);
 - different requirements for large and small firms;
- and

- partial or total exemptions.

I further direct that whenever an executive agency chooses, for reasons other than legal limitations, not to provide such flexibility in a proposed or final rule that is likely to have a significant economic impact on a substantial number of small entities, it should explicitly justify its decision not to do so in the explanation that accompanies that proposed or final rule.

Adherence to these requirements is designed to ensure that regulatory actions do not place unjustified economic burdens on small business owners and other small entities. If regulations are preceded by careful analysis, and subjected to public comment, they are less likely to be based on intuition and guesswork and more likely to be justified in light of a clear understanding of the likely consequences of alternative courses of action. With that understanding, agencies will be in a better position to protect the public while avoiding excessive costs and paperwork.

This memorandum 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. Nothing in this memorandum shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking,¹ and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1166.)

¹ So in original. The comma probably should be a semicolon.

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(d)(1) For a covered agency, as defined in section 609(d)(2), each initial regulatory flexibility analysis shall include a description of—

(A) any projected increase in the cost of credit for small entities;

(B) any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities; and

(C) advice and recommendations of representatives of small entities relating to issues described in subparagraphs (A) and (B) and subsection (b).

(2) A covered agency, as defined in section 609(d)(2), shall, for purposes of complying with paragraph (1)(C)—

(A) identify representatives of small entities in consultation with the Chief Counsel for Advocacy of the Small Business Administration; and

(B) collect advice and recommendations from the representatives identified under subparagraph (A) relating to issues described in subparagraphs (A) and (B) of paragraph (1) and subsection (b).

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1166; amended Pub. L. 104-121, title II, §241(a)(1), Mar. 29, 1996, 110 Stat. 864; Pub. L. 111-203, title X, §1100G(b), July 21, 2010, 124 Stat. 2112.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-203 added subsec. (d).

1996—Subsec. (a). Pub. L. 104-121, §241(a)(1)(B), inserted at end “In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.”

Pub. L. 104-121, §241(a)(1)(A), which directed the insertion of “, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States” after “proposed rule” was executed by making the insertion where those words appeared in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a statement of the need for, and objectives of, the rule;

(2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6)¹ a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; and

(6)¹ for a covered agency, as defined in section 609(d)(2), a description of the steps the agency has taken to minimize any additional cost of credit for small entities.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, §241(b), Mar. 29, 1996, 110 Stat. 864; Pub. L. 111-203, title X, §1100G(c), July 21, 2010, 124 Stat. 2113; Pub. L. 111-240, title I, §1601, Sept. 27, 2010, 124 Stat. 2551.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111-240, §1601(1), struck out “succinct” before “statement”.

Subsec. (a)(2). Pub. L. 111-240, §1601(2), substituted “statement” for “summary” before “of the significant issues” and “of the assessment”.

Subsec. (a)(3), (4). Pub. L. 111-240, §1601(3), (4), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 111-240, §1601(3), redesignated par. (4) as (5). Former par. (5), relating to description of steps taken to minimize the significant economic impact on small entities, redesignated (6).

Pub. L. 111-203, §1100G(c)(1), which directed amendment of par. (4) by striking “and” at the end, was executed to par. (5) to reflect the probable intent of Congress and the intervening redesignation of par. (4) as (5) by Pub. L. 111-240, §1601(3). See above.

Subsec. (a)(6). Pub. L. 111-240, §1601(3), redesignated par. (5), relating to description of steps taken to mini-

mize the significant economic impact on small entities, as (6).

Pub. L. 111-203, §1100G(c)(3), added par. (6) relating to description of steps taken to minimize any additional cost of credit for small entities.

Pub. L. 111-203, §1100G(c)(2), which directed amendment of par. (5) by substituting “; and” for period at end, was executed to par. (6), relating to description of steps taken to minimize the significant economic impact on small entities, to reflect the probable intent of Congress and the intervening redesignation of par. (5) as (6) by Pub. L. 111-240, §1601(3). See above.

1996—Subsec. (a). Pub. L. 104-121, §241(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

“(1) a succinct statement of the need for, and the objectives of, the rule;

“(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

“(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.”

Subsec. (b). Pub. L. 104-121, §241(b)(2), substituted “such analysis or a summary thereof.” for “at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel

¹ So in original. Two pars. (6) have been enacted.

for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, §243(a), Mar. 29, 1996, 110 Stat. 866.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-121 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date

of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as—

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term “covered agency” means—

- (1) the Environmental Protection Agency;
- (2) the Consumer Financial Protection Bureau of the Federal Reserve System; and
- (3) the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

- (1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.
- (2) Special circumstances requiring prompt issuance of the rule.
- (3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1168; amended Pub. L. 104-121, title II, §244(a), Mar. 29, 1996, 110 Stat. 867; Pub. L. 111-203, title X, §1100G(a), July 21, 2010, 124 Stat. 2112.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111-203 substituted “means—” for “means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.” and added pars. (1) to (3).

1996—Pub. L. 104-121, §244(a)(2), (3), designated existing provisions as subsec. (a) and inserted “including soliciting and receiving comments over computer networks” after “entities” in par. (4).

Pub. L. 104-121, §244(a)(1), which directed insertion of “the reasonable use of” before “techniques,” in introductory provisions, was executed by making the insertion in text which did not contain a comma after the word “techniques” to reflect the probable intent of Congress.

Subsecs. (b) to (e). Pub. L. 104-121, §244(a)(4), added subsecs. (b) to (e).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

SMALL BUSINESS ADVOCACY CHAIRPERSONS

Pub. L. 104-121, title II, §244(b), Mar. 29, 1996, 110 Stat. 868, provided that: “Not later than 30 days after the date of enactment of this Act [Mar. 29, 1996], the head of each covered agency that has conducted a final regulatory flexibility analysis shall designate a small business advocacy chairperson using existing personnel to the extent possible, to be responsible for implementing this section and to act as permanent chair of the agency’s review panels established pursuant to this section.”

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

- (1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is Jan. 1, 1981. See Effective Date note set out under section 601 of this title.

§ 611. Judicial review

(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than—

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to

take corrective action consistent with this chapter and chapter 7, including, but not limited to—

(A) remanding the rule to the agency, and

(B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1169; amended Pub. L. 104-121, title II, §242, Mar. 29, 1996, 110 Stat. 865.)

AMENDMENTS

1996—Pub. L. 104-121 amended section generally. Prior to amendment, section read as follows:

“(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

“(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

“(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rule-making was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought

in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

(Added Pub. L. 96-354, §3(a), Sept. 19, 1980, 94 Stat. 1170; amended Pub. L. 104-121, title II, §243(b), Mar. 29, 1996, 110 Stat. 866.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-121, §243(b)(1), which directed substitution of “the Committees on the Judiciary and Small Business of the Senate and House of Representatives” for “the committees on the Judiciary of the Senate and the House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives”, was executed by making the substitution for “the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 104-121, §243(b)(2), substituted “his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the” for “his views with respect to the”.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

CHAPTER 7—JUDICIAL REVIEW

| | |
|------|-------------------------------|
| Sec. | |
| 701. | Application; definitions. |
| 702. | Right of review. |
| 703. | Form and venue of proceeding. |
| 704. | Actions reviewable. |
| 705. | Relief pending review. |
| 706. | Scope of review. |

SHORT TITLE

The provisions of sections 551 to 559 of this title and this chapter were originally enacted by act June 11, 1946, ch. 423, 60 Stat. 237, popularly known as the “Administrative Procedure Act”. That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into sections 551 to 559 of this title and this chapter.

§ 701. Application; definitions

- (a) This chapter applies, according to the provisions thereof, except to the extent that—
- (1) statutes preclude judicial review; or
 - (2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;
- (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
- (F) courts martial and military commissions;
- (G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by section 551 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 103-272, §5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111-350, §5(a)(3), Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|--------------------------------------|--|
| (a) | 5 U.S.C. 1009 (introductory clause). | June 11, 1946, ch. 324, §10 (introductory clause), 60 Stat. 243. |

In subsection (a), the words “This chapter applies, according to the provisions thereof,” are added to avoid the necessity of repeating the introductory clause of former section 1009 in sections 702-706.

Subsection (b) is added on authority of section 2 of the Act of June 11, 1946, ch. 324, 60 Stat. 237, as amended, which is carried into section 551 of this title.

In subsection (b)(1)(G), the words “or naval” are omitted as included in “military”.

In subsection (b)(1)(H), the words “functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947” are omitted as executed. Reference to the “Selective Training and Service Act of 1940” is omitted as that Act expired on Mar. 31, 1947. Reference to the “Sugar Control Extension Act of 1947” is omitted as that Act expired on Mar. 31, 1948. References to the “Housing and Rent Act of 1947, as amended” and the “Veterans’ Emergency Housing Act of 1946” have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by §111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87-256, 75 Stat. 538, since §111(c) of the Act provides that a reference in other Acts to a provision of law repealed by §111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87-256.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Sections 1891-1902 of title 50, appendix, referred to in subsec. (b)(1)(H), were omitted from the Code as executed.

AMENDMENTS

2011—Subsec. (b)(1)(H). Pub. L. 111-350 struck out “chapter 2 of title 41;” after “title 12;”.

1994—Subsec. (b)(1)(H). Pub. L. 103-272 substituted “subchapter II of chapter 471 of title 49; or sections” for “or sections 1622.”.

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1009(a), June 11, 1946, ch. 324, §10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94-574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1009(b), June 11, 1946, ch. 324, §10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94-574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1009(c), June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1009(d), June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
(2) hold unlawful and set aside agency action, findings, and conclusions found to be—
(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
(B) contrary to constitutional right, power, privilege, or immunity;
(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
(D) without observance of procedure required by law;
(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 1009(e), June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85-791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: "This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title]."

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

Table with 2 columns: Sec., description. Rows 801-808: Congressional review, Congressional disapproval procedure, Special rule on statutory, regulatory, and judicial deadlines, Definitions, Judicial review, Applicability; severability, Exemption for monetary policy, Effective date of certain rules.

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

- (i) a copy of the rule;
(ii) a concise general statement relating to the rule, including whether it is a major rule; and
(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

- (i) a complete copy of the cost-benefit analysis of the rule, if any;
(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;
(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and
(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

- (A) the later of the date occurring 60 days after the date on which—
(i) the Congress receives the report submitted under paragraph (1); or
(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

- (i) on which either House of Congress votes and fails to override the veto of the President; or
(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by oper-

ation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

(D) issued pursuant to any statute implementing an international trade agreement.

(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

(A) in the case of the Senate, 60 session days,

or

(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

(2)(A) In applying section 802 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

(i) such rule were published in the Federal Register (as a rule that shall take effect) on—

(I) in the case of the Senate, the 15th session day, or

(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 868.)

REFERENCES IN TEXT

Sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995, referred to in subsec. (a)(1)(B)(iii), are classified to sections 1532, 1533, 1534, and 1535, respectively, of Title 2, The Congress.

The date of the enactment of this chapter, referred to in subsec. (e)(1), (2), is the date of the enactment of Pub. L. 104-121, which was approved Mar. 29, 1996.

EFFECTIVE DATE

Pub. L. 104-121, title II, §252, Mar. 29, 1996, 110 Stat. 874, provided that: “The amendment made by section 351 [probably means section 251, enacting this chapter] shall take effect on the date of enactment of this Act [Mar. 29, 1996].”

TRUTH IN REGULATING

Pub. L. 106-312, Oct. 17, 2000, 114 Stat. 1248, as amended by Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Truth in Regulating Act of 2000’.

“SEC. 2. PURPOSES.

“The purposes of this Act are to—

“(1) increase the transparency of important regulatory decisions;

“(2) promote effective congressional oversight to ensure that agency rules fulfill statutory requirements in an efficient, effective, and fair manner; and

“(3) increase the accountability of Congress and the agencies to the people they serve.

“SEC. 3. DEFINITIONS.

“In this Act, the term—

“(1) ‘agency’ has the meaning given such term under section 551(1) of title 5, United States Code;

“(2) ‘economically significant rule’ means any proposed or final rule, including an interim or direct final rule, that may have an annual effect on the economy of \$100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; and

“(3) ‘independent evaluation’ means a substantive evaluation of the agency’s data, methodology, and assumptions used in developing the economically significant rule, including—

“(A) an explanation of how any strengths or weaknesses in those data, methodology, and assumptions support or detract from conclusions reached by the agency; and

“(B) the implications, if any, of those strengths or weaknesses for the rulemaking.

“SEC. 4. PILOT PROJECT FOR REPORT ON RULES.

“(a) IN GENERAL.—

“(1) REQUEST FOR REVIEW.—When an agency publishes an economically significant rule, a chairman or ranking member of a committee of jurisdiction of either House of Congress may request the Comptroller General of the United States to review the rule.

“(2) REPORT.—The Comptroller General shall submit a report on each economically significant rule selected under paragraph (4) to the committees of jurisdiction in each House of Congress not later than 180 calendar days after a committee request is received. The report shall include an independent evaluation of the economically significant rule by the Comptroller General.

“(3) INDEPENDENT EVALUATION.—The independent evaluation of the economically significant rule by the Comptroller General under paragraph (2) shall include—

“(A) an evaluation of the agency’s analysis of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of the persons or entities likely to receive the benefits;

“(B) an evaluation of the agency’s analysis of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms and the identification of the persons or entities likely to bear the costs;

“(C) an evaluation of the agency’s analysis of alternative approaches set forth in the notice of proposed rulemaking and in the rulemaking record, as well as of any regulatory impact analysis, federalism assessment, or other analysis or assessment prepared by the agency or required for the economically significant rule; and

“(D) a summary of the results of the evaluation of the Comptroller General and the implications of those results.

“(4) PROCEDURES FOR PRIORITIES OF REQUESTS.—The Comptroller General shall have discretion to develop procedures for determining the priority and number of requests for review under paragraph (1) for which a report will be submitted under paragraph (2).

“(b) AUTHORITY OF COMPTROLLER GENERAL.—Each agency shall promptly cooperate with the Comptroller General in carrying out this Act. Nothing in this Act is intended to expand or limit the authority of the Government Accountability Office.

“SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Government Accountability Office to carry out this Act \$5,200,000 for each of fiscal years 2000 through 2002.

“SEC. 6. EFFECTIVE DATE AND DURATION OF PILOT PROJECT.

“(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act [Oct. 17, 2000].

“(b) DURATION OF PILOT PROJECT.—The pilot project under this Act shall continue for a period of 3 years, if in each fiscal year, or portion thereof included in that period, a specific annual appropriation not less than \$5,200,000 or the pro-rated equivalent thereof shall have been made for the pilot project.

“(c) REPORT.—Before the conclusion of the 3-year period, the Comptroller General shall submit to Congress a report reviewing the effectiveness of the pilot project and recommending whether or not Congress should permanently authorize the pilot project.”

§ 802. Congressional disapproval procedure

(a) For purposes of this section, the term “joint resolution” means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: “That Congress disapproves the rule submitted by the _____ relating to _____, and such rule shall have no force or effect.” (The blank spaces being appropriately filled in).

(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(2) For purposes of this section, the term “submission or publication date” means the later of the date on which—

(A) the Congress receives the report submitted under section 801(a)(1); or

(B) the rule is published in the Federal Register, if so published.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested

in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

(g) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 871.)

§ 803. Special rule on statutory, regulatory, and judicial deadlines

(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

(b) The term "deadline" means any date certain for fulfilling any obligation or exercising

any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 873.)

§ 804. Definitions

For purposes of this chapter—

(1) The term "Federal agency" means any agency as that term is defined in section 551(1).

(2) The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

(A) an annual effect on the economy of \$100,000,000 or more;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

(3) The term "rule" has the meaning given such term in section 551, except that such term does not include—

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 873.)

REFERENCES IN TEXT

The Telecommunications Act of 1996, referred to in par. (2), is Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 609 of Title 47, Telecommunications, and Tables.

§ 805. Judicial review

No determination, finding, action, or omission under this chapter shall be subject to judicial review.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 873.)

§ 806. Applicability; severability

(a) This chapter shall apply notwithstanding any other provision of law.

(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 873.)

§ 807. Exemption for monetary policy

Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 874.)

§ 808. Effective date of certain rules

Notwithstanding section 801—

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping, or

(2) any rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.

(Added Pub. L. 104-121, title II, §251, Mar. 29, 1996, 110 Stat. 874.)

CHAPTER 9—EXECUTIVE REORGANIZATION

- Sec. 901. Purpose.
902. Definitions.
903. Reorganization plans.
904. Additional contents of reorganization plan.
905. Limitations on powers.1
906. Effective date and publication of reorganization plans.
907. Effect on other laws, pending legal proceedings, and unexpended appropriations.
908. Rules of Senate and House of Representatives on reorganization plans.
909. Terms of resolution.
910. Introduction and reference of resolution.
911. Discharge of committee considering resolution.
912. Procedure after report or discharge of committee; debate; vote on final passage.
[913. Omitted.]

AMENDMENTS

1984—Pub. L. 98-614, §3(e)(3), Nov. 8, 1984, 98 Stat. 3193, substituted "passage" for "disapproval" in item 912.

1977—Pub. L. 95-17, §2, Apr. 6, 1977, 91 Stat. 29, reenacted chapter heading and items 901 to 903, 905 to 909, and 911 without change, substituted "plan" for "plans" in item 904 and "Introduction and reference of resolution" for "Reference of resolution to committee" in item 910, inserted "; vote on final disapproval" in item 912, and omitted item 913 "Decisions without debate on motion to postpone or proceed".

§ 901. Purpose

(a) The Congress declares that it is the policy of the United States—

1 So in original. Does not conform to section catchline.

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

(c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.

(d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 394; Pub. L. 92-179, §1, Dec. 10, 1971, 85 Stat. 574; Pub. L. 95-17, §2, Apr. 6, 1977, 91 Stat. 29.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 133z, June 20, 1949, ch. 226, §2, 63 Stat. 203.

In subsection (a), the words "from time to time examine" are substituted for "examine and from time to time reexamine" since the initial examination has been executed. The words "of the Government" following "agencies" are omitted as unnecessary in view of the definition of "agency" in section 902. In subsection (a)(1), the words "of the Government" following "executive branch" are omitted as unnecessary and to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 901(c) of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 60e-2(a) of Title 2, The Congress.

AMENDMENTS

1977—Subsecs. (a) to (d). Pub. L. 95-17 reenacted subsecs. (a) and (b) without change, added subsec. (c), and redesignated former subsec. (c) as (d).

1971—Subsec. (a). Pub. L. 92-179, §1(a), substituted "The Congress declares that it is the policy of the

United States" for "The President shall from time to time examine the organization of all agencies and shall determine what changes therein are necessary to accomplish the following purposes" preceding par. (1).

Subsec. (c). Pub. L. 92-179, §1(b), added subsec. (c) consisting of provisions formerly set out preceding par. (1) of subsec. (a).

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-614, §1, Nov. 8, 1984, 98 Stat. 3192, provided: "That this Act [amending sections 903 to 906 and 908 to 912 of this title] may be cited as the 'Reorganization Act Amendments of 1984'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-17, §1, Apr. 6, 1977, 91 Stat. 29, provided: "That this Act [amending this chapter] may be cited as the 'Reorganization Act of 1977'."

NATIONAL COMMISSION ON EXECUTIVE ORGANIZATION

Pub. L. 100-527, §17, Oct. 25, 1988, 102 Stat. 2645, directed President, within 30 days after Mar. 15, 1989, to make a determination as to whether the national interest would be served by establishment of a National Commission on Executive Organization to review structural organization of executive branch of Federal Government, and stated that if President failed to transmit to Congress notification of his intent to establish such Commission section would cease to be effective 30 days after Mar. 15, 1989. [President did not transmit such notification to Congress and thus section ceased to be effective 30 days after Mar. 15, 1989.]

EX. ORD. NO. 6166. REORGANIZATION OF EXECUTIVE AGENCIES GENERALLY

Ex. Ord. No. 6166, June 10, 1933, provided:

§1. PROCUREMENT

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by an agency is transferred to a Procurement Division in the Treasury Department, at the head of which shall be a Director of Procurement.

The Office of the Supervising Architect of the Treasury Department is transferred to the Procurement Division, except that the buildings of the Treasury Department shall be administered by the Treasury Department and the administration of post-office buildings is transferred to the Post Office Department. The General Supply Committee of the Treasury Department is abolished.

In respect of any kind of procurement, warehousing, or distribution for any agency the Procurement Division may, with the approval of the President, (a) undertake the performance of such procurement, warehousing, or distribution itself, or (b) permit such agency to perform such procurement, warehousing, or distribution, or (c) entrust such performance to some other agency, or (d) avail itself in part of any of these recourses, according as it may deem desirable in the interest of economy and efficiency. When the Procurement Division has prescribed the manner of procurement, warehousing, or distribution of any thing, no agency shall thereafter procure, warehouse, or distribute such thing in any manner other than so prescribed.

The execution of work now performed by the Corps of Engineers of the Army shall remain with said corps, subject to the responsibilities herein vested in the Procurement Division.

The Procurement Division shall also have control of all property, facilities, structures, machinery, equipment, stores, and supplies not necessary to the work of any agency; may have custody thereof or entrust custody to any other agency; and shall furnish the same to agencies as need therefor may arise.

The Fuel Yards of the Bureau of Mines of the Department of Commerce are transferred to the Procurement Office. (As amended by Ex. Ord. No. 6623 of Mar. 1, 1934.)

AMENDMENT OF SECTION BY EX. ORD. NO. 6623

Ex. Ord. No. 6623, Mar. 1, 1934, revoked a final paragraph of section 1 of Ex. Ord. No. 6166, which provided for the abolition of the Federal Employment Stabilization Board and the transfer of its functions to the Federal Emergency Administration of Public Works. Said Ex. Ord. No. 6623 also provided in part as follows:

"It is further ordered that the said Federal Employment Stabilization Board be, and it is hereby, abolished.

"There is hereby established in the Department of Commerce an office to be known as the 'Federal Employment Stabilization Office,' and there are hereby transferred to such office the functions of the Federal Employment Stabilization Board, together with its Director and other personnel, and records, supplies, equipment, and property of every kind.

"The unexpended balances of appropriations and/or allotments of appropriations of the Federal Employment Stabilization Board are hereby transferred to the Federal Employment Stabilization Office, Department of Commerce."

EFFECTIVE DATE

The effective date of Ex. Ord. No. 6166, §1, as provided for in section 22, post, was extended to Dec. 31, 1933, by Ex. Ord. No. 6224, of July 27, 1933, and the effective date of the last paragraph, subsequently revoked by Ex. Ord. No. 6623, was deferred by Ex. Ord. No. 6624 of Mar. 1, 1934, until such revocation could become effective.

[Subsequent to the effective date of Ex. Ord. No. 6166, §1, certain functions affected thereby were again transferred as follows: The Public Buildings Branch of the Procurement Division was transferred to Public Buildings Administration within the Federal Works Administration by 1939 Reorg. Plan No. 1, §§301, 303, 4 Fed. Reg. 2729; 53 Stat. 1426, 1427; the Federal Employment Stabilization Office, created by Ex. Ord. No. 6166, §1, as amended by Ex. Ord. No. 6624, was abolished by 1939 Reorg. Plan No. 1, §4, 4 Fed. Reg. 2727, 53 Stat. 1423, and its functions transferred to the Executive Office of the President.]

SUPERSEDURE OF PARS. 1, 3, AND 5

Section 602(b) of act June 30, 1949, ch. 288, title VI, 63 Stat. 401, eff. July 1, 1949, as renumbered from title V, section 502(b) of said act June 30, 1949 by act Sept. 5, 1950, ch. 849, §§6(a), (b), 7(e), 64 Stat. 583, provided that: "The provisions of the first, third, and fifth paragraphs of section 1 of Executive Order Numbered 6166 of June 10, 1933 [this Ex. Ord.], are hereby superseded, insofar as they relate to any function now administered by the Bureau of Federal Supply except functions with respect to standard contract forms."

§2. NATIONAL PARKS, BUILDINGS, AND RESERVATIONS

All functions of administration of public buildings, reservations, national parks, national monuments, and national cemeteries are consolidated in the National Park Service in the Department of the Interior, at the head of which shall be a Director of the National Park Service; except that where deemed desirable there may be excluded from this provision any public building or reservation which is chiefly employed as a facility in the work of a particular agency. This transfer and consolidation of functions shall include, among others, those of the former National Park Service of the Department of the Interior and the following National Cemeteries and Parks of the War Department which are located within the continental limits of the United States:

NATIONAL MILITARY PARKS

Chickamauga and Chattanooga National Military Park, Georgia and Tennessee.
Fort Donelson National Military Park, Tennessee.
Fredericksburg and Spotsylvania County Battle Fields Memorial, Virginia.

Gettysburg National Military Park, Pennsylvania.
 Guilford Courthouse National Military Park, North Carolina.
 Kings Mountain National Military Park, South Carolina.
 Moores Creek National Military Park, North Carolina.
 Petersburg National Military Park, Virginia.
 Shiloh National Military Park, Tennessee.
 Stones River National Military Park, Tennessee.
 Vicksburg National Military Park, Mississippi.

NATIONAL PARKS

Abraham Lincoln National Park, Kentucky.
 Fort McHenry National Park, Maryland.

BATTLEFIELD SITES

Antietam Battlefield, Maryland.
 Appomattox, Virginia.
 Brices Cross Roads, Mississippi.
 Chalmette Monument and Grounds, Louisiana.
 Cowpens, South Carolina.
 Fort Necessity, Wharton County, Pennsylvania.
 Kenesaw Mountain, Georgia.
 Monocacy, Maryland.
 Tupelo, Mississippi.
 White Plains, New York.

NATIONAL MONUMENTS

Big Hole Battlefield, Beaverhead County, Montana.
 Cabrillo Monument, Fort Rosecrans, California.
 Castle Pinckney, Charleston, South Carolina.
 Father Millet Cross, Fort Niagara, New York.
 Fort Marion, St. Augustine, Florida.
 Fort Matanzas, Florida.
 Fort Pulaski, Georgia.
 Meriwether Lewis, Hardin County, Tennessee.
 Mound City Group, Chillicothe, Ohio.
 Statue of Liberty, Fort Wood, New York.

MISCELLANEOUS MEMORIALS

Camp Blount Tablets, Lincoln County, Tennessee.
 Kill Devil Hill Monument, Kitty Hawk, North Carolina.
 New Echota Marker, Georgia.
 Lee Mansion, Arlington National Cemetery, Virginia.

NATIONAL CEMETERIES

Custer Battlefield, National Cemetery in the State of Montana.
 Battleground, District of Columbia.
 Antietam (Sharpsburg), Maryland.
 Vicksburg, Mississippi.
 Gettysburg, Pennsylvania.
 Chattanooga, Tennessee.
 Fort Donelson (Dover), Tennessee.
 Shiloh (Pittsburg Landing), Tennessee.
 Stones River (Murfreesboro), Tennessee.
 Fredericksburg, Virginia.
 Poplar Grove (Petersburg), Virginia.
 Yorktown, Virginia.

National cemeteries located in insular possessions under the jurisdiction of the War Department shall be administered by the Bureau of Insular Affairs of the War Department.

The functions of the following agencies are transferred to the National Park Service of the Department of the Interior, and the agencies are abolished:

Arlington Memorial Bridge Commission
 Public Buildings Commission
 Public Buildings and Public Parks of the National Capital
 National Memorial Commission
 Rock Creek and Potomac Parkway Commission

Expenditures by the Federal Government for the purposes of the Commission of Fine Arts, the George Rogers Clark Sesquicentennial Commission, and the Rushmore National Commission shall be administered by the Department of the Interior. (As amended by Ex. Ord. No. 6228 of July 28, 1933; Ex. Ord. No. 6614 of Feb. 26, 1934; Ex. Ord. No. 8428 of June 3, 1940, 5 F.R. 2132; and act Mar. 2, 1934. ch. 39, §1, 48 Stat. 389.)

AMENDMENTS

The enumeration of the National Cemeteries and Parks of the War Department which were transferred to the Department of the Interior was added by Ex. Ord. No. 6228, §1, of July 28, 1933, and Ex. Ord. No. 8428 of June 3, 1940.

A provision of this section transferring the administration of national cemeteries located in foreign countries to the State Department was revoked by Ex. Ord. No. 6614 of Feb. 26, 1934.

EFFECTIVE DATE

See section 22 of this Ex. Ord. The transfer of national cemeteries located in the insular possessions to the Bureau of Insular Affairs, as provided in this section, was postponed until further order by Ex. Ord. No. 6228, §3, of July 28, 1933.

§3. INVESTIGATIONS

All functions now exercised by the Bureau of Prohibition of the Department of Justice with respect to the granting of permits under the national prohibition laws are transferred to the Division of Internal Revenue in the Treasury Department.

All functions now exercised by the Bureau of Prohibition with respect to investigations and all the functions now performed by the Bureau of Investigation of the Department of Justice are transferred to and consolidated in a Division of Investigation in the Department of Justice, at the head of which shall be a Director of Investigation.

All other functions now performed by the Bureau of Prohibition are transferred to such divisions in the Department of Justice as in the judgment of the Attorney General may be desirable.

§4. DISBURSEMENT

[Section, as amended by Ex. Ord. No. 6728, May 29, 1934; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; and 1940 Reorg. Plan No. IV, §§3, 4, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234, which provided that the function of disbursement of moneys of the United States exercised by any agency [except United States marshals; the Post Office Department; the Postmaster General; the Board of Trustees of the Postal Savings System; and those disbursement functions of the War Department, Navy Department (including the Marine Corps), and the Panama Canal, not pertaining to departmental salaries in the District of Columbia] were transferred to the [Fiscal Service of the] Treasury Department and, together with the Office of Disbursing Clerk of that department, was consolidated in a Division of Disbursement, at the head of which was a Chief Disbursing Officer, that the Division of Disbursement of the Treasury Department was authorized to establish local offices, or to delegate the exercise of its functions locally to officers or employees of other agencies, according as the interests of efficiency and economy might require, that the Division of Disbursement would disburse moneys only upon the certification of persons by law duly authorized to incur obligations upon behalf of the United States and that the function of accountability for improper certification would be transferred to such persons, and no disbursing officer would be held accountable therefor, was repealed and reenacted as section 3321 of Title 31, Money and Finance, by Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 877, the first section of which enacted Title 31.]

AMENDMENTS

The bracketed provisions in the first sentence of section 4 of Ex. Ord. No. 6166 reflect the changes effected by 1940 Reorg. Plan No. IV, §§3, 4, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234, 1235, Ex. Ord. No. 6728, and 1940 Reorg. Plan No. III, §1(a)(1), 5 F.R. 2107, 54 Stat. 1231, respectively.

EFFECTIVE DATE

The effective date of section 4 of Ex. Ord. No. 6166, originally fixed by section 22 of this Ex. Ord., was sub-

sequently postponed as follows: to Dec. 31, 1933, by Ex. Ord. No. 6224 of July 27, 1933; to June 30, 1934 (insofar as not already effected prior to Dec. 31, 1933), by Ex. Ord. No. 6540 of Dec. 28, 1933; to Dec. 31, 1934 (insofar as not already effected prior to June 30, 1934), by Ex. Ord. No. 6727 of May 29, 1934; to June 30, 1935, by Ex. Ord. No. 6927 of Dec. 31, 1934; to Dec. 31, 1935 (insofar as not already effected prior to June 30, 1934), by Ex. Ord. No. 7077 of June 15, 1935; to June 30, 1936 (insofar as not already effected prior to Dec. 31, 1935), by Ex. Ord. No. 7261 of Dec. 31, 1935. Each of these orders contained a provision that the changes therein delayed might be made sooner effective by order of the Secretary of the Treasury approved by the President.

§5. CLAIMS BY OR AGAINST THE UNITED STATES

The functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States and of defending claims and demands against the Government, and of supervising the work of United States attorneys, marshals, and clerks in connection therewith, now exercised by any agency or officer, are transferred to the Department of Justice.

As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.

For the exercise of such of his functions as are not transferred to the Department of Justice by the foregoing two paragraphs, the Solicitor of the Treasury is transferred from the Department of Justice to the Treasury Department.

Nothing in this section shall be construed to affect the function of any agency or officer with respect to cases at any stage prior to reference to the Department of Justice for prosecution or defense.

EFFECTIVE DATE

With regard to legal work performed by the Veterans' Administration in connection with suits against the United States arising under section 19 of the World War Veterans Act, 1924, the effective date of this section was postponed to Sept. 10, 1933, by Ex. Ord. No. 6222 of July 27, 1933.

The effective date of the first paragraph of this section, insofar as it affected the functions of the General Counsel for the Bureau of Internal Revenue, was postponed until Oct. 10, 1933, by Ex. Ord. No. 6244 of Aug. 8, 1933.

§6. INSULAR COURTS

The United States Court for China, the District Court of the United States for the Panama Canal Zone, and the District Court of the Virgin Islands of the United States are transferred to the Department of Justice.

EFFECTIVE DATE

Ex. Ord. No. 6243, Aug. 5, 1933, provided that "the effective date of the transfer to the Department of Justice of the District Court of the United States for the Panama Canal Zone is hereby postponed to October 4, 1933."

§7. SOLICITORS

The Solicitor for the Department of Commerce is transferred from the Department of Justice to the Department of Commerce.

The Solicitor for the Department of Labor is transferred from the Department of Justice to the Department of Labor.

§8. INTERNAL REVENUE

The Bureaus of Internal Revenue and or Industrial Alcohol of the Treasury Department are consolidated

in a Division of Internal Revenue, at the head of which shall be a Commissioner of Internal Revenue.

EFFECTIVE DATE

The effective date of section 8 of Ex. Ord. No. 6166, originally fixed by section 22 of the same order, post, was subsequently postponed as follows: to Dec. 31, 1933, by Ex. Ord. No. 6224 of July 27, 1933; to June 30, 1934, by Ex. Ord. No. 6540 of Dec. 28, 1933. Said orders, however, contained a provision whereby the changes thereby delayed might be sooner effected by order of the Secretary of the Treasury approved by the President.

§9. ASSISTANT SECRETARY OF COMMERCE

The Assistant Secretary of Commerce for Aeronautics shall be an Assistant Secretary of Commerce and shall perform such functions as the Secretary of Commerce may designate.

§10. OFFICIAL REGISTER

The function of preparation of the Official Register is transferred from the Bureau of the Census to the Civil Service Commission.

§11. STATISTICS OF CITIES

The function of the Bureau of the Census of the Department of Commerce of compiling statistics of cities under 100,000 population is abolished for the period ending June 30, 1935.

§12. SHIPPING BOARD

The functions of the United States Shipping Board including those over and in respect to the United States Shipping Board Merchant Fleet Corporation are transferred to the Department of Commerce, and the United States Shipping Board is abolished.

§13. NATIONAL SCREW THREAD COMMISSION

The National Screw Thread Commission is abolished, and its records, property, facilities, equipment, and supplies are transferred to the Department of Commerce.

§14. IMMIGRATION AND NATURALIZATION

The Bureaus of Immigration and of Naturalization of the Department of Labor are consolidated as an Immigration and Naturalization Service of the Department of Labor, at the head of which shall be a Commissioner of Immigration and Naturalization.

§15. VOCATIONAL EDUCATION

The functions of the Federal Board for Vocational Education are transferred to the Department of the Interior, and the Board shall act in an advisory capacity without compensation.

§16. APPORTIONMENT OF APPROPRIATIONS

The functions of making, waiving, and modifying apportionments of appropriations are transferred to the Director of the Bureau of the Budget.

§17. COORDINATING SERVICE

The Federal Coordinating Service is abolished.

EFFECTIVE DATE

The effective date of this section originally fixed by section 22 of this Ex. Ord., was subsequently deferred to Oct. 10, 1933, by Ex. Ord. No. 6239 of Aug. 2, 1933.

§18. FUNCTIONS ABOLISHED

Section 18 of Ex. Ord. No. 6166, which provided for the partial abolition of cooperative vocational education payments for agricultural experiment stations; cooperative agricultural extension work; and endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts, was revoked by Ex. Ord. No. 6536 of Feb. 6, 1934.

§19. GENERAL PROVISIONS

Each agency, all the functions of which are transferred to or consolidated with another agency, is abolished.

The records pertaining to an abolished agency or a function disposed of, disposition of which is not elsewhere herein provided for, shall be transferred to the successor. If there be no successor agency, and such abolished agency be within a department, said records shall be disposed of as the head of such department may direct.

The property, facilities, equipment, and supplies employed in the work of an abolished agency or the exercise of a function disposed of, disposition of which is not elsewhere herein provided for, shall, to the extent required, be transferred to the successor agency. Other such property, facilities, equipment, and supplies shall be transferred to the Procurement Division.

All personnel employed in connection with the work of an abolished agency or function disposed of shall be separated from the service of the United States, except that the head of any successor agency, subject to my approval, may, within a period of four months after transfer or consolidation, reappoint any of such personnel required for the work of the successor agency without reexamination or loss of civil-service status.

EFFECTIVE DATE

The effective date of the last paragraph of this section, originally fixed by section 22, post, was deferred as to employees separated from service under sections 2 and 15, ante, until Sept. 30, 1933, by Ex. Ord. No. 6227 of July 27, 1933. As to employees separated under section 12, ante, a similar deferment to Sept. 30, 1933, was made by Ex. Ord. No. 6245 of Aug. 9, 1933.

§20. APPROPRIATIONS

Such portions of the unexpended balances of appropriations for any abolished agency or function disposed of shall be transferred to the successor agency as the Director of the Budget shall deem necessary.

Unexpended balances of appropriations for an abolished agency or function disposed of, not so transferred by the Director of the Budget, shall, in accordance with law, be impounded and returned to the Treasury.

§21. DEFINITIONS

As used in this order—

“Agency” means any commission, independent establishment, board, bureau, division, service, or office in the executive branch of the Government.

“Abolished agency” means any agency which is abolished, transferred, or consolidated.

“Successor agency” means any agency to which is transferred some other agency or function, or which results from the consolidation of other agencies or functions.

“Function disposed of” means any function eliminated or transferred.

§22. EFFECTIVE DATE

In accordance with law, this order shall become effective 61 days from its date: *Provided*, That in case it shall appear to the President that the interests of economy require that any transfer, consolidation, or elimination be delayed beyond the date this order becomes effective, he may, in his discretion, fix a later date therefor, and he may for like cause further defer such date from time to time. (Promulgated June 10, 1933.)

[Postponements of effective date of certain transfers, etc., see notes under the various sections of this Executive Order effecting those transfers, etc.]

Executive Order No. 7261, promulgated December 31, 1935, provided that “except as hereinafter provided, the transfers, consolidations, and eliminations contemplated by section 4 of Executive Order No. 6166 of June 10, 1933, as amended, which are not effected prior to December 31, 1935, pursuant to Executive Order No.

6224 of July 27, 1933, Executive Order No. 6540 of December 28, 1933, Executive Order No. 6727 of May 29, 1934, Executive Order No. 6927 of December 21, 1934, and Executive Order No. 7077 of June 15, 1935, together with the operation of all other provisions of Executive Order No. 6166 of June 10, 1933, as amended, in so far as they relate to said section 4, be further delayed until June 30, 1936: *Provided*, that any transfer, consolidation, or elimination, in whole or in part, under said section 4, including any other provisions of the said order of June 10, 1933, in so far as they relate to section 4 thereof, may be made operative and effective between December 31, 1935, and June 30, 1936, by order of the Secretary of the Treasury, approved by the President.”

Executive Order No. 7980, promulgated September 29, 1938, provided: “That the transfers, consolidations, and eliminations contemplated by section 4 of Executive Order No. 6166 of June 10, 1933, as amended, together with the operation of all other provisions of Executive Order No. 6166 of June 10, 1933, as amended, so far as they relate to the said section 4, be further delayed until December 31, 1938, with respect to the function of disbursement now exercised by United States Marshals under the Department of Justice.”

Functions relating to disbursement by United States marshals which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV of 1940, §3, eff. June 30, 1940. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

Functions relating to disbursement of postal revenues and all other funds under jurisdiction of Post Office Department, Postmaster General, and Board of Trustees of Postal Savings System which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, set out in note under this section, were transferred to and vested in (a) said Board of Trustees as to postal savings disbursements, and (b) Post Office Department as to all other disbursements involved, such functions to be exercised by postmasters and other authorized disbursing agents of Post Office Department and of Postal Savings System in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV of 1940, §4, eff. June 30, 1940. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

Public Buildings Branch of Procurement Division and its functions and personnel were transferred to Public Buildings Administration, and functions of Secretary of Agriculture and Director of Procurement Division relating to administration thereof and to selection of sites for public buildings were transferred to Federal Works Administrator by Reorg. Plan No. I of 1939, §§301, 303, effective July 1, 1939. See also sections 307–310 of said plan for provisions relating to transfer of records, property, funds, and personnel.

EXECUTIVE ORDER NO. 11007

Ex. Ord. No. 11007, Feb. 27, 1962, 27 F.R. 1875, which related to regulations for formation and use of advisory committees, was superseded by Ex. Ord. No. 11671, June 5, 1972, 37 F.R. 11307.

EXECUTIVE ORDER NO. 11671

Ex. Ord. No. 11671, June 5, 1972, 37 F.R. 11307, which related to committee management, was superseded by Ex. Ord. No. 11686, Oct. 7, 1972, 37 F.R. 21421, set out in the Appendix to this title.

§902. Definitions

For the purpose of this chapter—

(1) “agency” means—

- (A) an Executive agency or part thereof; and
 (B) an office or officer in the executive branch;

but does not include the Government Accountability Office or the Comptroller General of the United States;

(2) “reorganization” means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

(3) “officer” is not limited by section 2104 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 394; Pub. L. 90–83, §1(98), Sept. 11, 1967, 81 Stat. 220; Pub. L. 95–17, §2, Apr. 6, 1977, 91 Stat. 30; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES
 1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| (1) | 5 U.S.C. 133z–5. | June 20, 1949, ch. 226, §7, 63 Stat. 205. |
| (2) | 5 U.S.C. 133z–6. | June 20, 1949, ch. 226, §8, 63 Stat. 206. |

In paragraph (1)(A), the words “an Executive agency or part thereof” are coextensive with and substituted for “any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, . . . authority, administration, or other establishment, in the executive branch of the Government” and to conform to the definition in section 105.

In paragraph (1)(B), the words “an office or officer in the civil service or uniformed services in or under an Executive agency” are substituted for “office, officer, . . . in the executive branch of the Government” to conform to the definitions in sections 105, 2101, and 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends section 902 of title 5, United States Code, so as to preserve the application of the source statute for section 902 (sec. 7 of the Reorganization Act of 1949). In the codification of title 5 by Public Law 89–554, that application was inadvertently restricted due to the operation of section 2104 of title 5, providing a title-wide definition of “officer.” Briefly, that section defines “officer” as a civil appointive officer of the Federal Government. In the Reorganization Act of 1949, the word “officer” was not defined, and has been construed to include not only civil appointive officers, but uniformed officers, the President, and officers of the government of the District of Columbia. Thus, this section amends section 902 of title 5 by inserting a paragraph providing that the title-wide definition of officer is inapplicable to chapter 9 of title 5. Also, paragraph (1)(B) of section 902 is amended so that the wording thereof is identical to that formerly appearing in section 7 of the Reorganization Act of 1949.

CODIFICATION

Section 902(a) of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 60e–2(b) of Title 2, The Congress.

AMENDMENTS

2004—Par. (1). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office” in concluding provisions.

1977—Par. (1)(C). Pub. L. 95–17 struck out subpar. (C) which defined “agency” as any and all parts of the government of the District of Columbia other than the courts thereof.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

§ 903. Reorganization plans

(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President’s message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are

expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903-905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 394; Pub. L. 90-83, §1(99), Sept. 11, 1967, 81 Stat. 220; Pub. L. 92-179, §2, Dec. 10, 1971, 85 Stat. 574; Pub. L. 95-17, §2, Apr. 6, 1977, 91 Stat. 30; Pub. L. 98-614, §§3(b)(1), (2), 4, Nov. 8, 1984, 98 Stat. 3192, 3193.)

HISTORICAL AND REVISION NOTES
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 133z-1. | June 20, 1949, ch. 226, §3, 63 Stat. 203. |

In subsection (a)(5), the words "officer in the civil service or uniformed services" are substituted for "officer" to conform to the definitions in sections 2101 and 2104.

In subsection (b), the words "The President shall have a reorganization plan delivered" as substituted for "The delivery . . . shall be".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section 1(99) amends section 903(a)(5) of title 5, United States Code, to conform to the wording formerly appearing in the source statute (sec. 3(5) of the Reorganization Act of 1949). In this regard, the explanation appearing in section 1(98) of this bill is equally applicable to this section.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-614, §4, inserted "In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan."

Subsec. (c). Pub. L. 98-614, §3(b)(1), (2), substituted "60 calendar days" for "thirty calendar days", and "90 calendar days" for "sixty calendar days".

1977—Subsec. (a)(2). Pub. L. 95-17 inserted provision that no enforcement function or statutory program shall be abolished by the plan.

Subsec. (b). Pub. L. 95-17 substituted provisions limiting to three the number of plans that may be pending before Congress at any one time for provisions limiting to one the number of plans that may be transmitted to Congress within any period of thirty consecutive days and provisions requiring that the President estimate any increase in expenditures and describe any improvements in management, delivery of Federal services, execution of laws, and increases in efficiency of Government operations expected as a result of the reorganizations included in the plan.

Subsec. (c). Pub. L. 95-17 added subsec. (c).

1971—Subsec. (a). Pub. L. 92-179, §2(a), restructured provisions covering requirements of findings of fact and certification by placing in a position preceding par. (1) provisions formerly set out following par. (6).

Subsec. (b). Pub. L. 92-179, §2(b), inserted provisions limiting to one plan within any period of thirty consecutive days the allowable number of plans submitted.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-83 effective Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as a note under section 5102 of this title.

§ 904. Additional contents of reorganization plan

A reorganization plan transmitted by the President under section 903 of this title—

(1) may, subject to section 905, change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of an agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be

by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 395; Pub. L. 92-179, §3, Dec. 10, 1971, 85 Stat. 575; Pub. L. 95-17, §2, Apr. 6, 1977, 91 Stat. 31; Pub. L. 98-614, §5(b), Nov. 8, 1984, 98 Stat. 3194.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| ..... | 5 U.S.C. 133z-2. | June 20, 1949, ch. 226, §4, 63 Stat. 204. |

In paragraph (1), the words “may change” are substituted for “shall change” in view of the discretionary grant of authority reflected by the words “in such cases as the President considers necessary”.

In paragraph (2), the words “competitive service” are substituted for “classified civil service” to conform to the definition in section 2102.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Par. (1). Pub. L. 98-614 inserted “, subject to section 905.”.

1977—Pub. L. 95-17 struck out in provisions following par. (5) exception that, in the case of an officer of the government of the District of Columbia, the appointment of the head of an agency may be by the Commissioner or other body of that government designated in the plan.

1971—Pub. L. 92-179 revised the form of the provisions covering the elements which a reorganization plan contains by moving provisions formerly set out in par. (2) to a position following par. (5).

§ 905. Limitation on powers

(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

(1) creating a new executive department or renaming an existing executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

(2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;

(3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;

(4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;

(5) creating a new agency which is not a component or part of an existing executive department or independent agency;

(6) increasing the term of an office beyond that provided by law for the office; or

(7) dealing with more than one logically consistent subject matter.

(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress (in accordance with section 903(b)) on or before December 31, 1984.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 396; Pub. L. 91-5, Mar. 27, 1969, 83 Stat. 6; Pub. L. 92-179, §4, Dec. 10, 1971, 85 Stat. 576; Pub. L. 95-17, §2, Apr. 6, 1977, 91 Stat. 31; Pub. L. 96-230, Apr. 8, 1980, 94 Stat. 329; Pub. L. 98-614, §§2(a), 5(a), Nov. 8, 1984, 98 Stat. 3192, 3193.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|---------------------|---|
| (a) | 5 U.S.C. 133z-3(a). | June 20, 1949, ch. 226, §5(a), 63 Stat. 205. July 2, 1964, Pub. L. 88-351, §2, 78 Stat. 240. |
| (b) | 5 U.S.C. 133z-3(b). | June 20, 1949, ch. 226, §5(b), 63 Stat. 205. Feb. 11, 1953, ch. 3, 67 Stat. 4. Mar. 25, 1955, ch. 16, 69 Stat. 14. Sept. 4, 1957, Pub. L. 85-286, §1, 71 Stat. 611. Apr. 7, 1961, Pub. L. 87-18, 75 Stat. 41. July 2, 1964, Pub. L. 88-351, §1, 78 Stat. 240. June 18, 1965, Pub. L. 89-43, 79 Stat. 135. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-614, §5(a)(1), inserted “or renaming an existing executive department”.

Subsec. (a)(5) to (7). Pub. L. 98-614, §5(a)(2), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (b). Pub. L. 98-614, §2(a), substituted “(in accordance with section 903(b)) on or before December 31, 1984” for “within four years of the date of enactment of the Reorganization Act of 1977”.

1980—Subsec. (b). Pub. L. 96-230 substituted “four years” for “three years”.

1977—Subsec. (a)(1). Pub. L. 95-17 substituted “an executive department or independent regulatory agency,” for “an Executive department” and “or more executive departments or two or more independent regulatory agencies,” for “or more Executive departments”.

Subsec. (a)(6), (7). Pub. L. 95-17 redesignated par. (7) as (6). Former par. (6), which related to limitation on reorganization plans that have effect of transferring to or consolidating with another agency the government of the District of Columbia or all the functions thereof which are subject to this chapter, or abolishing that government or all those functions, was struck out.

Subsec. (b). Pub. L. 95-17 substituted “within three years of the date of enactment of the Reorganization Act of 1977” for “before April 1, 1973”.

1971—Subsec. (a)(7). Pub. L. 92-179, §4(a), added par. (7).

Subsec. (b). Pub. L. 92-179, §4(b), substituted “April 1, 1973” for “April 1, 1971”.

1969—Subsec. (b). Pub. L. 91-5 substituted “April 1, 1971” for “December 31, 1968”.

PLAN FOR TRANSPORTATION DEPARTMENT REORGANIZATION

Pub. L. 104-50, title III, §335, Nov. 15, 1995, 109 Stat. 458, provided in part that: “notwithstanding 5 U.S.C. 905(b), the President may prepare and transmit to Con-

gress not later than the date for transmittal to Congress of the Budget Request for Fiscal Year 1997, a reorganization plan pursuant to chapter 9 of title 5, United States Code, for the reorganization of the surface transportation activities of the Department of Transportation and the relationship of the Saint Lawrence Seaway Development Corporation to the Department.”

§ 906. Effective date and publication of reorganization plans

(a) Except as provided under subsection (c) of this section, a reorganization plan shall be effective upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution.

(b) For the purpose of this chapter—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(d) A reorganization plan which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 396; Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 32; Pub. L. 98-614, § 3(a), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| (a)-(c) | 5 U.S.C. 133z-4. | June 20, 1949, ch. 226, § 6, 63 Stat. 205. Sept. 4, 1957, Pub. L. 85-286, § 2, 71 Stat. 611. |
| (d) | 5 U.S.C. 133z-9. | June 20, 1949, ch. 226, § 11, 63 Stat. 206. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-614, § 3(a)(1), struck out “otherwise” before “provided under subsection (c)”, substituted “shall be” for “is” before “effective”, and substituted “upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution” for “at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor the reorganization plan.”

Subsec. (c). Pub. L. 98-614, § 3(a)(2), struck out before period at end “or, if both Houses of Congress have defeated a resolution of disapproval, may be effective at a time earlier than the expiration of the sixty-day period required by subsection (a)”.

1977—Subsec. (a). Pub. L. 95-17 substituted “sixty” for “60” in two places.

Subsec. (b). Pub. L. 95-17 substituted in provisions preceding par. (1) “this chapter” for “subsection (a) of this section” and in par. (2) “any period of time in which Congress is in continuous session” for “the 60-day period”.

Subsec. (c). Pub. L. 95-17 inserted provision that if both Houses of Congress have defeated a resolution of disapproval, the provision of a reorganization plan may be effective at a time earlier than the expiration of the sixty-day period required by subsec. (a).

Subsec. (d). Pub. L. 95-17 reenacted subsec. (d) without change.

RATIFICATION AND AFFIRMATION OF PRIOR REORGANIZATION PLANS AS LAW; ACTIONS TAKEN PURSUANT TO SUCH PLANS

Pub. L. 98-532, Oct. 19, 1984, 98 Stat. 2705, provided that:

“SECTION 1. The Congress hereby ratifies and affirms as law each reorganization plan that has, prior to the date of enactment of this Act [Oct. 19, 1984], been implemented pursuant to the provisions of chapter 9 of title 5, United States Code, or any predecessor Federal reorganization statute.

“SEC. 2. Any actions taken prior to the date of enactment of this Act [Oct. 19, 1984] pursuant to a reorganization plan that is ratified and affirmed by section 1 shall be considered to have been taken pursuant to a reorganization expressly approved by Act of Congress.”

§ 907. Effect on other laws, pending legal proceedings, and unexpended appropriations

(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

(b) For the purpose of subsection (a) of this section, “regulation or other action” means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this chapter. On motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be main-

tained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(d) The appropriations or portions of appropriations unexpended by reason of the operation of the chapter may not be used for any purpose, but shall revert to the Treasury.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 396; Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 32.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|------------------|---|
| (a)-(c) | 5 U.S.C. 133z-7. | June 20, 1949, ch. 226, § 9, 63 Stat. 206. |
| (d) | 5 U.S.C. 133z-8. | June 20, 1949, ch. 226, § 10, 63 Stat. 206. |

In subsections (a) and (c), the words “the provisions of” in the phrase “under this chapter” are omitted as unnecessary.

In subsection (c), the words “the suit, action, or other proceeding” are substituted for “the same”.

In subsection (d), the words “shall revert” are substituted for “shall be . . . returned”, and the words “impounded and” are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1977—Subsecs. (a), (b). Pub. L. 95-17 reenacted subsecs. (a) and (b) without change.

Subsec. (c). Pub. L. 95-17 substituted “twelve months” for “12 months”.

Subsec. (d). Pub. L. 95-17 reenacted subsec. (d) without change.

§ 908. Rules of Senate and House of Representatives on reorganization plans

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter¹) on or before December 31, 1984; and they 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 the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 33; Pub. L. 98-614, § 2(b), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|-------------------|---|
| ..... | 5 U.S.C. 133z-10. | June 20, 1949, ch. 226, § 201, 63 Stat. 206. |

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

The words “Sections 909-913 of this title” are substituted for “The following sections of this title” to reflect the codification of sections 202-206 of Title II of the Act of June 20, 1949.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Par. (1). Pub. L. 98-614 substituted “with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter) on or before December 31, 1984” for “described in section 909 of this title”.

1977—Pub. L. 95-17 substituted “Sections 909 through 912 of this title” for “Sections 909-913 of this title” in provisions preceding par. (1).

§ 909. Terms of resolution

For the purpose of sections 908 through 912 of this title, “resolution” means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the reorganization plan numbered _____ transmitted to the Congress by the President on _____, 19____.”, and includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 33; Pub. L. 98-614, § 3(c), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|-------------------|---|
| ..... | 5 U.S.C. 133z-11. | June 20, 1949, ch. 226, § 202, 63 Stat. 207. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 903(c) of this chapter, referred to in text, means section 903(c) of this title.

AMENDMENTS

1984—Pub. L. 98-614 substituted “a joint resolution of the Congress” for “a resolution of either House of Congress”, and “the Congress approves” for “the _____ does not favor”.

1977—Pub. L. 95-17 substituted “sections 908 through 912 of this title” for “sections 908-913 of this title” and provision that the blank spaces are to be appropriately filled for provision that the first blank space is to be filled with the name of the resolving House and the other blank spaces are to be appropriately filled and inserted provision that “resolution” includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter.

§ 910. Introduction and reference of resolution

(a) No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Government Operations Committee of the House, or by a Member or Members of the House des-

igned by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 95-17, §2, Apr. 6, 1977, 91 Stat. 33; Pub. L. 98-614, §3(b)(3), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|-------------------|---|
| ..... | 5 U.S.C. 133z-12. | June 20, 1949, ch. 226, §203, 63 Stat. 207. |

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-614 substituted “75 calendar days” for “45 calendar days”.

1977—Pub. L. 95-17 substituted “Introduction and reference of resolution” for “Reference of resolution to committee” in section catchline, designated existing provisions as subsec. (b), substituted “the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House” for “a committee” and inserted requirement that the Committee shall make its recommendation to the House or Senate within 45 calendar days of continuous session of Congress following the date of a resolution's introduction, and added subsec. (a).

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.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note under section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 911. Discharge of committee considering resolution

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the first resolution introduced with respect

to the same reorganization plan) has not reported such resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 92-179, §5, Dec. 10, 1971, 85 Stat. 576; Pub. L. 95-17, §2, Apr. 6, 1977, 91 Stat. 34; Pub. L. 98-614, §3(b)(4), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|-------------------|---|
| ..... | 5 U.S.C. 133z-13. | June 20, 1949, ch. 226, §204, 63 Stat. 207. |

In subsection (a), the words “at the end of 10 calendar days . . . it is” are substituted for “before the expiration of ten calendar days . . . it shall then (but not before) be”.

In subsection (b), the words “A motion to discharge” are substituted for “Such motion”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Pub. L. 98-614 substituted “75 calendar days” for “45 calendar days”.

1977—Pub. L. 95-17 substituted provisions deeming the committee discharged from further consideration of a resolution where that committee has not reported the resolution within 45 days of continuous session of Congress after the resolution's introduction for provisions permitting a motion to discharge a committee where the committee considering a resolution has not reported the resolution within 20 calendar days after the resolution's introduction, provisions permitting a motion to discharge to be made only by an individual favoring the resolution and limiting debate to 1 hour, and provisions prohibiting a renewal of a motion to discharge where the original motion was agreed to or disagreed to or the making of another motion with respect to a resolution from the same reorganization plan.

1971—Subsec. (a). Pub. L. 92-179 substituted “20 calendar days” for “10 calendar days”.

§ 912. Procedure after report or discharge of committee; debate; vote on final passage

(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten

hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(e) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 398; Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 34; Pub. L. 98-614, § 3(d), (e)(1), (2), Nov. 8, 1984, 98 Stat. 3193.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 133z-14, June 20, 1949, ch. 226, § 205, 63 Stat. 207.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Pub. L. 98-614, § 3(e)(2), substituted “passage” for “disapproval” in section catchline.

Subsec. (b). Pub. L. 98-614, § 3(d)(1), substituted “passed or rejected” for “agreed to or disagreed to”.

Subsec. (c). Pub. L. 98-614, § 3(d)(2), substituted “final passage” for “final approval”.

Subsec. (e). Pub. L. 98-614, § 3(e)(1), added subsec. (e). 1977—Pub. L. 95-17 inserted “; vote on final disapproval” after “debate” in section catchline.

Subsec. (a). Pub. L. 95-17 inserted provisions that a motion to discharge a committee is not subject to a motion to postpone or to a motion to proceed to the consideration of other business and that if a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

Subsec. (b). Pub. L. 95-17 inserted provisions that a motion to postpone or a motion to proceed to the consideration of other business is not in order.

Subsec. (c). Pub. L. 95-17 added subsec. (c).

Subsec. (d). Pub. L. 95-17 added subsec. (d) which provisions were formerly set out in section 913(b) of this title.

[§ 913. Omitted]

CODIFICATION

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 398, providing for decision without debate with respect to mo-

tions to postpone, motions to proceed to the consideration of other business, and appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, was omitted in the general amendment of this chapter by Pub. L. 95-17, § 2, Apr. 6, 1977, 91 Stat. 29. See section 912 of this title.

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

Table with 2 columns: Chap., Sec. 11. Office of Personnel Management 1101 12. Merit Systems Protection Board, Office of Special Counsel, and Employee Right of Action 1201 13. Special Authority 1301 14. Agency Chief Human Capital Officers 1401 15. Political Activity of Certain State and Local Employees 1501

AMENDMENTS

2002—Pub. L. 107-296, title XIII, § 1302(b), Nov. 25, 2002, 116 Stat. 2288, added item for chapter 14.

1992—Pub. L. 102-378, § 2(1), Oct. 2, 1992, 106 Stat. 1346, substituted “Employee” for “Individual” in item for chapter 12.

1989—Pub. L. 101-12, § 3(b)(1), Apr. 10, 1989, 103 Stat. 31, substituted “, Office of Special Counsel, and Individual Right of Action” for “and Special Counsel” in item for chapter 12.

1978—Pub. L. 95-454, title II, § 201(c)(1), Oct. 13, 1978, 92 Stat. 1121, substituted “CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES” for “THE UNITED STATES CIVIL SERVICE COMMISSION” in heading for Part II.

Pub. L. 95-454, title II, § 201(c)(2), Oct. 13, 1978, 92 Stat. 1121, substituted “Office of Personnel Management” for “Organization” in item for chapter 11.

Pub. L. 95-454, title II, § 202(d), Oct. 13, 1978, 92 Stat. 1131, added item for chapter 12.

CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

Table with 2 columns: Sec., Office of Personnel Management. 1101. Office of Personnel Management. 1102. Director; Deputy Director; Associate Directors. 1103. Functions of the Director. 1104. Delegation of authority for personnel management. 1105. Administrative procedure.

AMENDMENTS

1978—Pub. L. 95-454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119, substituted in chapter heading “OFFICE OF PERSONNEL MANAGEMENT” for “ORGANIZATION”, in item 1101 “Office of Personnel Management” for “Appointment of Commissioners”, in item 1102 “Director; Deputy Director; Associate Directors” for “Term of office; filling vacancies; removal”, in item 1103 “Functions of the Director” for “Chairman; Vice Chairman; Executive Director”, in item 1104 “Delegation of authority for personnel management” for “Functions of Chairman”, and in item 1105 “Administrative procedure” for “Boards of examiners”.

§ 1101. Office of Personnel Management

The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.