

(2) The Administrator shall also consult with the International Joint Commission to determine how to monitor the disposal of medical waste emanating from Canada.

(b) Public comment

In the case of the regulations required by this subchapter to be promulgated within 9 months after November 1, 1988, the Administrator may promulgate such regulations in interim final form without prior opportunity for public comment, but the Administrator shall provide an opportunity for public comment on the interim final rule. The promulgation of such regulations shall not be subject to the Paperwork Reduction Act of 1980.¹

(c) Relationship to subchapter III

Nothing in this subchapter shall affect the authority of the Administrator to regulate medical waste, including medical waste listed under section 6992a of this title, under subchapter III of this chapter.

(Pub. L. 89-272, title II, §11010, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2957.)

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (b), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

§ 6992j. Effective date

The regulations promulgated under this subchapter shall take effect within 90 days after promulgation, except that, at the time of promulgation, the Administrator may provide for a shorter period prior to the effective date if he finds the regulated community does not need 90 days to come into compliance.

(Pub. L. 89-272, title II, §11011, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2958.)

§ 6992k. Authorization of appropriations

There are authorized to be appropriated to the Administrator such sums as may be necessary for each of the fiscal years 1989 through 1991 for purposes of carrying out activities under this subchapter.

(Pub. L. 89-272, title II, §11012, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2958.)

CHAPTER 83—ENERGY EXTENSION SERVICE

§§ 7001 to 7011. Repealed. Pub. L. 102-486, title I, § 143(a), Oct. 24, 1992, 106 Stat. 2843

Section 7001, Pub. L. 95-39, title V, §502, June 3, 1977, 91 Stat. 191, related to congressional declaration and statement of purposes.

Section 7002, Pub. L. 95-39, title V, §503, June 3, 1977, 91 Stat. 192, provided for establishment of Energy Extension Service.

Section 7003, Pub. L. 95-39, title V, §504, June 3, 1977, 91 Stat. 192, provided for development and implementation of comprehensive program.

Section 7004, Pub. L. 95-39, title V, §505, June 3, 1977, 91 Stat. 193, provided for initial implementation of State energy extension service plans.

Section 7005, Pub. L. 95-39, title V, §506, June 3, 1977, 91 Stat. 195, provided for national implementation of State energy extension service plans.

Section 7006, Pub. L. 95-39, title V, §507, June 3, 1977, 91 Stat. 198, related to administration of Energy Extension Service.

Section 7007, Pub. L. 95-39, title V, §508, June 3, 1977, 91 Stat. 199, related to energy education, extension, and information.

Section 7008, Pub. L. 95-39, title V, §509, June 3, 1977, 91 Stat. 199, provided for establishment of National Energy Extension Service Advisory Board.

Section 7009, Pub. L. 95-39, title V, §511, June 3, 1977, 91 Stat. 201, related to records.

Section 7010, Pub. L. 95-39, title V, §512, June 3, 1977, 91 Stat. 201, related to authorization of appropriations.

Section 7011, Pub. L. 95-39, title V, §513, June 3, 1977, 91 Stat. 202, set out definitions.

SHORT TITLE

Section 501 of title V of Pub. L. 95-39, which provided that this title, which enacted this chapter and amended sections 5813 and 5818 of this title, could be cited as the "National Energy Extension Service Act", was repealed by Pub. L. 102-486, title I, §143(a), Oct. 24, 1992, 106 Stat. 2843.

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§ 7101. Definitions

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

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

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

(Pub. L. 95-91, § 2, Aug. 4, 1977, 91 Stat. 567.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a), (b), and (c), was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-28, § 1, July 18, 1997, 111 Stat. 245, provided that: “This Act [amending sections 7191 and 7234 of this title and repealing section 776 of Title 15, Commerce and Trade] may be cited as the ‘Department of Energy Standardization Act of 1997.’”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-271, § 1, Apr. 11, 1990, 104 Stat. 135, provided that: “This Act [amending section 7171 of this title and enacting provisions set out as a note under section 7171 of this title] may be cited as the ‘Federal Energy Regulatory Commission Member Term Act of 1990.’”

SHORT TITLE

Section 1 of Pub. L. 95-91 provided: “That this Act [enacting this chapter and section 916 of Title 7, Agriculture, amending sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 of Title 5, Government Organization and Employees, section 1701z-8 of Title 12, Banks and Banking, and sections 766, 790a, 790d, and 2002 of Title 15, Commerce and Trade, repealing sections 2036 and 5818 of this title and sections 763, 768, and 786 of Title 15, enacting provisions set out as a note under section 2201 of this title, and repealing provisions set out as a note under section 761 of Title 15] may be cited as the ‘Department of Energy Organization Act.’”

For short title of part E of title XXXI of div. C of Pub. L. 101-510, which enacted subchapter XIII of this chapter, as the “Department of Energy Science Education Enhancement Act”, see section 3161 of Pub. L. 101-510, set out as a note under section 7381 of this title.

For short title of part A of title V of Pub. L. 103-382, which enacted subchapter XIV of this chapter, as the “Albert Einstein Distinguished Educator Fellowship Act of 1994”, see section 511 of Pub. L. 103-382, set out as a note under section 7382 of this title.

EXECUTIVE ORDER NO. 12083

Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, as amended by Ex. Ord. No. 12121, Feb. 26, 1979, 44 F.R.

11195; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, which established the Energy Coordinating Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 20, Aug. 17, 1982, 47 F.R. 36100, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER I—DECLARATION OF FINDINGS AND PURPOSES**§ 7111. Congressional findings**

The Congress of the United States finds that—

(1) the United States faces an increasing shortage of nonrenewable energy resources;

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

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

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

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

(Pub. L. 95-91, title I, § 101, Aug. 4, 1977, 91 Stat. 567.)

§ 7112. Congressional declaration of purpose

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

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

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

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

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

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

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

(B) developing priorities necessary to meet those requirements;

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

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

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

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

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

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

(10) To establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President.

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

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

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

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

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

(16) To create an awareness of, and responsibility for, the fuel and energy needs of rural

and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development.

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

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

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

(Pub. L. 95-91, title I, §102, Aug. 4, 1977, 91 Stat. 567; Pub. L. 101-510, div. C, title XXXI, §3163, Nov. 5, 1990, 104 Stat. 1841.)

AMENDMENTS

1990—Pub. L. 101-510 substituted "chapter:" for "chapter—" in introductory provisions, capitalized the first letter of the first word in each of pars. (1) to (18), substituted a period for last semicolon in each of pars. (1) to (17), struck out "and" at end of par. (17), and added par. (19).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7133 of this title.

§ 7113. Relationship with States

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

(Pub. L. 95-91, title I, §103, Aug. 4, 1977, 91 Stat. 569.)

SUBCHAPTER II—ESTABLISHMENT OF DEPARTMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7232, 7341 of this title.

§ 7131. Establishment

There is established at the seat of government an executive department to be known as the De-

partment of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this chapter referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this chapter, under the supervision and direction of the Secretary.

(Pub. L. 95-91, title II, §201, Aug. 4, 1977, 91 Stat. 569.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7132. Principal officers

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

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

(Pub. L. 95-91, title II, §202, Aug. 4, 1977, 91 Stat. 569.)

§ 7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities

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

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

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

(A) solar energy resources;

(B) geothermal energy resources;

(C) recycling energy resources;

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

(E) the fuel cycle for nuclear energy resources.

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

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 7112 of this title.

(5) National security functions, including those transferred to the Department from the Energy Research and Development Administration which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development.

(6) Intergovernmental policies and relations, including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

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

(8) Nuclear waste management responsibilities, including—

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

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that

nothing in this paragraph shall alter or effect title to such waste;

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

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

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

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

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph,

except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

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

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

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

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

(Pub. L. 95-91, title II, §203, Aug. 4, 1977, 91 Stat. 570.)

FEDERAL POWER MARKETING ADMINISTRATION EMPLOYMENT LEVELS

Pub. L. 101-514, title V, §510, Nov. 5, 1990, 104 Stat. 2098, provided that no funds appropriated or made available were to be used by the executive branch to change employment levels determined by Administrators of the Federal Power Marketing Administrations to be necessary to carry out their responsibilities under this chapter and related laws, or to change employment levels of other Department of Energy programs to compensate for employment levels of the Federal Power Marketing Administrations, prior to repeal by Pub. L. 104-46, title V, §501, Nov. 13, 1995, 109 Stat. 419.

MARKETING AND EXCHANGE OF SURPLUS ELECTRICITY FROM NAVAJO GENERATING STATION

Pub. L. 98-381, title I, §107, Aug. 17, 1984, 98 Stat. 1339, provided that:

“(a) Subject to the provisions of any existing layoff contracts, electrical capacity and energy associated

with the United States' interest in the Navajo generating station which is in excess of the pumping requirements of the Central Arizona project and any such needs for desalting and protective pumping facilities as may be required under section 101(b)(2)(B) of the Colorado River Basin Salinity Control Act of 1974, as amended [43 U.S.C. 1571(b)(2)(B)] (hereinafter in this Act referred to as ‘Navajo surplus’) shall be marketed and exchanged by the Secretary of Energy pursuant to this section.

“(b) Navajo surplus shall be marketed by the Secretary of Energy pursuant to the plan adopted under subsection (c) of this section, directly to, with or through the Arizona Power Authority and/or other entities having the status of preference entities under the reclamation law in accordance with the preference provisions of section 9(c) of the Reclamation Project Act of 1939 [43 U.S.C. 485h(c)] and as provided in part IV, section A of the Criteria.

“(c) In the marketing and exchanging of Navajo surplus, the Secretary of the Interior shall adopt the plan deemed most acceptable, after consultation with the Secretary of Energy, the Governor of Arizona, and the Central Arizona Water Conservation District (or its successor in interest to the repayment obligation for the Central Arizona project), for the purposes of optimizing the availability of Navajo surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona project. The Secretary of the Interior, in concert with the Secretary of Energy, in accordance with section 14 of the Reclamation Project Act of 1939 [43 U.S.C. 389], shall grant electrical power and energy exchange rights with Arizona entities as necessary to implement the adopted plan: *Provided, however,* That if exchange rights with Arizona entities are not required to implement the adopted plan, exchange rights may be offered to other entities.

“(d) For the purposes provided in subsection (c) of this section, the Secretary of Energy, or the marketing entity or entities under the adopted plan, are authorized to establish and collect or cause to be established and collected, rate components, in addition to those currently authorized, and to deposit the revenues received in the Lower Colorado River Basin Development Fund to be available for such purposes and if required under the adopted plan, to credit, utilize, pay over directly or assign revenues from such additional rate components to make repayment and establish reserves for repayment of funds, including interest incurred, to entities which have advanced funds for the purposes of subsection (c) of this section: *Provided, however,* That rates shall not exceed levels that allow for an appropriate saving for the contractor.

“(e) To the extent that this section may be in conflict with any other provision of law relating to the marketing and exchange of Navajo surplus, or to the disposition of any revenues therefrom, this section shall control.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7139, 7158 of this title.

§ 7134. Federal Energy Regulatory Commission; compensation of Chairman and members

There shall be within the Department, a Federal Energy Regulatory Commission established by subchapter IV of this chapter (hereinafter referred to in this chapter as the “Commission”). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5. The Chairman and members of the Commission shall be

individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

(Pub. L. 95-91, title II, § 204, Aug. 4, 1977, 91 Stat. 571.)

§ 7135. Energy Information Administration

(a) Establishment; appointment of Administrator; compensation; qualifications; duties

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

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

(b) Delegation of functions

The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 796 of title 15) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) Functions of Director of Office of Energy Information and Analysis

In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974 [15 U.S.C. 790 et seq.], and the provisions of sections 53(d) and 59 thereof [15 U.S.C. 790b(d), 790h] shall be applicable to the Administrator in the performance of any function under this chapter.

(d) Collection or analysis of information and preparation of reports without approval

The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with re-

spect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) Annual audit

The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55¹ of part B of the Federal Energy Administration Act of 1974.

(f) Furnishing information or analysis to any other administration, commission, or office within Department

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

(g) Availability of information to public

Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5. The provisions of section 796(d) of title 15, and section 5916 of this title, shall continue to apply to any information obtained by the Administrator under such provisions.

(h) Identification and designation of "major energy producing companies"; format for financial report; accounting practices; filing of financial report; annual report of Department; definitions; confidentiality

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

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

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

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

(2) The Administrator shall develop and make effective for use during the second full calendar year following August 4, 1977, the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit

¹ See References in Text note below.

for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

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

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

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

(E) such other analyses or evaluations as the Administrator finds it necessary to achieve the purposes of this chapter.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent with the purposes and provisions of this chapter, is consistent with such accounting practices where applicable.

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

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a)² of section 7267 of this title.

(6) As used in this subsection the term—

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

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

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

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

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

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

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

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

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

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

(C) “person” has the meaning as set forth in section 796 of title 15.

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

(i) Manufacturers energy consumption survey

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

(A) quantity of fuels consumed;

(B) energy expenditures;

(C) fuel switching capabilities; and

(D) use of nonpurchased sources of energy, such as solar, wind, biomass, geothermal, waste by-products, and cogeneration.

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

(j) Collection and publication of survey results

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

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

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

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

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

(k) Survey procedure

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

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

(2) when surveying electric utilities, collect information on demand-side management programs conducted by such utilities, including information regarding the types of demand-

²So in original. Section 7267 of this title was enacted without a subsec. (a).

side management programs being operated, the quantity of measures installed, expenditures on demand-side management programs, estimates of energy savings resulting from such programs, and whether the savings estimates were verified; and

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

(I) Data collection

In order to improve the ability to evaluate the effectiveness of the Nation's energy efficiency policies and programs, the Administrator shall, in carrying out the data collection provisions of subsections (i) and (k) of this section, consider—

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

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

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

(Pub. L. 95-91, title II, §205, Aug. 4, 1977, 91 Stat. 572; Pub. L. 99-509, title III, §3101(a), Oct. 21, 1986, 100 Stat. 1888; Pub. L. 102-486, title I, §171, Oct. 24, 1992, 106 Stat. 2864.)

REFERENCES IN TEXT

The Federal Energy Administration Act of 1974, referred to in subsec. (c), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended. Part B of the Federal Energy Administration Act of 1974 is classified generally to subchapter II (§790 et seq.) of chapter 16B of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

Section 55 of part B of the Federal Energy Administration Act of 1974, referred to in subsec. (e), was classified to section 790d of Title 15, Commerce and Trade, and was repealed by Pub. L. 104-66, title I, §1051(k), Dec. 21, 1995, 109 Stat. 717.

The Energy Policy and Conservation Act, referred to in subsec. (h)(3), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

AMENDMENTS

1992—Subsec. (i)(1). Pub. L. 102-486, §171(a)(1), in introductory provisions, substituted “at least once every two years” for “on at least a triennial basis”.

Subsec. (i)(1)(D). Pub. L. 102-486, §171(a)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “use of nonpurchased sources of energy, such as cogeneration and waste by-products.”

Subsecs. (j) to (l). Pub. L. 102-486, §171(b), added subsecs. (j) to (l).

1986—Subsec. (i). Pub. L. 99-509 added subsec. (i).

END USE CONSUMPTION SURVEYS; MANUFACTURING ENERGY CONSUMPTION SURVEY

Pub. L. 104-134, title I, §101(c) [title II], Apr. 26, 1996, 110 Stat. 1321-156, 1321-188; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: “That notwithstanding section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)) or any other provision of law, funds appropriated under this heading [DEPARTMENT OF ENERGY, ENERGY INFORMATION AD-

MINISTRATION] hereafter may be used to enter into a contract for end use consumption surveys for a term not to exceed eight years: *Provided further*, That notwithstanding any other provision of law, hereafter the Manufacturing Energy Consumption Survey shall be conducted on a triennial basis.”

§ 7135a. Delegation by Secretary of energy research, etc., functions to Administrator of Energy Information Administration; prohibition against required delegation; utilization of capabilities by Secretary

Notwithstanding any other provision of law, the Secretary of Energy shall not be required to delegate to the Administrator of the Energy Information Administration any energy research, development, and demonstration function vested in the Secretary, pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.], the Federal Nonnuclear Energy Research and Development Act [42 U.S.C. 5901 et seq.], the Geothermal Research, Development and Demonstration Act [30 U.S.C. 1101 et seq.], the Electric and Hybrid Vehicle Research, Development and Demonstration Act [15 U.S.C. 2501 et seq.], the Solar Heating and Cooling Demonstration Act [42 U.S.C. 5501 et seq.], the Solar Energy Research, Development and Demonstration Act [42 U.S.C. 5551 et seq.], and the Energy Reorganization Act [42 U.S.C. 5801 et seq.]. Additionally, the Secretary may utilize the capabilities of the Energy Information Administration as he deems appropriate for the conduct of such programs.

(Pub. L. 95-238, title I, §104(b), Feb. 25, 1978, 92 Stat. 53.)

REFERENCES IN TEXT

The Atomic Energy Act, referred to in text, probably means the Atomic Energy Act of 1954, act Aug. 30, 1954, ch. 1073, 68 Stat. 921, as amended, which is classified generally to chapter 23 (§2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act, referred to in text, probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Geothermal Research, Development, and Demonstration Act, referred to in text, probably means the Geothermal Energy, Research, Development, and Demonstration Act of 1974, Pub. L. 93-410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Electric and Hybrid Vehicle Research, Development and Demonstration Act, referred to in text, probably means the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, Sept. 17, 1976, 90 Stat. 1260, as amended, which is classified generally to chapter 52 (§2501 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 15 and Tables.

The Solar Heating and Cooling Demonstration Act, referred to in text, probably means the Solar Heating and Cooling Demonstration Act of 1974, Pub. L. 93-409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§5501 et seq.) of chapter

71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Solar Energy Research, Development, and Demonstration Act, referred to in text, probably means the Solar Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93-473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Energy Reorganization Act, referred to in text, probably means the Energy Reorganization Act of 1974, Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7136. Economic Regulatory Administration; appointment of Administrator; compensation; qualifications; functions

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

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

(Pub. L. 95-91, title II, §206, Aug. 4, 1977, 91 Stat. 574.)

§ 7137. Functions of Comptroller General

The functions of the Comptroller General of the United States under section 771 of title 15 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this chapter or any other Act administered by the Department.

(Pub. L. 95-91, title II, §207, Aug. 4, 1977, 91 Stat. 574.)

§ 7138. Repealed. Pub. L. 100-504, title I, § 102(e)(1)(A), Oct. 18, 1988, 102 Stat. 2517

Section, Pub. L. 95-91, title II, §208, Aug. 4, 1977, 91 Stat. 575; Pub. L. 96-226, title II, §202, Apr. 3, 1980, 94 Stat. 315; Pub. L. 97-375, title II, §205, Dec. 21, 1982, 96 Stat. 1823, related to the Office of Inspector General in the Department of Energy, providing for (a) appointment and confirmation of Inspector General and Deputy Inspector General, removal, assistants, and compensation; (b) duties and responsibilities of Inspector

General; (c) semiannual reports to Secretary and Congress; (d) report on problems, abuses, or deficiencies relating to administration of Department programs and operations; (e) additional investigations and reports; (f) transmittal of reports, information, or documents without clearance or approval; (g) additional authority of Inspector General; (h) auditing requirements; (i) avoidance of duplication and coordination and cooperation with activities of Comptroller General; and (j) report of violations of Federal criminal law to Attorney General. See section 9 of Pub. L. 95-452, Inspector General Act of 1978, as amended, set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Oct. 18, 1988, see section 113 of Pub. L. 100-504, set out as an Effective Date of 1988 Amendment note under section 5 of Pub. L. 95-452 [Inspector General Act of 1978] in the Appendix to Title 5, Government Organization and Employees.

§ 7139. Office of Energy Research; establishment; appointment of Director; compensation; duties

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

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

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

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

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

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

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

(6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 7133 of this title, as the Secretary considers advantageous.

(Pub. L. 95-91, title II, §209, Aug. 4, 1977, 91 Stat. 577.)

§ 7140. Leasing Liaison Committee; establishment; composition

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

(Pub. L. 95-91, title II, §210, Aug. 4, 1977, 91 Stat. 577.)

§ 7141. Office of Minority Economic Impact

(a) Establishment; appointment of Director; compensation

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

(b) Advice to Secretary on effect of energy policies, regulations, and other actions of Department respecting minority participation in energy programs

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

(c) Research programs respecting effects of national energy programs, policies, and regulations of Department on minorities

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

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

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

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

(d) Management and technical assistance to minority educational institutions and business enterprises to foster participation in research, development, demonstration, and contract activities of Department

The Director may provide the management any¹ technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying

out his functions under this section, the Director may enter into contracts, in accordance with section 7256 of this title and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

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

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

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

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

(e) Loans to minority business enterprises; restriction on use of funds; interest; deposits into Treasury

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

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

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

(f) Definitions

As used in this section, the term—

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

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

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

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

(g) Authorization of appropriations

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

(Pub. L. 95-91, title II, §211, as added Pub. L. 95-619, title VI, §641, Nov. 9, 1978, 92 Stat. 3284.)

§ 7142. National Atomic Museum**(a) Recognition and status**

The museum operated by the Department of Energy and currently located at Building 20358 on Wyoming Avenue South near the corner of M street within the confines of the Kirtland Air Force Base (East), Albuquerque, New Mexico—

(1) is recognized as the official atomic museum of the United States;

(2) shall be known as the “National Atomic Museum”; and

(3) shall have the sole right throughout the United States and its possessions to have and use the name “National Atomic Museum”.

(b) Volunteers

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) recruit, train, and accept the services of individuals without compensation as volunteers for, or in aid of, interpretive functions or other services or activities of and related to the museum; and

(B) provide to volunteers incidental expenses, such as nominal awards, uniforms, and transportation.

(2) Except as provided in paragraphs (3) and (4), a volunteer who is not otherwise employed by the Federal Government is not subject to laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, because of service as a volunteer under this subsection.

(3) For purposes of chapter 171 of title 28 (relating to tort claims), a volunteer under this subsection is considered a Federal employee.

(4) For the purposes of subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries), a volunteer under this subsection is considered an employee of the United States.

(c) Authority

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) accept and use donations of money or gifts pursuant to section 7262¹ of this title, if such gifts or money are designated in a written document signed by the donor as intended for the museum, and such donations or gifts are determined by the Secretary to be suitable and beneficial for use by the museum;

(B) operate a retail outlet on the premises of the museum for the purpose of selling or dis-

tributing mementos, replicas of memorabilia, literature, materials, and other items of an informative, educational, and tasteful nature relevant to the contents of the museum; and

(C) exhibit, perform, display, and publish information and materials concerning museum mementos, items, memorabilia, and replicas thereof in any media or place anywhere in the world, at reasonable fees or charges where feasible and appropriate, to substantially cover costs.

(2) The net proceeds of activities authorized under subparagraphs (B) and (C) of paragraph (1) may be used by the National Atomic Museum for activities of the museum.

(Pub. L. 102-190, div. C, title XXXI, §3137, Dec. 5, 1991, 105 Stat. 1578; Pub. L. 103-35, title II, §203(b)(4), May 31, 1993, 107 Stat. 102.)

REFERENCES IN TEXT

Section 7262 of this title, referred to in subsec. (c)(1)(A), was repealed by Pub. L. 104-206, title V, §502, Sept. 30, 1996, 110 Stat. 3002.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103-35 struck out comma after “Secretary of Energy” in introductory provisions.

§ 7143. Office of Fissile Materials Disposition**(a) Establishment**

There shall be within the Department an Office of Fissile Materials Disposition.

(b) Designation of head of Office

The Secretary shall designate the head of the Office. The head of the Office shall report to the Under Secretary.

(c) Responsibilities of head of Office

The head of the Office shall be responsible for all activities of the Department relating to the management, storage, and disposition of fissile materials from weapons and weapons systems that are excess to the national security needs of the United States.

(Pub. L. 95-91, title II, §212, as added Pub. L. 103-337, div. C, title XXXI, §3158(a), Oct. 5, 1994, 108 Stat. 3093.)

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7301 of this title.

§ 7151. General transfers

(a) Except as otherwise provided in this chapter, there are transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and

¹ See References in Text note below.

the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in subchapter IV of this chapter, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 7172(a)(2) of this title to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

(Pub. L. 95-91, title III, §301, Aug. 4, 1977, 91 Stat. 577.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Energy, see Parts 1, 2, and 7 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

EX. ORD. NO. 12038. TRANSFER OF CERTAIN FUNCTIONS TO SECRETARY OF ENERGY

Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, as amended by Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) it is hereby ordered as follows:

SECTION 1. *Functions of the Federal Energy Administration.* In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act [subsec. (a) of this section], hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended [formerly set out as a note under 31 U.S.C. 501], relating to Federal Regional Councils, is further amended by deleting "The Federal Energy Administration" in Section 1(a)(10) and substituting "The Department of Energy", and by deleting "The Deputy Administrator of the Federal Energy Administration" in Section 3(a)(10) and substituting "The Deputy Secretary of Energy".

(b) Executive Order No. 11790 of June 25, 1974 [set out as a note under 15 U.S.C. 761], relating to the Federal Energy Administration Act of 1974, is amended by deleting "Administrator of the Federal Energy Administration" and "Administrator" wherever they appear in Sections 1 through 6 and substituting "Secretary of Energy" and "Secretary", respectively, and by deleting Section 7 through 10.

(c) Executive Order No. 11912, as amended [set out as a note under 42 U.S.C. 6201], relating to energy policy and conservation, and Proclamation No. 3279, as amended [set out as a note under 19 U.S.C. 1862], relating to imports of petroleum and petroleum products, are further amended by deleting "Administrator of the

Federal Energy Administration", "Federal Energy Administration", and "Administrator" (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting "Secretary of Energy", "Department of Energy", and "Secretary", respectively, and by deleting "the Administrator of Energy Research and Development" in Section 10(a)(1) of Executive Order No. 11912, as amended.

SEC. 2. *Functions of the Federal Power Commission.* In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act [subsec. (b) of this section], the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under 15 U.S.C. 717b], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting "Federal Power Commission" and "Commission" wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each "Secretary of Energy".

(b) Executive Order No. 11969 of February 2, 1977 [formerly set out as a note under 15 U.S.C. 717], relating to the administration of the Emergency Natural Gas Act of 1977 [formerly set out as a note under 15 U.S.C. 717], is hereby amended by deleting the second sentence in Section 1, by deleting "the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting "Chairman of the Federal Power Commission" and "Chairman" wherever those terms appear and substituting therefor "Secretary of Energy" and "Secretary", respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended [formerly set out as a note under 42 U.S.C. 1962b], relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting "from each of the following Federal departments and agencies" and substituting therefor "to be appointed by the head of each of the following Executive agencies", by deleting "Federal Power Commission" and substituting therefor "Department of Energy", and by deleting "such member to be appointed by the head of each department or independent agency he represents."

SEC. 3. *Functions of the Secretary of the Interior.* In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act [42 U.S.C. 7152], the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting "Secretary of Energy" for "Secretary of the Interior", by adding "of the Interior" after "Secretary" in Sections 2 and 3, and by adding "and the Secretary of Energy," after "the Secretary of the Interior" wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting "Secretary of the Interior" and "Department of the Interior" wherever those terms appear and substituting therefor "Secretary of Energy" and "Department of Energy", respectively.

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration.*

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act [subsec. (a) of this section] the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended [set out as a note under 50 U.S.C.

435]; Executive Order No. 10899 of December 9, 1960 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11057 of December 18, 1962 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11477 of August 7, 1969 [set out as a note under 42 U.S.C. 2187]; Executive Order No. 11752 of December 17, 1973 [formerly set out as a note under 42 U.S.C. 4331]; and Executive Order No. 11761 of January 17, 1974 [formerly set out as a note under 20 U.S.C. 1221]; are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93-438; 88 Stat. 1233) [42 U.S.C. 5801 et seq.], and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(2) Executive Order No. 11652, as amended [formerly set out as a note under 50 U.S.C. 435], relating to the classification of national security matters, is further amended by substituting "Department of Energy" for "Energy Research and Development Administration" in Sections 2(A), 7(A) and 8 and by deleting "Federal Power Commission" in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976 [formerly set out as a note under 42 U.S.C. 5841], relating to export licensing policy for nuclear materials and equipment, is amended by substituting "the Secretary of Energy" for "the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator" in Section 1(b) and for the "Administrator" in Sections 2 and 3.

(4) Executive Order No. 11905, as amended, [formerly set out as a note under 50 U.S.C. 401], relating to foreign intelligence activities, is further amended by deleting "Energy Research and Development Administration", "Administrator or the Energy Research and Development Administration", and "ERDA" wherever those terms appear and substituting "Department of Energy", "Secretary of Energy", and "DOE" respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting "Department of Energy" for "Energy Research and Development Administration":

(i) Executive Order No. 11345, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Mississippi River Basin Commission.

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions.*

(a) Executive Order No. 10480, as amended [formerly set out as a note under 50 App. U.S.C. 2153], is further amended by adding thereto the following new Sections:

"Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

"Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency

preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under 44 U.S.C. 1505].

(b) Executive Order No. 11490, as amended [formerly set out as a note under 50 App. U.S.C. 2251], is further amended by adding thereto the following new section:

"Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior."

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of section 901 [42 U.S.C. 7341] thereof and Executive Order No. 12009 of September 13, 1977 [formerly set out as a note under 42 U.S.C. 7341], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7159, 7174 of this title; title 15 section 3418; title 16 section 824a-4.

§ 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

(Pub. L. 95-238, title I, §104(a), Feb. 25, 1978, 92 Stat. 53.)

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7152. Transfers from Department of the Interior

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

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

(D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.];

(E) the power marketing functions of the Bureau of Reclamation, including the con-

struction, operation, and maintenance of transmission lines and attendant facilities; and

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

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

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

(b), (c) Repealed. Pub. L. 97-100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407

(d) Functions of Bureau of Mines

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

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

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

(3) coal preparation and analysis.

(Pub. L. 95-91, title III, § 302, Aug. 4, 1977, 91 Stat. 578; Pub. L. 97-100, title II, § 201, Dec. 23, 1981, 95 Stat. 1407; Pub. L. 104-58, title I, § 104(h), Nov. 28, 1995, 109 Stat. 560.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 104-58, title I, § 104(h), Nov. 28, 1995, 109 Stat. 560, provided that, effective as of the later of two sale dates (the date that Eklutna Hydroelectric Project is conveyed to Eklutna

Purchasers or date that Snettisham Hydroelectric Project is conveyed to Snettisham Purchaser), subsection (a) of this section is amended in par. (1), by striking subpar. (C) and redesignating subpars. (D) to (F) as (C) to (E), respectively, and, in par. (2), by striking "and the Alaska Power Administration" and inserting "and" after "Southwestern Power Administration,".

REFERENCES IN TEXT

The Bonneville Project Act of 1937, referred to in subsec. (a)(1)(D), is act Aug. 20, 1937, ch. 720, 50 Stat. 731, as amended, which is classified generally to chapter 12B (§832 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 832 of Title 16 and Tables.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1)(D), is Pub. L. 93-454, Oct. 18, 1974, 88 Stat. 1376, as amended, which is classified generally to chapter 12G (§838 et seq.) of Title 16. For complete classification of this Act to the Code, see Short Title note set out under section 838 of Title 16 and Tables.

Act of June 18, 1954, as amended by the Act of December 23, 1963, referred to in subsec. (a)(1)(F), is act June 18, 1954, ch. 310, 68 Stat. 255, which was not classified to the Code.

Act of May 15, 1910, referred to in subsec. (d), as amended, probably means act May 16, 1910, ch. 240, 36 Stat. 369, which is classified to sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1981—Subsecs. (b), (c). Pub. L. 97-100 struck out subsecs. (b) and (c) which related, respectively, to the functions of the Secretary of Energy to promulgate regulations under certain provisions of the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act and to the functions of establishing production rates for all Federal leases.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102-285, set out as a note under section 1 of Title 30, Mineral Lands and Mining.

EFFECTIVE DATE OF 1995 AMENDMENT

For effective date of amendment by Pub. L. 104-58, see section 104(h) of Pub. L. 104-58, set out below.

ALASKA POWER ADMINISTRATION ASSET SALE AND TERMINATION

Title I of Pub. L. 104-58 provided that:

“SEC. 101. SHORT TITLE.

“This title may be cited as the ‘Alaska Power Administration Asset Sale and Termination Act’.

“SEC. 102. DEFINITIONS.

“For purposes of this title:

“(1) The term ‘Eklutna’ means the Eklutna Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Eklutna Purchase Agreement.

“(2) The term ‘Eklutna Purchase Agreement’ means the August 2, 1989, Eklutna Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Eklutna Purchasers, together with any amendments thereto adopted before the enactment of this section [Nov. 28, 1995].

“(3) The term ‘Eklutna Purchasers’ means the Municipality of Anchorage doing business as Municipal

Light and Power, the Chugach Electric Association, Inc. and the Matanuska Electric Association, Inc.

“(4) The term ‘Snettisham’ means the Snettisham Hydroelectric Project and related assets as described in section 4 and Exhibit A of the Snettisham Purchase Agreement.

“(5) The term ‘Snettisham Purchase Agreement’ means the February 10, 1989, Snettisham Purchase Agreement between the Alaska Power Administration of the Department of Energy and the Alaska Power Authority and its successors in interest, together with any amendments thereto adopted before the enactment of this section.

“(6) The term ‘Snettisham Purchaser’ means the Alaska Industrial Development and Export Authority or a successor State agency or authority.

“SEC. 103. SALE OF EKLUTNA AND SNETTISHAM HYDROELECTRIC PROJECTS.

“(a) SALE OF EKLUTNA.—The Secretary of Energy is authorized and directed to sell Eklutna to the Eklutna Purchasers in accordance with the terms of this Act and the Eklutna Purchase Agreement.

“(b) SALE OF SNETTISHAM.—The Secretary of Energy is authorized and directed to sell Snettisham to the Snettisham Purchaser in accordance with the terms of this Act and the Snettisham Purchase Agreement.

“(c) COOPERATION OF OTHER AGENCIES.—The heads of other Federal departments, agencies, and instrumentalities of the United States shall assist the Secretary of Energy in implementing the sales and conveyances authorized and directed by this title.

“(d) PROCEEDS.—Proceeds from the sales required by this title shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to prepare, survey, and acquire Eklutna and Snettisham for sale and conveyance. Such preparations and acquisitions shall provide sufficient title to ensure the beneficial use, enjoyment, and occupancy by the purchasers.

“(f) CONTRIBUTED FUNDS.—Notwithstanding any other provision of law, the Alaska Power Administration is authorized to receive, administer, and expend such contributed funds as may be provided by the Eklutna Purchasers or customers or the Snettisham Purchaser or customers for the purposes of upgrading, improving, maintaining, or administering Eklutna or Snettisham. Upon the termination of the Alaska Power Administration under section 104(f), the Secretary of Energy shall administer and expend any remaining balances of such contributed funds for the purposes intended by the contributors.

“SEC. 104. EXEMPTION AND OTHER PROVISIONS.

“(a) FEDERAL POWER ACT.—(1) After the sales authorized by this Act occur, Eklutna and Snettisham, including future modifications, shall continue to be exempt from the requirements of Part I of the Federal Power Act (16 U.S.C. 791a et seq.), except as provided in subsection (b).

“(2) The exemption provided by paragraph (1) shall not affect the Memorandum of Agreement entered into among the State of Alaska, the Eklutna Purchasers, the Alaska Energy Authority, and Federal fish and wildlife agencies regarding the protection, mitigation of, damages to, and enhancement of fish and wildlife, dated August 7, 1991, which remains in full force and effect.

“(3) Nothing in this title or the Federal Power Act preempts the State of Alaska from carrying out the responsibilities and authorities of the Memorandum of Agreement.

“(b) SUBSEQUENT TRANSFERS.—Except for subsequent assignment of interest in Eklutna by the Eklutna Purchasers to the Alaska Electric Generation and Transmission Cooperative Inc. pursuant to section 19 of the Eklutna Purchase Agreement, upon any subsequent sale or transfer of any portion of Eklutna or Snettisham from the Eklutna Purchasers or the

Snettisham Purchaser to any other person, the exemption set forth in paragraph (1) of subsection (a) of this section shall cease to apply to such portion.

“(c) REVIEW.—(1) The United States District Court for the District of Alaska shall have jurisdiction to review decisions made under the Memorandum of Agreement and to enforce the provisions of the Memorandum of Agreement, including the remedy of specific performance.

“(2) An action seeking review of a Fish and Wildlife Program (‘Program’) of the Governor of Alaska under the Memorandum of Agreement or challenging actions of any of the parties to the Memorandum of Agreement prior to the adoption of the Program shall be brought not later than 90 days after the date on which the Program is adopted by the Governor of Alaska, or be barred.

“(3) An action seeking review of implementation of the Program shall be brought not later than 90 days after the challenged act implementing the Program, or be barred.

“(d) EKLUTNA LANDS.—With respect to Eklutna lands described in Exhibit A of the Eklutna Purchase Agreement:

“(1) The Secretary of the Interior shall issue rights-of-way to the Alaska Power Administration for subsequent reassignment to the Eklutna Purchasers—

“(A) at no cost to the Eklutna Purchasers;

“(B) to remain effective for a period equal to the life of Eklutna as extended by improvements, repairs, renewals, or replacements; and

“(C) sufficient for the operation of, maintenance of, repair to, and replacement of, and access to, Eklutna facilities located on military lands and lands managed by the Bureau of Land Management, including lands selected by the State of Alaska.

“(2) Fee title to lands at Anchorage Substation shall be transferred to Eklutna Purchasers at no additional cost if the Secretary of the Interior determines that pending claims to, and selections of, those lands are invalid or relinquished.

“(3) With respect to the Eklutna lands identified in paragraph 1 of Exhibit A of the Eklutna Purchase Agreement, the State of Alaska may select, and the Secretary of the Interior shall convey to the State, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85-508; 72 Stat. 339) [set out as a note preceding section 21 of Title 48, Territories and Insular Possessions], and the North Anchorage Land Agreement dated January 31, 1983. This conveyance shall be subject to the rights-of-way provided to the Eklutna Purchasers under paragraph (1).

“(e) SNETTISHAM LANDS.—With respect to the Snettisham lands identified in paragraph 1 of Exhibit A of the Snettisham Purchase Agreement and Public Land Order No. 5108, the State of Alaska may select, and the Secretary of the Interior shall convey to the State of Alaska, improved lands under the selection entitlements in section 6 of the Act of July 7, 1958 (commonly referred to as the Alaska Statehood Act, Public Law 85-508; 72 Stat. 339).

“(f) TERMINATION OF ALASKA POWER ADMINISTRATION.—Not later than one year after both of the sales authorized in section 103 have occurred, as measured by the Transaction Dates stipulated in the Purchase Agreements, the Secretary of Energy shall—

“(1) complete the business of, and close out, the Alaska Power Administration;

“(2) submit to Congress a report documenting the sales; and

“(3) return unobligated balances of funds appropriated for the Alaska Power Administration to the Treasury of the United States.

“(g) REPEALS.—(1) The Act of July 31, 1950 (64 Stat. 382) [enacting sections 312 to 312d of Title 48, Territories and Insular Possessions, and provisions formerly set out as a note under section 312 of Title 48] is repealed effective on the date that Eklutna is conveyed to the Eklutna Purchasers.

“(2) Section 204 of the Flood Control Act of 1962 (76 Stat. 1193) is repealed effective on the date that Snettisham is conveyed to the Snettisham Purchaser.

“(3) The Act of August 9, 1955 [enacting sections 1962d-12 to 1962d-14 of this title], concerning water resources investigation in Alaska (69 Stat. 618), is repealed.

“(h) DOE ORGANIZATION ACT.—As of the later of the two dates determined in paragraphs (1) and (2) of subsection (g), section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)) is amended—

“(1) in paragraph (1)—

“(A) by striking subparagraph (C); and

“(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E) respectively; and

“(2) in paragraph (2) by striking out ‘and the Alaska Power Administration’ and by inserting ‘and’ after ‘Southwestern Power Administration.’

“(i) DISPOSAL.—The sales of Eklutna and Snettisham under this title are not considered disposal of Federal surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) [see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works] or the Act of October 3, 1944, popularly referred to as the ‘Surplus Property Act of 1944’ (50 U.S.C. App. 1622).

“SEC. 105. OTHER FEDERAL HYDROELECTRIC PROJECTS.

“The provisions of this title regarding the sale of the Alaska Power Administration’s hydroelectric projects under section 103 and the exemption of these projects from Part I of the Federal Power Act [16 U.S.C. 791a et seq.] under section 104 do not apply to other Federal hydroelectric projects.”

USE OF FUNDS TO STUDY NONCOST-BASED METHODS OF PRICING HYDROELECTRIC POWER

Pub. L. 102-377, title V, §505, Oct. 2, 1992, 106 Stat. 1343, provided that: “Notwithstanding any other provision of this Act, subsequent Energy and Water Development Appropriations Acts or any other provision of law hereafter, none of the funds made available under this Act, subsequent Energy and Water Development Appropriations Acts or any other law hereafter shall be used for the purposes of conducting any studies relating or leading to the possibility of changing from the currently required ‘at cost’ to a ‘market rate’ or any other noncost-based method for the pricing of hydroelectric power by the six Federal public power authorities, or other agencies or authorities of the Federal Government, except as may be specifically authorized by Act of Congress hereafter enacted.”

TRANSFERS TO SECRETARY OF THE INTERIOR OF CERTAIN FOSSIL ENERGY RESEARCH AND DEVELOPMENT AUTHORITIES

Pub. L. 97-257, title I, §100, Sept. 10, 1982, 96 Stat. 841, provided: “That there are transferred to, and vested in, the Secretary of the Interior all functions vested in, or delegated to, the Secretary of Energy and the Department of Energy under or with respect to (1) the Act of May 16, 1910 [30 U.S.C. 1, 3, 5-7], and other authorities formerly exercised by the Bureau of Mines [now United States Bureau of Mines], but limited to research and development relating to increased efficiency of production technology of solid fuel minerals; (2) section 908 of the Surface Mining Control and Reclamation Act of 1977, relating to research and development concerning alternative coal mining technologies (30 U.S.C. 1328); (3) sections 5(g)(2), 8(a)(4), 8(a)(9), 27(b)(2)(3) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(g)(2) and 1337(a)(4) and 1337(a)(9) [and 1353(b)(2) and (3)]); and (4) section 105 of the Energy Policy and Conservation Act (42 U.S.C. 6213): *Provided further*, That the personnel employed, personnel positions, equipment, facilities, and unexpended balances of the aforementioned transferred programs shall be merged with the ‘Mines and minerals’ account of the Bureau of Mines.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7153 of this title; title 16 section 839f; title 33 section 2213.

§ 7153. Administration of leasing transfers

(a) Authority retained by Secretary of the Interior

The Secretary of the Interior shall retain any authorities not transferred under section 7152(b)¹ of this title and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 7152(b)¹ of this title with respect to the issuance or supervision of Federal leases. Nothing in section 7152(b)¹ of this title shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) Consultation with Secretary of the Interior with respect to promulgation of regulations

In exercising the authority under section 7152(b)¹ of this title to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

(c) Repealed. Pub. L. 97-100, title II, §201, Dec. 23, 1981, 95 Stat. 1407

(d) Preparation of environmental impact statement

The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 4332(2)(C) of this title for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

(Pub. L. 95-91, title III, §303, Aug. 4, 1977, 91 Stat. 579; Pub. L. 97-100, title II, §201, Dec. 23, 1981, 95 Stat. 1407.)

REFERENCES IN TEXT

Section 7152(b) of this title, referred to in subsecs. (a) and (b), was repealed by Pub. L. 97-100, title II, §201, Dec. 23, 1981, 95 Stat. 1407.

AMENDMENTS

1981—Subsec. (c). Pub. L. 97-100 struck out subsec. (c) which afforded the Secretary of Energy the opportunity to disapprove any terms and conditions on which the Secretary of the Interior proposed to issue a Federal lease.

§ 7154. Transfers from Department of Housing and Urban Development

(a) There is transferred to, and vested in, the Secretary the functions vested in the Secretary

¹ See References in Text note below.

of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976 [42 U.S.C. 6833], to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act [42 U.S.C. 6831 et seq.], shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 1701z-8 of title 12.

(Pub. L. 95-91, title III, §304, Aug. 4, 1977, 91 Stat. 580.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (a), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1125, as amended. Title III of the Energy Conservation and Production Act, known as the Energy Conservation Standards for New Buildings Act of 1976, is classified generally to subchapter II (§6831 et seq.) of chapter 81 of this title. For complete classification of the Energy Conservation and Production Act and the Energy Standards for New Buildings Act of 1976 to the Code, see Short Title note set out under section 6801 of this title and Tables.

§ 7155. Repealed. Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 95-91, title III, §306, Aug. 4, 1977, 91 Stat. 581, transferred to Secretary the functions set forth in Interstate Commerce Act and vested by law in Interstate Commerce Commission or Chairman and members thereof as related to transportation of oil by pipeline. See section 60501 of Title 49, Transportation.

§ 7156. Transfers from Department of the Navy

There are transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

- (1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;
- (2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;
- (3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;
- (4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;
- (5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and
- (6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

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

(Pub. L. 95-91, title III, §307, Aug. 4, 1977, 91 Stat. 581.)

§ 7156a. Repealed. Pub. L. 105-85, div. C, title XXXIV, §3403, Nov. 18, 1997, 111 Stat. 2059

Section, Pub. L. 96-137, §2, Dec. 12, 1979, 93 Stat. 1061, related to assignment of naval officers to key management positions within Office of Naval Petroleum and Oil Shale Reserves in Department of Energy and to position of Director.

§ 7157. Transfers from Department of Commerce

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

(Pub. L. 95-91, title III, §308, Aug. 4, 1977, 91 Stat. 581.)

§ 7158. Naval reactor and military application programs

(a) The Division of Naval Reactors established pursuant to section 2035 of this title, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Assistant Secretary to whom the Secretary has assigned the function listed in section 7133(a)(2)(E) of this title, and such organizational unit shall be deemed to be an organizational unit established by this chapter.

(b) The Division of Military Application, established by section 2035 of this title, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 2037¹ of this title, are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 7133(a)(5) of this title, and such organizational units shall be deemed to be organizational units established by this chapter.

(Pub. L. 95-91, title III, §309, Aug. 4, 1977, 91 Stat. 581.)

REFERENCES IN TEXT

This chapter, referred to in subsections (a) and (b), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 2037 of this title, referred to in subsec. (b), was repealed by Pub. L. 99-661, div. C, title I, §3137(c), Nov. 14, 1986, 100 Stat. 4066.

NAVAL NUCLEAR PROPULSION PROGRAM

Pub. L. 98-525, title XVI, §1634, Oct. 19, 1984, 98 Stat. 2649, provided that: "The provisions of Executive Order

¹ See References in Text note below.

Numbered 12344, dated February 1, 1982 [set out below], pertaining to the Naval Nuclear Propulsion Program, shall remain in force until changed by law.”

EX. ORD. NO. 12344. NAVAL NUCLEAR PROPULSION PROGRAM

Ex. Ord. No. 12344, Feb. 1, 1982, 47 F.R. 4979, provided: By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States of America, with recognition of the crucial importance to national security of the Naval Nuclear Propulsion Program, and for the purpose of preserving the basic structure, policies, and practices developed for this Program in the past and assuring that the Program will continue to function with excellence, it is hereby ordered as follows:

SECTION 1. The Naval Nuclear Propulsion Program is an integrated program carried out by two organizational units, one in the Department of Energy and the other in the Department of the Navy.

SEC. 2. Both organizational units shall be headed by the same individual so that the activities of each may continue in practice under common management. This individual shall direct the Naval Nuclear Propulsion Program in both departments. The director shall be qualified by reason of technical background and experience in naval nuclear propulsion. The director may be either a civilian or an officer of the United States Navy, active or retired.

SEC. 3. The Secretary of the Navy (through the Secretary of Defense) and the Secretary of Energy shall obtain the approval of the President to appoint the director of the Naval Nuclear Propulsion Program for their respective Departments. The director shall be appointed to serve a term of eight years, except that the Secretary of Energy and the Secretary of the Navy may, with mutual concurrence, terminate or extend the term of the respective appointments.

SEC. 4. An officer of the United States Navy appointed as director shall be nominated for the grade of Admiral. A civilian serving as director shall be compensated at a rate to be specified at the time of appointment.

SEC. 5. Within the Department of Energy, the Secretary of Energy shall assign to the director the responsibility of performing the functions of the Division of Naval Reactors transferred to the Department of Energy by Section 309(a) of the Department of Energy Organization Act (42 U.S.C. 7158), including assigned civilian power reactor programs, and any naval nuclear propulsion functions of the Department of Energy, including:

(a) direct supervision over the Bettis and Knolls Atomic Power Laboratories, the Expanded Core Facility and naval reactor prototype plants;

(b) research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto;

(c) the safety of reactors and associated naval [naval] nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public;

(d) training, including training conducted at the naval prototype reactors of the Department of Energy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of personnel who supervise, operate, or maintain naval nuclear propulsion plants; and

(e) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics and fiscal management.

SEC. 6. Within the Department of Energy, the director shall report to the Secretary of Energy, through the Assistant Secretary assigned nuclear energy functions and shall serve as a Deputy Assistant Secretary. The director shall have direct access to the Secretary of Energy and other senior officials in the Department of Energy concerning naval nuclear propulsion matters, and to all other personnel who supervise, operate or maintain naval nuclear propulsion plants and support facilities for the Department of Energy.

SEC. 7. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility to supervise all technical aspects of the Navy's nuclear propulsion work, including:

(a) research, development, design, procurement, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition, of naval nuclear propulsion plants, including components thereof, and any special maintenance and service facilities related thereto; and

(b) training programs, including Nuclear Power Schools of the Navy, and assistance and concurrence in the selection, training, qualification, and assignment of personnel reporting to the director and of Government personnel who supervise, operate, or maintain naval nuclear propulsion plants.

SEC. 8. Within the Department of the Navy, the Secretary of the Navy shall assign to the director responsibility within the Navy for:

(a) the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities, including prescribing and enforcing standards and regulations for these areas as they affect the environment and the safety and health of workers, operators, and the general public.

(b) administration of the Naval Nuclear Propulsion Program, including oversight of program support in areas such as security, nuclear safeguards and transportation, public information, procurement, logistics, and fiscal management.

SEC. 9. In addition to any other organizational assignments within the Department of the Navy, the director shall report directly to the Chief of Naval Operations. The director shall have direct access to the Secretary of the Navy and other senior officials in the Department of the Navy concerning naval nuclear propulsion matters, and to all other Government personnel who supervise, operate, or maintain naval nuclear propulsion plants and support facilities.

SEC. 10. This Order is effective on February 1, 1982.

RONALD REAGAN.

§ 7159. Transfer to Department of Transportation

Notwithstanding section 7151(a) of this title, there are transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 6361(b)(1)(B) of this title.

(Pub. L. 95-91, title III, § 310, Aug. 4, 1977, 91 Stat. 582.)

SUBCHAPTER IV—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7134, 7136, 7151, 7298, 7301, 7341 of this title.

§ 7171. Appointment and administration

(a) Federal Energy Regulatory Commission; establishment

There is established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) Composition; term of office; conflict of interest; expiration of terms

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

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after April 11, 1990, shall expire as follows:

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

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

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

(c) Duties and responsibilities of Chairman

The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) Supervision and direction of members, employees, or other personnel of Commission

In the performance of their functions, the members, employees, or other personnel of the

Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) Designation of Acting Chairman; quorum; seal

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

(f) Rules

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

(g) Powers of Commission

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

(h) Principal office of Commission

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

(i) Commission deemed agency; attorney for Commission

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

(j) Annual authorization and appropriation request

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the

amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(Pub. L. 95-91, title IV, § 401, Aug. 4, 1977, 91 Stat. 582; Pub. L. 101-271, § 2(a), (b), Apr. 11, 1990, 104 Stat. 135.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101-271 designated existing provisions as par. (1), substituted "5 years" for "four years", struck out after third sentence "The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years.", substituted "A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires." for "A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.", and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2(c) of Pub. L. 101-271 provided that: "The amendments made by this section [amending this section] apply only to persons appointed or reappointed as members of the Federal Energy Regulatory Commission after the date of enactment of this Act [Apr. 11, 1990]."

RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

Pub. L. 101-549, title VIII, § 808, Nov. 15, 1990, 104 Stat. 2690, provided that:

"(a) DEFINITION.—For purposes of this section, 'renewable energy' means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

"(b) RATE INCENTIVES STUDY.—Within 18 months after enactment [Nov. 15, 1990], the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall include, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

"(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

"(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment [Nov. 15, 1990]."

RETENTION AND USE OF REVENUES FROM LICENSING FEES, INSPECTION SERVICES, AND OTHER SERVICES AND COLLECTIONS; REDUCTION TO ACHIEVE FINAL FISCAL YEAR APPROPRIATION

Pub. L. 105-62, title III, Oct. 13, 1997, 111 Stat. 1334, provided in part: "That notwithstanding any other provision of law, not to exceed \$162,141,000 of revenues from fees and annual charges, and other services and collections in fiscal year 1998 shall be retained and used for necessary expenses in this account, and shall remain available until expended: *Provided further*, That the sum herein appropriated from the General Fund shall be reduced as revenues are received during fiscal year 1998 so as to result in a final fiscal year 1998 appropriation from the General Fund estimated at not more than \$0."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-206, title III, Sept. 30, 1996, 110 Stat. 2998.
 Pub. L. 104-46, title III, Nov. 13, 1995, 109 Stat. 416.
 Pub. L. 103-316, title III, Aug. 26, 1994, 108 Stat. 1719.
 Pub. L. 103-126, title III, Oct. 28, 1993, 107 Stat. 1330.
 Pub. L. 102-377, title III, Oct. 2, 1992, 106 Stat. 1338.
 Pub. L. 102-104, title III, Aug. 17, 1991, 105 Stat. 531.
 Pub. L. 101-514, title III, Nov. 5, 1990, 104 Stat. 2093.
 Pub. L. 101-101, title III, Sept. 29, 1989, 103 Stat. 661.
 Pub. L. 100-371, title III, July 19, 1988, 102 Stat. 870.
 Pub. L. 100-202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329-104, 1329-124.
 Pub. L. 99-500, § 101(e) [title III], Oct. 18, 1986, 100 Stat. 1783-194, 1783-208, and Pub. L. 99-591, § 101(e) [title III], Oct. 30, 1986, 100 Stat. 3341-194, 3341-208.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7192 of this title.

§ 7172. Jurisdiction of Commission

(a) Transfer of functions from Federal Power Commission

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

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natu-

ral gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

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

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825o]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717g, 717h, 717i to 717p, 717s, 717t].

(b) Repealed. Pub. L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379

(c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a)¹ of title 15 which is required by section 757 or 760a¹ of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a¹ of title 15, and section 6421 of this title.

(d) Matters involving agency determinations to be made on record after agency hearing

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

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

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

except that nothing in this subsection shall require that functions under sections 6213 and 6214 of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 7174 of this title.

(f) Limitation

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

(g) Final agency action

The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 7174 of this title, shall be final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy

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

(Pub. L. 95-91, title IV, § 402, Aug. 4, 1977, 91 Stat. 583; Pub. L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (a)(1)(A), (B), and (F), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. Parts I and II of the Federal Power Act are classified generally to subchapters I (§ 791a et seq.) and II (§ 824 et seq.), respectively, of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (a)(1)(E), (F), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Sections 753, 757, and 760a of title 15, referred to in subsec. (c), were omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-272 struck out subsec. (b) which read as follows: “There are transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.” See section 60502 of Title 49, Transportation.

¹ See References in Text note below.

OIL PIPELINE REGULATORY REFORM

Pub. L. 102-486, title XVIII, Oct. 24, 1992, 106 Stat. 3010, provided that:

“SEC. 1801. OIL PIPELINE RATEMAKING METHODOLOGY.

“(a) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act [Oct. 24, 1992], the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act [former 49 U.S.C. 1(5)].

“(b) EFFECTIVE DATE.—The final rule to be issued under subsection (a) may not take effect before the 365th day following the date of the issuance of the rule.

“SEC. 1802. STREAMLINING OF COMMISSION PROCEDURES.

“(a) RULEMAKING.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Commission shall issue a final rule to streamline procedures of the Commission relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays.

“(b) SCOPE OF RULEMAKING.—Issues to be considered in the rulemaking proceeding to be conducted under subsection (a) shall include the following:

“(1) Identification of information to be filed with an oil pipeline tariff and the availability to the public of any analysis of such tariff filing performed by the Commission or its staff.

“(2) Qualification for standing (including definitions of economic interest) of parties who protest oil pipeline tariff filings or file complaints thereto.

“(3) The level of specificity required for a protest or complaint and guidelines for Commission action on the portion of the tariff or rate filing subject to protest or complaint.

“(4) An opportunity for the oil pipeline to file a response for the record to an initial protest or complaint.

“(5) Identification of specific circumstances under which Commission staff may initiate a protest.

“(c) ADDITIONAL PROCEDURAL CHANGES.—In conducting the rulemaking proceeding to carry out subsection (a), the Commission shall identify and transmit to Congress any other procedural changes relating to oil pipeline rates which the Commission determines are necessary to avoid unnecessary regulatory costs and delays and for which additional legislative authority may be necessary.

“(d) WITHDRAWAL OF TARIFFS AND COMPLAINTS.—

“(1) WITHDRAWAL OF TARIFFS.—If an oil pipeline tariff which is filed under part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.] and which is subject to investigation is withdrawn—

“(A) any proceeding with respect to such tariff shall be terminated;

“(B) the previous tariff rate shall be reinstated; and

“(C) any amounts collected under the withdrawn tariff rate which are in excess of the previous tariff rate shall be refunded.

“(2) WITHDRAWAL OF COMPLAINTS.—If a complaint which is filed under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] with respect to an oil pipeline tariff is withdrawn, any proceeding with respect to such complaint shall be terminated.

“(e) ALTERNATIVE DISPUTE RESOLUTION.—To the maximum extent practicable, the Commission shall establish appropriate alternative dispute resolution procedures, including required negotiations and voluntary arbitration, early in an oil pipeline rate proceeding as a method preferable to adjudication in resolving disputes relating to the rate. Any proposed rates derived from implementation of such procedures shall be considered by the Commission on an expedited basis for approval.

“SEC. 1803. PROTECTION OF CERTAIN EXISTING RATES.

“(a) RATES DEEMED JUST AND REASONABLE.—Except as provided in subsection (b)—

“(1) any rate in effect for the 365-day period ending on the date of the enactment of this Act [Oct. 24, 1992] shall be deemed to be just and reasonable (within the meaning of section 1(5) of the Interstate Commerce Act [former 49 U.S.C. 1(5)]); and

“(2) any rate in effect on the 365th day preceding the date of such enactment shall be deemed to be just and reasonable (within the meaning of such section 1(5)) regardless of whether or not, with respect to such rate, a new rate has been filed with the Commission during such 365-day period; if the rate in effect, as described in paragraph (1) or (2), has not been subject to protest, investigation, or complaint during such 365-day period.

“(b) CHANGED CIRCUMSTANCES.—No person may file a complaint under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] against a rate deemed to be just and reasonable under subsection (a) unless—

“(1) evidence is presented to the Commission which establishes that a substantial change has occurred after the date of the enactment of this Act [Oct. 24, 1992]—

“(A) in the economic circumstances of the oil pipeline which were a basis for the rate; or

“(B) in the nature of the services provided which were a basis for the rate; or

“(2) the person filing the complaint was under a contractual prohibition against the filing of a complaint which was in effect on the date of enactment of this Act and had been in effect prior to January 1, 1991, provided that a complaint by a party bound by such prohibition is brought within 30 days after the expiration of such prohibition.

If the Commission determines pursuant to a proceeding instituted as a result of a complaint under section 13 of the Interstate Commerce Act that the rate is not just and reasonable, the rate shall not be deemed to be just and reasonable. Any tariff reduction or refunds that may result as an outcome of such a complaint shall be prospective from the date of the filing of the complaint.

“(c) LIMITATION REGARDING UNDULY DISCRIMINATORY OR PREFERENTIAL TARIFFS.—Nothing in this section shall prohibit any aggrieved person from filing a complaint under section 13 or section 15(1) of the Interstate Commerce Act [former 49 U.S.C. 13, 15(1)] challenging any tariff provision as unduly discriminatory or unduly preferential.

“SEC. 1804. DEFINITIONS.

“For the purposes of this title, the following definitions apply:

“(1) COMMISSION.—The term ‘Commission’ means the Federal Energy Regulatory Commission and, unless the context requires otherwise, includes the Oil Pipeline Board and any other office or component of the Commission to which the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)) are delegated.

“(2) OIL PIPELINE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘oil pipeline’ means any common carrier (within the meaning of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.]) which transports oil by pipeline subject to the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

“(B) EXCEPTION.—The term ‘oil pipeline’ does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

“(3) OIL.—The term ‘oil’ has the same meaning as is given such term for purposes of the transfer of func-

tions from the Interstate Commerce Commission to the Federal Energy Regulatory Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

“(4) RATE.—The term ‘rate’ means all charges that an oil pipeline requires shippers to pay for transportation services.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2077, 2160, 6303, 7151, 7173, 7174, 7191, 7920, 8433 of this title.

§ 7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

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

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d) of this section, the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95–91, title IV, § 403, Aug. 4, 1977, 91 Stat. 585.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7174 of this title.

§ 7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 of this title or section 60501 of title 49, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1) and (c)(1) of this title and section 60502 of title 49, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

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

- (1) concur in adoption of the rule or statement as proposed by the Secretary;
- (2) concur in adoption of the rule or statement only with such changes as it may recommend; or
- (3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Options of Secretary; final agency action

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

- (1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1) of this section;
- (2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2) of this section; or
- (3) ordering that the rule shall not be issued.

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

(Pub. L. 95–91, title IV, § 404, Aug. 4, 1977, 91 Stat. 586.)

CODIFICATION

In subsec. (a), “section 60501 of title 49” substituted for reference to section 306 of this Act, meaning section 306 of Pub. L. 95-91 [42 U.S.C. 7155], and “section 60502 of title 49” substituted for reference to section 402(b), meaning section 402(b) of Pub. L. 95-91 [42 U.S.C. 7172(b)] on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7172 of this title.

§ 7175. Right of Secretary to intervene in Commission proceedings

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

(Pub. L. 95-91, title IV, §405, Aug. 4, 1977, 91 Stat. 586.)

§ 7176. Reorganization

For the purposes of chapter 9 of title 5 the Commission shall be deemed to be an independent regulatory agency.

(Pub. L. 95-91, title IV, §406, Aug. 4, 1977, 91 Stat. 586.)

§ 7177. Access to information

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

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 825c and section 825j of title 16 and section 717i and section 717j of title 15 shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

(Pub. L. 95-91, title IV, §407, Aug. 4, 1977, 91 Stat. 587.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7178. Federal Energy Regulatory Commission fees and annual charges**(a) In general**

(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this section and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this section shall not affect the authority, requirements, exceptions, or limitations in sections 803(e) and 823a(e) of title 16.

(b) Basis for assessments

The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) Estimates

The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) Time of payment

The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) Adjustments

The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) Use of funds

All moneys received under this section shall be credited to the general fund of the Treasury.

(g) Waiver

The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

(Pub. L. 99-509, title III, §3401, Oct. 21, 1986, 100 Stat. 1890.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7919, 8411 of this title.

§ 7191. Procedures for issuance of rules, regulations, or orders**(a) Applicability of subchapter II of chapter 5 of title 5**

(1) Subject to the other requirements of this subchapter, the provisions of subchapter II of

chapter 5 of title 5 shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this chapter or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this subchapter. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this chapter, provides administrative procedure requirements in addition to the requirements provided in this subchapter, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this subchapter shall apply to the Commission to the same extent this subchapter applies to the Secretary in the exercise of any of the Commission's functions under section 7172(c)(1) of this title or which the Secretary has assigned under section 7172(e) of this title.

(b) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation

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

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

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

(c) Waiver of requirements

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

(d) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation

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

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

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

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

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

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

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

(e) Prescription of procedures for State and local government agencies

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

(Pub. L. 95-91, title V, §501, Aug. 4, 1977, 91 Stat. 587; Pub. L. 105-28, §2(a), July 18, 1997, 111 Stat. 245.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-28, §2(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

“(1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) of this section shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the

nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

“(2) Public notice of all rules, regulations, or orders described in subsection (a) of this section which are promulgated by officers of a State or local government agency pursuant to a delegation under this chapter shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

“(3) For the purposes of this subchapter, the exception from the requirements of section 553 of title 5 provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.”

Subsec. (c). Pub. L. 105-28, §2(a)(2), (3), redesignated subsec. (e) as (c) and substituted “subsection (b)” for “subsections (b), (c), and (d)”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 105-28, §2(a)(1), (2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: “Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.”

Subsecs. (e) to (g). Pub. L. 105-28, §2(a)(2), redesignated subsecs. (e) to (g) as (c) to (e), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6239, 7193, 7194, 8513, 9204 of this title.

§ 7192. Judicial review

(a) Agency action

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

(b) Review by district court of United States; removal

Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this chapter, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with

the applicable provisions of chapter 89 of title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Litigation supervision by Attorney General

Subject to the provisions of section 7171(i) of this title and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

(Pub. L. 95-91, title V, §502, Aug. 4, 1977, 91 Stat. 589.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6303, 8412, 8433, 8434 of this title.

§ 7193. Remedial orders

(a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973

If upon investigation the Secretary or his authorized representative believes that a person has violated any regulation, rule, or order described in section 7191(a) of this title promulgated pursuant to the Emergency Petroleum Allocation Act of 1973¹ [15 U.S.C. 751 et seq.], he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section “person” includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) Notice of intent to contest; final order not subject to review

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

(c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, af-

¹ See References in Text note below.

ford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) Time limits

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

(e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order

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

(f) Savings provision

The provisions of preceding provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after October 1, 1977.

(g) Retroactive application; marketing of petroleum products

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

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

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

(Pub. L. 95-91, title V, § 503, Aug. 4, 1977, 91 Stat. 590; Pub. L. 95-620, title VIII, § 805, Nov. 9, 1978, 92 Stat. 3348.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade, and was omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

AMENDMENTS

1978—Subsecs. (e), (f). Pub. L. 95-620, § 805(b), inserted "preceding provisions of" before "this section".

Subsec. (g). Pub. L. 95-620, § 805(a), added subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 3301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 4504.

§ 7194. Requests for adjustments

(a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 7191(a) of this title issued under the Federal Energy Administration Act [15 U.S.C. 761 et seq.], the Emergency Petroleum Allocation Act of 1973¹ [15 U.S.C. 751 et seq.], the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], or the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission² of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

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

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

(Pub. L. 95-91, title V, § 504, Aug. 4, 1977, 91 Stat. 590.)

REFERENCES IN TEXT

The Federal Energy Administration Act, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§ 761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which was classified generally to chapter 16A (§ 751 et seq.) of Title 15, and was omitted

¹ See References in Text note below.

² So in original. Probably should be "rescision".

from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a), is Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§791 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 4504.

§ 7195. Report to Congress; contents

Within one year after October 1, 1977, the Secretary shall submit a report to Congress concerning the actions taken to implement section 7191 of this title. The report shall include a discussion of the adequacy of such section from the standpoint of the Department and the public, including a summary of any comments obtained by the Secretary from the public about such section and implementing regulations, and such recommendations as the Secretary deems appropriate concerning the procedures required by such section.

(Pub. L. 95-91, title V, §505, Aug. 4, 1977, 91 Stat. 591.)

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

PART A—CONFLICT OF INTEREST PROVISIONS

§§ 7211, 7212. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section 7211, Pub. L. 95-91, title VI, §601, Aug. 4, 1977, 91 Stat. 591; Pub. L. 103-160, div. C, title XXXI, §3161(c)(1)(A), (B), Nov. 30, 1993, 107 Stat. 1958, related to definitions of supervisory employees and energy concern.

Section 7212, Pub. L. 95-91, title VI, §602, Aug. 4, 1977, 91 Stat. 592; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 103-160, div. C, title XXXI, §3161(b), (c)(1)(C), Nov. 30, 1993, 107 Stat. 1958, related to divestiture of energy holdings by supervisory employees.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§§ 7213 to 7217. Repealed. Pub. L. 103-160, div. C, title XXXI, §3161(a), Nov. 30, 1993, 107 Stat. 1957

Section 7213, Pub. L. 95-91, title VI, §603, Aug. 4, 1977, 91 Stat. 593, related to disclosure of energy assets.

Section 7214, Pub. L. 95-91, title VI, §604, Aug. 4, 1977, 91 Stat. 594, required, with exceptions for certain information, that supervisory employees of Department file report on prior employment.

Section 7215, Pub. L. 95-91, title VI, §605, Aug. 4, 1977, 91 Stat. 594, related to postemployment prohibitions and reporting requirements.

Section 7216, Pub. L. 95-91, title VI, §606, Aug. 4, 1977, 91 Stat. 595, prohibited former supervisory employees from participating in certain Department proceedings.

Section 7217, Pub. L. 95-91, title VI, §607, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784, related to procedures applicable to reports under former sections 7213, 7214, and 7215 of this title.

§ 7218. Repealed. Pub. L. 104-106, div. D, title XLIII, § 4304(b)(6), Feb. 10, 1996, 110 Stat. 664

Section. Pub. L. 95-91, title VI, §603, formerly §608, Aug. 4, 1977, 91 Stat. 596; renumbered §603 and amended, Pub. L. 103-160, div. C, title XXXI, §3161(c)(1)(D), (E), Nov. 30, 1993, 107 Stat. 1958, related to sanctions.

A prior section 603 of Pub. L. 95-91 was classified to section 7213 of this title prior to repeal by Pub. L. 103-160.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

PART B—PERSONNEL PROVISIONS

§ 7231. Officers and employees

(a) Authority of Secretary to appoint and fix compensation

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

(b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority

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

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

(A) when a person appointed, within four years after October 1, 1977, to fill such position under paragraph (1) leaves such position, or

(B) on the day which is four years after such date,

whichever is later.

(c) Placement of GS-16, GS-17, and GS-18 positions without regard to section 3324 of title 5; termination of authority

(1) Subject to the provisions of chapter 51 of title 5 but notwithstanding the last two sentences of section 5108(a)¹ of such title, the Sec-

¹ See References in Text note below.

retary may place at GS-16, GS-17, and GS-18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a)¹ of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections 3324 of title 5, relating to the approval by the Director of the Office of Personnel Management of appointments under GS-16, GS-17, and GS-18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this chapter and who, immediately before October 1, 1977, held a position and duties comparable to those of such position.

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

(d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation

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

(e) Determination of maximum aggregate number of positions

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

(f) Intelligence and intelligence-related positions exempt from competitive service

All positions in the Department which the Secretary determines are devoted to intelligence and intelligence-related activities of the United States Government are excepted from the competitive service, and the individuals who occupy such positions as of August 14, 1991, shall, while employed in such positions, be exempt from the competitive service.

(Pub. L. 95-91, title VI, §621, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 102-88, title IV, §403, Aug. 14, 1991, 105 Stat. 434.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (a), (b)(1), (2), and (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Section 5108(a) of title 5, referred to in subsec. (c)(1), was amended generally by Pub. L. 101-509, title V, §529

[title I, §102(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1443, and, as so amended, contains only one sentence.

This chapter, referred to in subsecs. (c)(2) and (d), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

August 14, 1991, referred to in subsec. (f), was in the original "the date of enactment of this Act", which was translated as meaning the date of enactment of Pub. L. 102-88, which enacted subsec. (f) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102-88 added subsec. (f).

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (c)(2), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL

Pub. L. 103-337, div. C, title XXXI, §3161, Oct. 5, 1994, 108 Stat. 3095, as amended by Pub. L. 105-85, div. C, title XXXI, §3139, Nov. 18, 1997, 111 Stat. 2040, provided that:

"(a) AUTHORITY.—(1) Notwithstanding any provision of title 5, United States Code, governing appointments in the competitive service and General Schedule classification and pay rates, the Secretary of Energy may—

"(A) establish and set the rates of pay for not more than 200 positions in the Department of Energy for scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department; and

"(B) appoint persons to such positions.

"(2) The rate of pay for a position established under paragraph (1) may not exceed the rate of pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(3) To the maximum extent practicable, the Secretary shall appoint persons under paragraph (1)(B) to the positions established under paragraph (1)(A) in accordance with the merit system principles set forth in section 2301 of such title.

"(4) The Secretary may not appoint more than 100 persons during fiscal year 1995 under the authority provided in this subsection.

"(b) OPM REVIEW.—(1) The Secretary shall enter into an agreement with the Director of the Office of Personnel Management under which agreement the Director shall periodically evaluate the use of the authority set forth in subsection (a)(1). The Secretary shall reimburse the Director for evaluations conducted by the Director pursuant to the agreement. Any such reimbursement shall be credited to the revolving fund referred to in section 1304(e) of title 5, United States Code.

“(2) If the Director determines as a result of such evaluation that the Secretary of Energy is not appointing persons to positions under such authority in a manner consistent with the merit system principles set forth in section 2301 of title 5, United States Code, or is setting rates of pay at levels that are not appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved, the Director shall notify the Secretary and Congress of that determination.

“(3) Upon receipt of a notification under paragraph (2), the Secretary shall—

“(A) take appropriate actions to appoint persons to positions under such authority in a manner consistent with such principles or to set rates of pay at levels that are appropriate for the qualifications and experience of the persons appointed and the duties of the positions involved; or

“(B) cease appointment of persons under such authority.

“(c) TERMINATION.—(1) The authority provided under subsection (a)(1) shall terminate on September 30, 1999.

“(2) An employee may not be separated from employment with the Department of Energy or receive a reduction in pay by reason of the termination of authority under paragraph (1).”

§ 7232. Senior positions

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

(Pub. L. 95-91, title VI, § 622, Aug. 4, 1977, 91 Stat. 597.)

§ 7233. Experts and consultants

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

(Pub. L. 95-91, title VI, § 623, Aug. 4, 1977, 91 Stat. 598.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 7234. Advisory committees

The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(Pub. L. 95-91, title VI, § 624, Aug. 4, 1977, 91 Stat. 598; Pub. L. 105-28, § 2(b)(1), July 18, 1997, 111 Stat. 245.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1997—Pub. L. 105-28 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: “Section 776 of title 15 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this chapter, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5.”

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5588 of this title.

§ 7235. Armed services personnel

(a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on August 4, 1977, in the Energy Research and Development Administration and under chapter 641 of title 10. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

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

(Pub. L. 95-91, title VI, § 625, Aug. 4, 1977, 91 Stat. 598; Pub. L. 95-509, title II, § 210, Oct. 24, 1978, 92 Stat. 1779.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-509 struck out requirement that a detailed member be charged to the limitations applicable to the Department and prohibition of such member from being charged to any statutory or other limitation or strengths applicable to the Armed Forces.

§ 7236. Executive management training in Department of Energy

(a) Establishment of training program

The Secretary of Energy shall establish and implement a management training program for personnel of the Department of Energy involved in the management of atomic energy defense activities.

(b) Training provisions

The training program shall at a minimum include instruction in the following areas:

- (1) Department of Energy policy and procedures for management and operation of atomic energy defense facilities.
- (2) Methods of evaluating technical performance.
- (3) Federal and State environmental laws and requirements for compliance with such environmental laws, including timely compliance with reporting requirements in such laws.
- (4) The establishment of program milestones and methods to evaluate success in meeting such milestones.
- (5) Methods for conducting long-range technical and budget planning.
- (6) Procedures for reviewing and applying innovative technology to environmental restoration and defense waste management.

(Pub. L. 101-189, div. C, title XXXI, §3142, Nov. 29, 1989, 103 Stat. 1680.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1990 and 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7237. Priority placement, job placement, retraining, and counseling programs for United States Department of Energy employees affected by reduction in force

(a) Definitions

(1) For the purposes of this section, the term "agency" means the United States Department of Energy.

(2) For the purposes of this section, the term "eligible employee" means any employee of the agency who—

- (A) is scheduled to be separated from service due to a reduction in force under—
 - (i) regulations prescribed under section 3502 of title 5; or
 - (ii) procedures established under section 3595 of title 5; or
- (B) is separated from service due to such a reduction in force, but does not include—
 - (i) an employee separated from service for cause on charges of misconduct or delinquency; or
 - (ii) an employee who, at the time of separation, meets the age and service requirements for an immediate annuity under subchapter III of chapter 83 or chapter 84 of title 5.

(b) Priority placement and retraining program

Not later than 30 days after September 30, 1996, the United States Department of Energy

shall establish an agency-wide priority placement and retraining program for eligible employees.

(c) Filling vacancy from outside agency

The priority placement program established under subsection (b) of this section shall include provisions under which a vacant position shall not be filled by the appointment or transfer of any individual from outside of the agency if—

- (1) there is then available any eligible employee who applies for the position within 30 days of the agency issuing a job announcement and is qualified (or can be trained or retrained to become qualified within 90 days of assuming the position) for the position; and
- (2) the position is within the same commuting area as the eligible employee's last-held position or residence.

(d) Job placement and counseling services

The head of the agency may establish a program to provide job placement and counseling services to eligible employees. A program established under subsection (d) of this section may include, but is not limited to, such services as—

- (1) career and personal counseling;
- (2) training and job search skills; and
- (3) job placement assistance, including assistance provided through cooperative arrangements with State and local employment services offices.

(Pub. L. 104-206, title III, §301, Sept. 30, 1996, 110 Stat. 2999.)

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1997, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7238. Temporary appointments for scientific and technical experts in Department of Energy research and development programs

(a) The Secretary, utilizing authority under other applicable law and the authority of this section, may appoint for a limited term, or on a temporary basis, scientists, engineers, and other technical and professional personnel on leave of absence from academic, industrial, or research institutions to work for the Department.

(b) The Department may pay, to the extent authorized for certain other Federal employees by section 5723 of title 5, travel expenses for any individual appointed for a limited term or on a temporary basis and transportation expenses of his or her immediate family and his or her household goods and personal effects from that individual's residence at the time of selection or assignment to his or her duty station. The Department may pay such travel expenses to the same extent for such an individual's return to the former place of residence from his or her duty station, upon separation from the Federal service following an agreed period of service. The Department may also pay a per diem allowance at a rate not to exceed the daily amounts prescribed under section 5702 of title 5 to such an individual, in lieu of transportation expenses of the immediate family and household goods and personal effects, for the period of his or her em-

ployment with the Department. Notwithstanding any other provision of law, the employer's contribution to any retirement, life insurance, or health benefit plan for an individual appointed for a term of one year or less, which could be extended for no more than one additional year, may be made or reimbursed from appropriations available to the Department.

(Pub. L. 104-271, title III, §301, Oct. 9, 1996, 110 Stat. 3307.)

CODIFICATION

Section was enacted as part of the Hydrogen Future Act of 1996, and not as part of the Department of Energy Organization Act which comprises this chapter.

DEFINITIONS

Section 2 of Pub. L. 104-271 provided that: "For purposes of titles II and III [enacting this section and provisions set out as a note under section 12403 of this title]—

"(1) the term 'Department' means the Department of Energy; and

"(2) the term 'Secretary' means the Secretary of Energy."

PART C—GENERAL ADMINISTRATIVE PROVISIONS

§ 7251. General authority

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

(Pub. L. 95-91, title VI, §641, Aug. 4, 1977, 91 Stat. 598.)

DEPARTMENT OF ENERGY SECURITY MANAGEMENT BOARD

Pub. L. 105-85, div. C, title XXXI, §3161, Nov. 18, 1997, 111 Stat. 2048, provided that:

"(a) ESTABLISHMENT.—(1) The Secretary of Energy shall establish a board to be known as the 'Department of Energy Security Management Board' (in this section referred to as the 'Board').

"(2) The Board shall advise the Secretary on policy matters, operational concerns, strategic planning, personnel, budget, procurement, and development of priorities relating to the security functions of the Department of Energy.

"(b) MEMBERS.—The Board shall be comprised of—

"(1) the Secretary of Energy, who shall serve as chairman;

"(2) the Director of the Office of Nonproliferation and National Security of the Department of Energy;

"(3) the Assistant Secretary of Energy for Environmental Management;

"(4) the Assistant Secretary of Energy for Defense Programs;

"(5) the Assistant Secretary of Energy for Environment, Safety, and Health;

"(6) the Associate Deputy Secretary of Energy for Field Management;

"(7) three individuals selected by the Secretary of Defense and appointed by the Secretary of Energy;

"(8) an individual selected by the Director of the Federal Bureau of Investigation and appointed by the Secretary of Energy; and

"(9) an individual selected by the Director of Central Intelligence and appointed by the Secretary of Energy.

"(c) APPOINTMENTS.—(1) The Secretary of Defense, the Director of the Federal Bureau of Investigation,

and the Director of Central Intelligence shall consult with the Secretary of Energy in selecting individuals for appointment under paragraphs (7), (8), and (9), respectively, of subsection (b).

"(2) The Secretary of Energy may not appoint as a member of the Board under paragraph (7), (8), or (9) of subsection (b) an officer or employee of the Department of Energy, an employee of a contractor or subcontractor of the Department, or an individual under contract with the Department.

"(3) The Secretary of Energy shall appoint members of the Board under paragraphs (7), (8), and (9) of subsection (b) not later than January 15, 1998.

"(d) VACANCIES.—Any vacancy in the Board shall be filled in the same manner as the original appointment.

"(e) PERSONNEL MATTERS.—(1)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Board.

"(B) All members of the Board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(2) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

"(f) APPLICABILITY OF FACAA.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Board under this section.

"(g) TERMINATION.—The Board shall terminate on October 31, 2000.

"(h) SECURITY FUNCTIONS DEFINED.—In this section, the term 'security functions' means all Department of Energy activities related to the safeguarding and security of nuclear weapons and materials, protection of classified and unclassified controlled nuclear information, and physical and personnel security."

§ 7252. Delegation

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

(Pub. L. 95-91, title VI, §642, Aug. 4, 1977, 91 Stat. 599.)

REORGANIZATION OF FIELD ACTIVITIES AND MANAGEMENT OF NATIONAL SECURITY FUNCTIONS

Pub. L. 104-206, title III, §302, Sept. 30, 1996, 110 Stat. 2999, provided that: "None of the funds appropriated by this or any other Act may be used to implement section 3140 of H.R. 3230 as reported by the Committee of Conference on July 30, 1996 [Pub. L. 104-201, set out below]. The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy and shall submit such plan to the Congress not later than 120 days after the date of enactment of this Act [Sept. 30, 1996]. The plan will specifically identify all significant functions performed by the Department's national security operations and area offices and make recommendations as to where those functions should be performed."

Pub. L. 104-201, div. C, title XXXI, §3140, Sept. 23, 1996, 110 Stat. 2833, provided that:

“(a) LIMITATION ON DELEGATION OF AUTHORITY.—(1) The Secretary of Energy, in carrying out national security programs, may delegate specific management and planning authority over matters relating to site operation of the facilities and laboratories covered by this section only to the Assistant Secretary of Energy for Defense Programs. Such Assistant Secretary may redelegate such authority only to managers of area offices of the Department of Energy located at such facilities and laboratories.

“(2) Nothing in this section may be construed as affecting the delegation by the Secretary of Energy of authority relating to reporting, management, and oversight of matters relating to the Department of Energy generally, or safety, environment, and health at such facilities and laboratories.

“(b) REQUIREMENT TO CONSULT WITH AREA OFFICES.—The Assistant Secretary of Energy for Defense Programs, in exercising any delegated authority to oversee management of matters relating to site operation of a facility or laboratory, shall exercise such authority only after direct consultation with the manager of the area office of the Department of Energy located at the facility or laboratory.

“(c) REQUIREMENT FOR DIRECT COMMUNICATION FROM AREA OFFICES.—The Secretary of Energy, acting through the Assistant Secretary of Energy for Defense Programs, shall require the head of each area office of the Department of Energy located at each facility and laboratory covered by this section to report on matters relating to site operation other than those matters set forth in subsection (a)(2) directly to the Assistant Secretary of Energy for Defense Programs, without obtaining the approval or concurrence of any other official within the Department of Energy.

“(d) DEFENSE PROGRAMS REORGANIZATION PLAN AND REPORT.—(1) The Secretary of Energy shall develop a plan to reorganize the field activities and management of the national security functions of the Department of Energy.

“(2) Not later than 120 days after the date of the enactment of this Act [Sept. 23, 1996], the Secretary shall submit to Congress a report on the plan developed under paragraph (1). The report shall specifically identify all significant functions performed by the operations offices relating to any of the facilities and laboratories covered by this section and which of those functions could be performed—

“(A) by the area offices of the Department of Energy located at the facilities and laboratories covered by this section; or

“(B) by the Assistant Secretary of Energy for Defense Programs.

“(3) The report also shall address and make recommendations with respect to other internal streamlining and reorganization initiatives that the Department could pursue with respect to military or national security programs.

“(e) DEFENSE PROGRAMS MANAGEMENT COUNCIL.—The Secretary of Energy shall establish a council to be known as the ‘Defense Programs Management Council’. The Council shall advise the Secretary on policy matters, operational concerns, strategic planning, and development of priorities relating to the national security functions of the Department of Energy. The Council shall be composed of the directors of the facilities and laboratories covered by this section and shall report directly to the Assistant Secretary of Energy for Defense Programs.

“(f) COVERED SITE OPERATIONS.—For purposes of this section, matters relating to site operation of a facility or laboratory include matters relating to personnel, budget, and procurement in national security programs.

“(g) COVERED FACILITIES AND LABORATORIES.—This section applies to the following facilities and laboratories of the Department of Energy:

“(1) The Kansas City Plant, Kansas City, Missouri.

“(2) The Pantex Plant, Amarillo, Texas.

“(3) The Y-12 Plant, Oak Ridge, Tennessee.

“(4) The Savannah River Site, Aiken, South Carolina.

“(5) Los Alamos National Laboratory, Los Alamos, New Mexico.

“(6) Sandia National Laboratories, Albuquerque, New Mexico.

“(7) Lawrence Livermore National Laboratory, Livermore, California.

“(8) The Nevada Test Site, Nevada.”

§ 7253. Reorganization

The Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this chapter, or to the transfer of functions vested by this chapter in any organizational unit or component.

(Pub. L. 95-91, title VI, § 643, Aug. 4, 1977, 91 Stat. 599.)

§ 7254. Rules and regulations

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

(Pub. L. 95-91, title VI, § 644, Aug. 4, 1977, 91 Stat. 599.)

§ 7255. Subpoena

For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 49 of title 15 with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.], the Commission shall have the same powers and authority as the Secretary has under this section.

(Pub. L. 95-91, title VI, § 645, Aug. 4, 1977, 91 Stat. 599; Pub. L. 95-621, title V, § 508(a), Nov. 9, 1978, 92 Stat. 3408.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§3301 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1978—Pub. L. 95-621 inserted provision giving the Commission the same powers and authority as the Secretary under this section for purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978.

§ 7256. Contracts, leases, etc., with public agencies and private organizations and persons

(a) General authority

The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with

public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Limitation on authority; appropriations

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

(c) Leasing of excess Department of Energy property

The Secretary may lease, upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that—

- (1) is located at a facility of the Department of Energy to be closed or reconfigured;
- (2) at the time the lease is entered into, is not needed by the Department of Energy; and
- (3) is under the control of the Department of Energy.

(d) Terms of lease

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

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

(e) Environmental concerns

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

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

may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

(f) Retention and use of rentals; report

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

(Pub. L. 95-91, title VI, § 646, Aug. 4, 1977, 91 Stat. 599; Pub. L. 103-160, div. C, title XXXI, § 3154, Nov. 30, 1993, 107 Stat. 1952.)

AMENDMENTS

1993—Subsecs. (c) to (f). Pub. L. 103-160 added subsecs. (c) to (f).

PILOT PROGRAM RELATING TO USE OF PROCEEDS OF DISPOSAL OR UTILIZATION OF CERTAIN DEPARTMENT OF ENERGY ASSETS

Pub. L. 105-85, div. C, title XXXI, § 3138, Nov. 18, 1997, 111 Stat. 2039, provided that:

“(a) PURPOSE.—The purpose of this section is to encourage the Secretary of Energy to dispose of or otherwise utilize certain assets of the Department of Energy by making available to the Secretary the proceeds of such disposal or utilization for purposes of defraying the costs of such disposal or utilization.

“(b) USE OF PROCEEDS TO DEFRAY COSTS.—(1) Notwithstanding section 3302 of title 31, United States Code, the Secretary may retain from the proceeds of the sale, lease, or disposal of an asset under subsection (c) an amount equal to the cost of the sale, lease, or disposal of the asset. The Secretary shall utilize amounts retained under this paragraph to defray the cost of the sale, lease, or disposal.

“(2) For purposes of paragraph (1), the cost of a sale, lease, or disposal shall include—

“(A) the cost of administering the sale, lease, or disposal;

“(B) the cost of recovering or preparing the asset concerned for the sale, lease, or disposal; and

“(C) any other cost associated with the sale, lease, or disposal.

“(c) COVERED TRANSACTIONS.—Subsection (b) applies to the following transactions:

“(1) The sale of heavy water at the Savannah River Site, South Carolina, that is under the jurisdiction of the Defense Environmental Management Program.

“(2) The sale of precious metals that are under the jurisdiction of the Defense Environmental Management Program.

“(3) The lease of buildings and other facilities located at the Hanford Reservation, Washington, that are under the jurisdiction of the Defense Environmental Management Program.

“(4) The lease of buildings and other facilities located at the Savannah River Site that are under the jurisdiction of the Defense Environmental Management Program.

“(5) The disposal of equipment and other personal property located at the Rocky Flats Defense Environmental Technology Site, Colorado, that is under the jurisdiction of the Defense Environmental Management Program.

“(6) The disposal of materials at the National Electronics Recycling Center, Oak Ridge, Tennessee that are under the jurisdiction of the Defense Environmental Management Program.

“(d) APPLICABILITY OF DISPOSAL AUTHORITY.—Nothing in this section shall be construed to limit the application of sections 202 and 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483 and 484(j)) to the disposal of equipment and other personal property covered by this section.

“(e) REPORT.—Not later than January 31, 1999, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and Committees on National Security and Appropriations of House of Representatives] a report on amounts retained by the Secretary under subsection (b) during fiscal year 1998.”

CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION

Section 3159 of Pub. L. 103-160, as amended by Pub. L. 103-337, div. A, title X, §1070(b)(16), Oct. 5, 1994, 108 Stat. 2857, provided that:

“(a) GOAL.—Except as provided in subsection (c), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Energy in carrying out national security programs of the Department in each of fiscal years 1994 through 2000 for the total combined amount obligated for contracts and subcontracts entered into with—

“(1) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals;

“(2) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

“(3) minority institutions (as defined in section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3))), which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1))).

“(b) AMOUNT.—(1) Except as provided in paragraph (2), the requirements of subsection (a) for any fiscal year apply to the combined total of the funds obligated for contracts entered into by the Department of Energy pursuant to competitive procedures for such fiscal year for purposes of carrying out national security programs of the Department.

“(2) In computing the combined total of funds under paragraph (1) for a fiscal year, funds obligated for such fiscal year for contracts for naval reactor programs shall not be included.

“(c) APPLICABILITY.—Subsection (a) does not apply—

“(1) to the extent to which the Secretary of Energy determines that compelling national security considerations require otherwise; and

“(2) if the Secretary notifies the Congress of such a determination and the reasons for the determination.”

SMALL BUSINESS CONCERNS PARTICIPATION IN PROGRAMS FUNDED BY DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 95-238, title II, §204, Feb. 25, 1978, 92 Stat. 59, as amended by Pub. L. 96-470, title II, §203(f), Oct. 19, 1980, 94 Stat. 2243, provided that:

“(a) In carrying out the programs for which funds are authorized by this Act [see Tables for classification], the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

“(b) The Secretary of Energy shall submit annually to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding year, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently taken to assure such participation in the future. Such report shall also contain such information as may be required by section 308 of the Act of December 31, 1975 (42 U.S.C. 5878a; 89 Stat. 1074).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7141 of this title.

§ 7256a. Costs not allowed under covered contracts

(a) In general

The following costs are not allowable under a covered contract:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Energy.

(5) Costs of membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft or by travel by other than common carrier that is not necessary for the performance of the contract and the cost of which exceeds the amount of the standard commercial fare.

(b) Regulations; costs of information provided to Congress or State legislatures and related costs

(1) Not later than 150 days after November 8, 1985, the Secretary of Energy shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications. Such regulations shall be published in accordance with section 418b of title 41.

(2) In any regulations implementing subsection (a)(2) of this section, the Secretary may not treat as not allowable (by reason of such subsection) the following costs of a contractor:

(A) Costs of providing to Congress or a State legislature, in response to a request from Congress or a State legislature, information of a factual, technical, or scientific nature, or advice of experts, with respect to topics directly related to the performance of the contract.

(B) Costs for transportation, lodging, or meals incurred for the purpose of providing such information or advice.

(c) "Covered contract" defined

In this section, "covered contract" means a contract for an amount more than \$100,000 entered into by the Secretary of Energy obligating funds appropriated for national security programs of the Department of Energy.

(d) Effective date

Subsection (a) of this section shall apply with respect to costs incurred under a covered contract on or after 30 days after the regulations required by subsection (b) of this section are issued.

(Pub. L. 99-145, title XV, §1534, Nov. 8, 1985, 99 Stat. 774; Pub. L. 100-180, div. C, title III, §3131(a), Dec. 4, 1987, 101 Stat. 1238.)

CODIFICATION

Section was enacted as part of the Department of Defense Authorization Act, 1986, and also as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100-180 designated existing provisions as par. (1) and added par. (2).

REGULATIONS

Section 3131(b) of Pub. L. 100-180 provided that: "Regulations to implement paragraph (2) of section 1534(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1986 (as added by subsection (a)) [42 U.S.C. 7256a(b)(2)] shall be prescribed not later than 90 days after the date of the enactment of this Act [Dec. 4, 1987]. Such regulations shall apply as if included in the original regulations prescribed under such section."

§ 7256b. Prohibition and report on bonuses to contractors operating defense nuclear facilities

(a) Prohibition

The Secretary of Energy may not provide any bonuses, award fees, or other form of performance- or production-based awards to a contractor operating a Department of Energy defense nuclear facility unless, in evaluating the performance or production under the contract, the Secretary considers the contractor's compliance with all applicable environmental, safety, and health statutes, regulations, and practices for determining both the size of, and the contractor's qualification for, such bonus, award fee, or other award. The prohibition in this subsection applies with respect to contracts entered into, or contract options exercised, after November 29, 1989.

(b) Report on Rocky Flats bonuses

The Secretary of Energy shall investigate the payment, from 1981 to 1988, of production bonuses to Rockwell International, the contractor operating the Rocky Flats Plant (Golden, Colorado), for purposes of determining whether the payment of such bonuses was made under fraudulent circumstances. Not later than 6 months after November 29, 1989, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of that investigation, including the Secretary's conclusions and recommendations.

(c) "Department of Energy defense nuclear facility" defined

In this section, the term "Department of Energy defense nuclear facility" has the meaning given such term by section 2286g of this title.

(d) Regulations

The Secretary of Energy shall promulgate regulations to implement subsection (a) of this section not later than 90 days after November 29, 1989.

(Pub. L. 101-189, div. C, title XXXI, §3151, Nov. 29, 1989, 103 Stat. 1682.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1990 and 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

CHANGE OF NAME

Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.

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

(Pub. L. 95-91, title VI, §647, Aug. 4, 1977, 91 Stat. 599.)

TERMINATION OR CHANGES IN ACTIVITIES OF GOVERNMENT-OWNED AND CONTRACTOR-OPERATED FACILITIES, NATIONAL LABORATORIES, ETC.; REPORTS BY SECRETARY OF ENERGY CONCERNING PROPOSALS PRIOR TO IMPLEMENTATION; CONTENTS; SUBMISSION DATE

Pub. L. 95-238, title I, §104(c), Feb. 25, 1978, 92 Stat. 53, provided that: "As part of the Department of Energy's responsibility to keep the Congress fully and currently informed, the Secretary shall make the following reports:

"(i) any proposal by the Secretary of the Department of Energy to terminate or make major changes in activities of the Government-owned and contrac-

tor-operated facilities, the national laboratories, energy research centers and the operations offices managing such laboratories, shall not be implemented until the Secretary transmits the proposal, together with all pertinent data, to the Committee on Science and Technology [now Committee on Science] of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and waits a period of thirty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees; and

“(ii) by January 31, 1978, the Secretary shall file a full and complete report on each such proposal which he has implemented, as described in the preceding paragraph, and any major program structure change with the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.”

§ 7257a. Laboratory-directed research and development programs

(a) Authority

Government-owned, contractor-operated laboratories that are funded out of funds available to the Department of Energy for national security programs are authorized to carry out laboratory-directed research and development.

(b) Regulations

The Secretary of Energy shall prescribe regulations for the conduct of laboratory-directed research and development at such laboratories.

(c) Funding

Of the funds provided by the Department of Energy to such laboratories for national security activities, the Secretary shall provide a specific amount, not to exceed 6 percent of such funds, to be used by such laboratories for laboratory-directed research and development.

(d) “Laboratory-directed research and development” defined

For purposes of this section, the term “laboratory-directed research and development” means research and development work of a creative and innovative nature which, under the regulations prescribed pursuant to subsection (b) of this section, is selected by the director of a laboratory for the purpose of maintaining the vitality of the laboratory in defense-related scientific disciplines.

(Pub. L. 101-510, div. C, title XXXI, §3132, Nov. 5, 1990, 104 Stat. 1832.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7257c of this title.

§ 7257b. Annual report on expenditures of Department of Energy Laboratory Directed Research and Development Program

(1) Not later than February 1 each year, the Secretary of Energy shall submit to the congressional defense committees a report on the funds

expended during the preceding fiscal year on activities under the Department of Energy Laboratory Directed Research and Development Program. The purpose of the report is to permit an assessment of the extent to which such activities support the national security mission of the Department of Energy.

(2) Each report shall be prepared by the officials responsible for Federal oversight of the funds expended on activities under the program.

(3) Each report shall set forth the criteria utilized by the officials preparing the report in determining whether or not the activities reviewed by such officials support the national security mission of the Department.

(Pub. L. 104-201, div. C, title XXXI, §3136(b), Sept. 23, 1996, 110 Stat. 2831; Pub. L. 105-85, div. C, title XXXI, §3137(c), Nov. 18, 1997, 111 Stat. 2039.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1997, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1997—Par. (1). Pub. L. 105-85 substituted “Not later than February 1 each year, the Secretary of Energy shall submit” for “The Secretary of Energy shall annually submit”.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives, see section 3 of Pub. L. 104-201, 110 Stat. 2439.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7257c of this title.

§ 7257c. Limitations on use of funds for laboratory directed research and development purposes

(a) General limitations

(1) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for weapons activities may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the national security mission of the Department of Energy.

(2) No funds authorized to be appropriated or otherwise made available to the Department of Energy in any fiscal year after fiscal year 1997 for environmental restoration, waste management, or nuclear materials and facilities stabilization may be obligated or expended for activities under the Department of Energy Laboratory Directed Research and Development Program, or under any Department of Energy technology transfer program or cooperative research and development agreement, unless such activities support the environmental restoration mission, waste management mission, or mate-

rials stabilization mission, as the case may be, of the Department of Energy.

(b) Limitation in fiscal year 1998 pending submittal of annual report

Not more than 30 percent of the funds authorized to be appropriated or otherwise made available to the Department of Energy in fiscal year 1998 for laboratory directed research and development may be obligated or expended for such research and development until the Secretary of Energy submits to the congressional defense committees the report required by section 7257b of this title in 1998.

(c) Omitted

(d) Assessment of funding level for laboratory directed research and development

The Secretary shall include in the report submitted under such section 7257b(1) of this title in 1998 an assessment of the funding required to carry out laboratory directed research and development, including a recommendation for the percentage of the funds provided to Government-owned, contractor-operated laboratories for national security activities that should be made available for such research and development under section 7257a(c) of this title.

(e) "Laboratory directed research and development" defined

In this section, the term "laboratory directed research and development" has the meaning given that term in section 7257a(d) of this title.

(Pub. L. 105-85, div. C, title XXXI, §3137, Nov. 18, 1997, 111 Stat. 2038.)

CODIFICATION

Section is comprised of section 3137 of Pub. L. 105-85. Subsec. (c) of section 3137 of Pub. L. 105-85 amended section 7257b of this title.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of the Department of Energy Organization Act which comprises this chapter.

"CONGRESSIONAL DEFENSE COMMITTEES" DEFINED

Congressional defense committees means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives, see section 3 of Pub. L. 105-85, 111 Stat. 1645.

§ 7258. Facilities construction

(a) Employees and dependents stationed at remote locations

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

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

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) Medical treatment at reasonable prices

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

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

(Pub. L. 95-91, title VI, §648, Aug. 4, 1977, 91 Stat. 600.)

§ 7259. Use of facilities

(a) Facilities of United States and foreign governments

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

(b) Facilities under custody of Secretary

In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in section 472(e) of title 40.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appro-

priations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

(Pub. L. 95-91, title VI, § 649, Aug. 4, 1977, 91 Stat. 600.)

§ 7260. Field offices

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

(Pub. L. 95-91, title VI, § 650, Aug. 4, 1977, 91 Stat. 601.)

§ 7261. Acquisition of copyrights, patents, etc.

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

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

(Pub. L. 95-91, title VI, § 651, Aug. 4, 1977, 91 Stat. 601.)

§ 7261a. Protection of sensitive technical information

(a) Property rights in inventions and discoveries; timely determination; reports to Congressional committees

(1) Whenever any contractor makes an invention or discovery to which the title vests in the Department of Energy pursuant to exercise of section 202(a)(ii) or (iv) of title 35, or pursuant to section 2182 of this title or section 5908 of this title in the course of or under any Government contract or subcontract of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy and the contractor requests waiver of any or all of the Government's property rights, the Secretary of Energy may decide to waive the Government's rights and assign the rights in such invention or discovery.

(2) Such decision shall be made within 150 days after the date on which a complete request for waiver of such rights has been submitted to the Secretary by the contractor. For purposes of this paragraph, a complete request includes such information, in such detail and form, as the Secretary by regulation prescribes as necessary to allow the Secretary to take into consideration the matters described in subsection (b) of this section in making the decision.

(3) If the Secretary fails to make the decision within such 150-day period, the Secretary shall

submit to the Committees on Armed Services of the House of Representatives and the Senate, within 10 days after the end of the 150-day period, a report on the reasons for such failure. The submission of such report shall not relieve the Secretary of the requirement to make the decision under this section. The Secretary shall, at the end of each 30-day period after submission of the first report during which the Secretary continues to fail to make the decision required by this section, submit another report on the reasons for such failure to the committees listed in this paragraph.

(b) Matters to be considered

In making a decision under this section, the Secretary shall consider, in addition to the applicable policies of section 2182 of this title or subsections (c) and (d) of section 5908 of this title—

(1) whether national security will be compromised;

(2) whether sensitive technical information (whether classified or unclassified) under the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy for which dissemination is controlled under Federal statutes and regulations will be released to unauthorized persons;

(3) whether an organizational conflict of interest contemplated by Federal statutes and regulations will result; and

(4) whether failure to assert such a claim will adversely affect the operation of the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy.

(Pub. L. 99-661, div. C, title I, § 3131, Nov. 14, 1986, 100 Stat. 4062; Pub. L. 100-180, div. C, title III, § 3135(a), Dec. 4, 1987, 101 Stat. 1240.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 and also as part of the National Defense Authorization Act for Fiscal Year 1987, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-180 designated existing provisions as par. (1), struck out at end “Such decision shall be made within a reasonable time (which shall usually be six months from the date of the request by the contractor for assignment of such rights).”, and added pars. (2) and (3).

CHANGE OF NAME

Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 3135(b) of Pub. L. 100-180 provided that: “Paragraphs (2) and (3) of section 3131(a) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 [subsec. (a)(2), (3) of this section] (as added by subsection (a)) shall apply with respect to waiver requests

submitted by contractors under that section after March 1, 1988.”

§ 7261b. Technology transfer to small businesses

(1) The Secretary of Energy shall establish a program to facilitate and encourage the transfer of technology to small businesses and shall issue guidelines relating to the program not later than May 1, 1993.

(2) For the purposes of this section, the term “small business” means a business concern that meets the applicable size standards prescribed pursuant to section 632(a) of title 15.

(Pub. L. 102-484, div. C, title XXXI, § 3135(b), Oct. 23, 1992, 106 Stat. 2641.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7262. Repealed. Pub. L. 104-206, title V, § 502, Sept. 30, 1996, 110 Stat. 3002

Section, Pub. L. 95-91, title VI, § 652, Aug. 4, 1977, 91 Stat. 601, authorized Secretary to accept gifts, bequests, and devises of property for purpose of aiding or facilitating work of Department.

CODIFICATION

Pub. L. 104-206, which directed the repeal of 42 U.S.C. 7262, was executed by repealing section 652 of Pub. L. 95-91, which was classified to this section, to reflect the probable intent of Congress.

§ 7263. Capital fund

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and

prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

(Pub. L. 95-91, title VI, § 653, Aug. 4, 1977, 91 Stat. 601.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7258, 7259 of this title.

§ 7264. Seal of Department

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

(Pub. L. 95-91, title VI, § 654, Aug. 4, 1977, 91 Stat. 602.)

§ 7265. Regional Energy Advisory Boards

(a) Establishment; membership

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

(b) Observers

Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act [42 U.S.C. 3181 et seq.] shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Recommendations of Board

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

(d) Notice of reasons not to adopt recommendations

If any Regional Advisory Board makes specific recommendations pursuant to subsection (c) of this section, the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

(Pub. L. 95-91, title VI, § 655, Aug. 4, 1977, 91 Stat. 602.)

REFERENCES IN TEXT

The Public Works and Economic Development Act, referred to in subsec. (b), is Pub. L. 89-136, Aug. 26, 1965,

79 Stat. 552, as amended. Title V of the Public Works and Economic Development Act was classified generally to subchapter V (§3181 et seq.) of chapter 38 of this title prior to repeal by Pub. L. 97-35, title XVIII, §1821(a)(8), Aug. 13, 1981, 95 Stat. 766. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

§ 7266. Designation of conservation officers

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

(Pub. L. 95-91, title VI, §656, Aug. 4, 1977, 91 Stat. 602.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8257 of this title.

§ 7267. Annual report

The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following October 1, 1977, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 774 of title 15, section 6325(c) of this title, section 10224(c) of this title, section 5877 of this title, and section 5914 of this title, and shall include:

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

(A) areas outside standard metropolitan statistical areas; and

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

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities;

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

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

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

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

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

(Pub. L. 95-91, title VI, §657, Aug. 4, 1977, 91 Stat. 603; Pub. L. 104-66, title I, §1052(g), Dec. 21, 1995, 109 Stat. 718.)

AMENDMENTS

1995—Pub. L. 104-66 inserted “section 6325(c) of this title, section 10224(c) of this title,” after “section 774 of title 15,” in introductory provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5562, 6806, 7135, 8235g of this title; title 15 section 780; title 22 section 3142.

§ 7268. Leasing report

The Secretary of the Interior shall submit to the Congress not later than one year after August 4, 1977, a report on the organization of the leasing operations of the Federal Government, together with any recommendations for reorganizing such functions may deem necessary or appropriate.

(Pub. L. 95-91, title VI, § 658, Aug. 4, 1977, 91 Stat. 604.)

§ 7269. Transfer of funds

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

(Pub. L. 95-91, title VI, § 659, Aug. 4, 1977, 91 Stat. 604.)

§ 7269a. Transfer of funds between appropriations for Department of Energy activities

Not to exceed 5 per centum of any appropriation made available for Department of Energy activities funded in this Act or subsequent Energy and Water Development Appropriations Acts may on and after October 2, 1992, be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 5 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committees on Appropriations of the House and Senate.

(Pub. L. 102-377, title III, § 302, Oct. 2, 1992, 106 Stat. 1339.)

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7269b. Transfer of unexpended appropriation balances

The unexpended balances of prior appropriations provided for activities in this Act or subsequent Energy and Water Development Appropriations Acts may on and after October 2, 1992, be transferred to appropriation accounts for such activities established pursuant to this title.¹ Balances so transferred may be merged with funds in the applicable established accounts and thereafter may be accounted for as

¹ See References in Text note below.

one fund for the same time period as originally enacted.

(Pub. L. 102-377, title III, § 303, Oct. 2, 1992, 106 Stat. 1339.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102-377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7270. Authorization of appropriations

Appropriations to carry out the provisions of this chapter shall be subject to annual authorization.

(Pub. L. 95-91, title VI, § 660, Aug. 4, 1977, 91 Stat. 604.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6247, 7351, 9009, 9312 of this title.

§ 7270a. Guards for Strategic Petroleum Reserve facilities

Under guidelines prescribed by the Secretary and concurred with by the Attorney General, employees of the Department of Energy and employees of contractors and subcontractors (at any tier) of the Department of Energy, while discharging their official duties of protecting the Strategic Petroleum Reserve (established under part B of title I of the Energy Policy and Conservation Act [42 U.S.C. 6231 et seq.]) or its storage or related facilities or of protecting persons upon the Strategic Petroleum Reserve or its storage or related facilities, may—

(1) carry firearms, if designated by the Secretary and qualified for the use of firearms under the guidelines; and

(2) arrest without warrant any person for an offense against the United States—

(A) in the case of a felony, if the employee has reasonable grounds to believe that the person—

(i) has committed or is committing a felony; and

(ii) is in or is fleeing from the immediate area of the felony; and

(B) in the case of a felony or misdemeanor, if the violation is committed in the presence of the employee.

(Pub. L. 95-91, title VI, § 661, as added Pub. L. 100-531, § 1(a), Oct. 25, 1988, 102 Stat. 2652.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title I of the Act is classified generally to part B (§ 6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7270b. Trespass on Strategic Petroleum Reserve facilities

(a) The Secretary may issue regulations relating to the entry upon or carrying, transporting,

or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or onto the Strategic Petroleum Reserve, its storage or related facilities, or real property subject to the jurisdiction, administration, or in the custody of the Secretary under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247). The Secretary shall post conspicuously, on the property subject to the regulations, notification that the property is subject to the regulations.

(b) Whoever willfully violates a regulation of the Secretary issued under subsection (a) of this section shall be guilty of a misdemeanor and punished upon conviction by a fine of not more than \$5,000, imprisonment for not more than one year, or both.

(Pub. L. 95-91, title VI, §662, as added Pub. L. 100-531, §1(a), Oct. 25, 1988, 102 Stat. 2652.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended. Part B of title I of the Act is classified generally to part B (§6231 et seq.) of subchapter I of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7271. Common defense and security program requests of single authorization of appropriations

The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.

(Pub. L. 95-509, title II, §208, Oct. 24, 1978, 92 Stat. 1779.)

CODIFICATION

Section was enacted as part of Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1979, and not as part of Department of Energy Organization Act which comprises this chapter.

NUCLEAR WEAPONS CAPITAL INVESTMENT REQUIREMENTS STUDY; SUBMITTAL TO CONGRESS

Section 209 of Pub. L. 95-509 directed Secretary to conduct a study of the status of all Government-owned, contractor-operated, plant, capital equipment, facilities, and utilities which support United States nuclear weapons program and submit results of study to Congress at same time that Department of Energy authorization request for fiscal year 1980 was submitted to Congress.

§ 7271a. Repealed. Pub. L. 105-85, div. C, title XXXI, § 3152(h), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 101-189, div. C, title XXXI, §3143, Nov. 29, 1989, 103 Stat. 1681, related to major Department of Energy national security programs.

§ 7271b. Requirement for annual five-year budget for national security programs of Department of Energy

(a) Requirement

The Secretary of Energy shall prepare each year a budget for the national security programs of the Department of Energy for the five-year period beginning in the year the budget is prepared. Each budget shall contain the estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the national security programs during the five-year period covered by the budget and shall be at a level of detail comparable to that contained in the budget submitted by the President to Congress under section 1105 of title 31.

(b) Submittal

The Secretary shall submit each year to the congressional defense committees the budget required under subsection (a) of this section in that year at the same time as the President submits to Congress the budget for the coming fiscal year pursuant to such section 1105.

(Pub. L. 104-201, div. C, title XXXI, §3155, Sept. 23, 1996, 110 Stat. 2841.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1997, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following authorization act:

Pub. L. 101-189, div. C, title XXXI, §3144, Nov. 29, 1989, 103 Stat. 1681.

REQUIREMENTS FOR DEPARTMENT OF ENERGY WEAPONS ACTIVITIES BUDGETS FOR FISCAL YEARS AFTER FISCAL YEAR 1996

Pub. L. 104-106, div. C, title XXXI, §3159, Feb. 10, 1996, 110 Stat. 626, required that weapons activities budget of Department of Energy be developed in accordance with the Nuclear Posture Review, the Post Nuclear Posture Review Stockpile Memorandum currently under development, and programmatic and technical requirements associated with the review and memorandum, and required Secretary of Energy to include in materials submitted to Congress in support of budget a long-term program plan, and a near-term program plan, for certification and stewardship of nuclear weapons stockpile, prior to repeal by Pub. L. 105-85, div. C, title XXXI, §3152(d), Nov. 18, 1997, 111 Stat. 2042.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives, see section 3 of Pub. L. 104-201, 110 Stat. 2439.

§ 7271c. Repealed. Pub. L. 105-85, div. C, title XXXI, § 3152(b), Nov. 18, 1997, 111 Stat. 2042

Section, Pub. L. 104-201, div. C, title XXXI, §3156, Sept. 23, 1996, 110 Stat. 2841, related to requirements for Department of Energy weapons activities budgets for fiscal years after fiscal year 1997.

§ 7272. Restriction on licensing requirement for certain defense activities and facilities

None of the funds authorized to be appropriated by this or any other Act may be used for any purpose related to licensing of any defense activity or facility of the Department of Energy by the Nuclear Regulatory Commission.

(Pub. L. 96-540, title II, §210, Dec. 17, 1980, 94 Stat. 3202.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-540, Dec. 17, 1980, 94 Stat. 3197, known as the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, which insofar as classified to the Code, enacted sections 7272 and 7273 of this title.

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:

Pub. L. 96-164, title II, §210, Dec. 29, 1979, 93 Stat. 1264.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7273 of this title.

§ 7273. Restriction on use of funds to pay penalties under Clean Air Act

None of the funds authorized to be appropriated by this or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.

(Pub. L. 96-540, title II, §211, Dec. 17, 1980, 94 Stat. 3203.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-540, Dec. 17, 1980, 94 Stat. 3197, known as the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1981, which insofar as classified to the Code, enacted sections 7272 and 7273 of this title.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of

Nuclear Energy Authorization Act of 1981, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations act:

Pub. L. 96-164, title II, §211, Dec. 29, 1979, 93 Stat. 1264.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7272 of this title.

§ 7273a. Restriction on use of funds to pay penalties under environmental laws

(a) Restriction

Funds appropriated to the Department of Energy for the Naval Nuclear Propulsion Program or the nuclear weapons programs or other atomic energy defense activities of the Department of Energy may not be used to pay a penalty, fine, or forfeiture in regard to a defense activity or facility of the Department of Energy due to a failure to comply with any environmental requirement.

(b) Exception

Subsection (a) of this section shall not apply with respect to an environmental requirement if—

(1) the President fails to request funds for compliance with the environmental requirement; or

(2) the Congress has appropriated funds for such purpose (and such funds have not been sequestered, deferred, or rescinded) and the Secretary of Energy fails to use the funds for such purpose.

(Pub. L. 99-661, div. C, title I, §3132, Nov. 14, 1986, 100 Stat. 4063.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987 and also as part of the National Defense Authorization Act for Fiscal Year 1987, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7273b. Security investigations

(1) No funds appropriated to the Department of Energy may be obligated or expended for the conduct of an investigation by the Department of Energy or any other Federal department or agency for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Energy determines both of the following:

(A) That a current, complete investigation file is not available from any other department or agency of the Federal government with respect to that individual or facility.

(B) That no other department or agency of the Federal government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(2) For purposes of paragraph (1)(A), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Pub. L. 101-510, div. C, title XXXI, §3104(d), Nov. 5, 1990, 104 Stat. 1828.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7274. Environmental impact statements relating to defense facilities of Department of Energy

(1) The Secretary may not proceed with the preparation of an environmental impact statement relating to the construction or operation of a defense facility of the Department of Energy if the estimated cost of preparing such statement exceeds \$250,000 unless—

(A) the Secretary has notified the Committees on Armed Services of the Senate and the House of Representatives of his intent to prepare such statement and a period of thirty days has expired after the date on which such notice was received by such committees; or

(B) the Secretary has received from each such committee, before the expiration of such thirty-day period, a written notice that the committee agrees with the decision of the Secretary regarding the preparation of such statement.

(2) The provisions of paragraph (1) shall not apply in the case of any environmental impact statement on which the Secretary began preparation before December 4, 1981.

(Pub. L. 97-90, title II, §212(b), Dec. 4, 1981, 95 Stat. 1171.)

CODIFICATION

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1982, and not as part of the Department of Energy Organization Act which comprises this chapter.

CHANGE OF NAME

Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE REPORT REQUIREMENT

Pub. L. 101-510, div. C, title XXXI, §3133, Nov. 5, 1990, 104 Stat. 1832, directed Secretary of Energy, not later than 30 days after the end of each quarter of fiscal years 1991 and 1992, to submit to Congress a brief report on Department of Energy's compliance with National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), which was to contain a brief description of each proposed action to be taken by the Department of Energy, the environmental impact of which was not clearly insignificant, and a description of the steps taken or proposed to be taken by the Department of Energy to assess the environmental impact of the proposed action, and if the Secretary found that the proposed action of the Department of Energy would have no significant impact, the Secretary was to include the rationale for that determination.

§ 7274a. Defense waste cleanup technology program

(a) Establishment of program

The Secretary of Energy shall establish and carry out a program of research for the develop-

ment of technologies useful for (1) the reduction of environmental hazards and contamination resulting from defense waste, and (2) environmental restoration of inactive defense waste disposal sites.

(b) Coordination of research activities

(1) In order to ensure nonduplication of research activities by the Department of Energy regarding technologies referred to in subsection (a) of this section, the Secretary shall coordinate the research activities of the Department of Energy relating to the development of such technologies with the research activities of the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies relating to the same matter.

(2) To the extent that funds are otherwise available for obligation, the Secretary may enter into cooperative agreements with the Environmental Protection Agency, the Department of Defense, and other appropriate Federal agencies for the conduct of research for the development of technologies referred to in subsection (a) of this section.

(c) Definitions

As used in this section:

(1) The term "defense waste" means waste, including radioactive waste, resulting primarily from atomic energy defense activities of the Department of Energy.

(2) The term "inactive defense waste disposal site" means any site (including any facility) under the control or jurisdiction of the Secretary of Energy which is used for the disposal of defense waste and is closed to the disposal of additional defense waste, including any site that is subject to decontamination and decommissioning.

(Pub. L. 101-189, div. C, title XXXI, §3141, Nov. 29, 1989, 103 Stat. 1679; Pub. L. 105-85, div. C, title XXXI, §3152(g), Nov. 18, 1997, 111 Stat. 2042.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1990 and 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1997—Subsecs. (c), (d). Pub. L. 105-85 redesignated subsec. (d) as (c) and struck out former subsec. (c) which required Secretary of Energy to submit to Congress not later than Apr. 1 each year a report on research activities of Department of Energy for development of technologies referred to in subsec. (a).

§ 7274b. Reports in connection with permanent closures of Department of Energy defense nuclear facilities

(a) Training and job placement services plan

Not later than 120 days before a Department of Energy defense nuclear facility (as defined in section 2286g of this title) permanently ceases all production and processing operations, the Secretary of Energy must submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of the training and job placement services needed to enable the employees at such facility to obtain employment in the envi-

ronmental remediation and cleanup activities at such facility. The discussion shall include the actions that should be taken by the contractor operating and managing such facility to provide retraining and job placement services to employees of such contractor.

(b) Closure report

Upon the permanent cessation of production operations at a Department of Energy defense nuclear facility, the Secretary of Energy shall submit to Congress a report containing—

- (1) a complete survey of environmental problems at the facility;
- (2) budget quality data indicating the cost of environmental restoration and other remediation and cleanup efforts at the facility; and
- (3) a discussion of the proposed cleanup schedule.

(Pub. L. 101-189, div. C, title XXXI, §3156, Nov. 29, 1989, 103 Stat. 1683.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1990 and 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

CHANGE OF NAME

Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 7274c. Report on environmental restoration expenditures

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the Secretary of Energy shall submit to Congress a report on how the environmental restoration and waste management funds for defense activities of the Department of Energy were expended during the fiscal year preceding the fiscal year during which the budget is submitted. The report shall include details on expenditures by operations office, installation, budget category, and activity. The report also shall include any schedule changes or modifications to planned activities for the fiscal year in which the budget is submitted.

(Pub. L. 101-510, div. C, title XXXI, §3134, Nov. 5, 1990, 104 Stat. 1833.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1991, and not as part of the Department of Energy Organization Act which comprises this chapter.

DEPARTMENT OF ENERGY MANAGEMENT PLAN FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES

Section 3135 of Pub. L. 101-510 provided that:

“(a) PLAN.—The Secretary of Energy shall develop a comprehensive five-year plan for the management of environmental restoration and waste management activities under the jurisdiction of the Department of Energy.

“(b) REPORT.—Not later than June 1, 1991, the Secretary of Energy shall submit to Congress a report on the management plan developed under subsection (a). The report shall include the following:

“(1) A description of management capabilities necessary to carry out environmental programs covered by the management plan for the next five years.

“(2) A description of current Department of Energy management capabilities and inadequacies.

“(3) A description of the technical resources, including staff and management information systems, needed to carry out the management plan.

“(4) A description of assistance from other Federal agencies and private contractors included in the management plan.

“(5) A description of the cost verification and quality control elements included in the management plan.”

§ 7274d. Worker protection at nuclear weapons facilities

(a) Training grant program

(1) The Secretary of Energy is authorized to award grants to organizations referred to in paragraph (2) in order for such organizations—

(A) to provide training and education to persons who are or may be engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and

(B) to develop curricula for such training and education.

(2)(A) Subject to subparagraph (B), the Secretary is authorized to award grants under paragraph (1) to non-profit organizations that have demonstrated (as determined by the Secretary) capabilities in—

(i) implementing and conducting effective training and education programs relating to the general health and safety of workers; and

(ii) identifying, and involving in training, groups of workers whose duties include hazardous substance response or emergency response.

(B) The Secretary shall give preference in the award of grants under this section to employee organizations and joint labor-management training programs that are grant recipients under section 9660a of this title.

(3) An organization awarded a grant under paragraph (1) shall carry out training, education, or curricula development pursuant to Department of Energy orders relating to employee safety training, including orders numbered 5480.4 and 5480.11.

(b) Enforcement of employee safety standards

(1) Subject to paragraph (2), the Secretary shall assess civil penalties against any contractor of the Department of Energy who (as determined by the Secretary)—

(A) employs individuals who are engaged in hazardous substance response or emergency response at Department of Energy nuclear weapons facilities; and

(B) fails (i) to provide for the training of such individuals to carry out such hazardous substance response or emergency response, or (ii) to certify to the Department of Energy that such employees are adequately trained for such response pursuant to orders issued by the Department of Energy relating to employee safety training (including orders numbered 5480.4 and 5480.11).

(2) Civil penalties assessed under this subsection may not exceed \$5,000 for each day in

which a failure referred to in paragraph (1)(B) occurs.

(c) Regulations

The Secretary shall prescribe regulations to carry out this section.

(d) “Hazardous substance” defined

For the purposes of this section, the term “hazardous substance” includes radioactive waste and mixed radioactive and hazardous waste.

(e) Funding

Of the funds authorized to be appropriated pursuant to section 3101(9)(A), \$10,000,000 may be used for the purpose of carrying out this section.

(Pub. L. 102-190, div. C, title XXXI, §3131, Dec. 5, 1991, 105 Stat. 1571.)

REFERENCES IN TEXT

Section 3101(9)(A), referred to in subsec. (e), is section 3101(9)(A) of Pub. L. 102-190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1564, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7274e. Scholarship and fellowship program for environmental restoration and waste management

(a) Establishment

The Secretary of Energy shall conduct a scholarship and fellowship program for the purpose of enabling individuals to qualify for employment in environmental restoration and waste management positions in the Department of Energy. The scholarship and fellowship program shall be known as the “Marilyn Lloyd Scholarship and Fellowship Program”.

(b) Eligibility

To be eligible to participate in the scholarship and fellowship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a));

(2) be pursuing a program of education that leads to an appropriate higher education degree in a qualifying field of study, as determined by the Secretary;

(3) sign an agreement described in subsection (c) of this section;

(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

(5) meet such other requirements as the Secretary prescribes.

(c) Agreement

An agreement between the Secretary and a participant in the scholarship and fellowship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary’s agreement to provide the participant with educational assistance for a

specified number of school years (not exceeding 5) during which the participant is pursuing a program of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The participant’s agreement (A) to accept such educational assistance, (B) to maintain enrollment and attendance in the program of education until completed, (C) while enrolled in such program, to maintain satisfactory academic progress as prescribed by the institution of higher education in which the participant is enrolled, and (D) after completion of the program of education, to serve as a full-time employee in an environmental restoration or waste management position in the Department of Energy for a period of 12 months for each school year or part thereof for which the participant is provided a scholarship or fellowship under the program established under this section.

(d) Repayment

(1) Any person participating in a scholarship or fellowship program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), if the person—

(A) does not complete the course of education as agreed to pursuant to subsection (c) of this section, or completes the course of education but declines to serve in a position in the Department of Energy as agreed to pursuant to subsection (c) of this section; or

(B) is voluntarily separated from service or involuntarily separated for cause from the Department of Energy before the end of the period for which the person has agreed to continue in the service of the Department of Energy.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, plus interest at the rate prescribed by paragraph (4), a sum equal to the amount of the educational assistance (plus such interest) is recoverable by the Government from the person or his estate by—

(A) in the case of a person who is an employee, setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) For purposes of repayment under this section, the total amount of educational assistance provided to a person under the program shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

(e) Preference for cooperative education students

In evaluating applicants for award of scholarships and fellowships under the program, the Secretary of Energy may give a preference to an individual who is enrolled in, or accepted for enrollment in, an educational institution that has a cooperative education program with the Department of Energy.

(f) Coordination of benefits

A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the student for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]).

(g) Award of scholarships and fellowships

(1) Subject to paragraph (2), the Secretary shall award at least 20 scholarships (for undergraduate students) and 20 fellowships (for graduate students) during fiscal year 1992.

(2) The requirement to award 20 scholarships and 20 fellowships under paragraph (1) applies only to the extent there is a sufficient number of applicants qualified for such awards.

(h) Report to Congress

Not later than January 1, 1993, the Secretary of Energy shall submit to Congress a report on activities undertaken under the program and recommendations for future activities under the program.

(i) Funding

Of the funds authorized to be appropriated pursuant to section 3101(9)(B), \$1,000,000 may be used for the purpose of carrying out this section. (Pub. L. 102-190, div. C, title XXXI, §3132, Dec. 5, 1991, 105 Stat. 1572; Pub. L. 103-337, div. C, title XXXI, §3156(b)(1), Oct. 5, 1994, 108 Stat. 3092.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (f), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, Education, and part C (§2751 et seq.) of subchapter I of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 3101(9)(B), referred to in subsec. (i), is section 3101(9)(B) of Pub. L. 102-190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1564, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-337 inserted at end “The scholarship and fellowship program shall be known as the ‘Marilyn Lloyd Scholarship and Fellowship Program’.”

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3156(b)(2) of Pub. L. 103-337 provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on January 3, 1995.”

§ 7274f. Defense Environmental Restoration and Waste Management Account**(a) Establishment**

There is hereby established in the Treasury of the United States for the Department of Energy an account to be known as the “Defense Environmental Restoration and Waste Management Account” (hereafter in this section referred to as the “Account”).

(b) Amounts in Account

All sums appropriated to the Department of Energy for environmental restoration and waste management at defense nuclear facilities shall be credited to the Account. Such appropriations shall be authorized annually by law. To the extent provided in appropriations Acts, amounts in the Account shall remain available until expended.

(Pub. L. 102-190, div. C, title XXXI, §3134, Dec. 5, 1991, 105 Stat. 1575.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7274g. Environmental restoration and waste management five-year plan and budget reports**(a) Five-year plan**

(1) Not later than September 1 of each year, the Secretary of Energy shall issue a plan for environmental restoration and waste management activities to be conducted, during the five-year period beginning on October 1 of the next calendar year, at all facilities owned or operated by the Department of Energy except defense nuclear facilities. The plan also shall contain a description of environmental restoration and waste management activities conducted during the fiscal year in which the plan is submitted and of such activities to be conducted during the fiscal year beginning on October 1 of the same calendar year. Such five-year plan shall be designed to complete environmental restoration at all such Department of Energy facilities not later than the year 2019.

(2) The Secretary shall prepare each annual five-year plan in a preliminary form at least four months before the date on which that plan is required to be issued under paragraph (1). The preliminary plan shall contain the matters referred to in paragraph (4) (other than the matters referred to in subparagraph (J) of that paragraph). The Secretary shall provide the preliminary plan to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public for coordination, review, and comment.

(3) At the same time the Secretary issues an annual five-year plan under paragraph (1), the Secretary shall submit the plan to the President and Congress, publish a notice of the issuance of the plan in the Federal Register, and make the plan available to the Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and the public.

(4) The annual five-year plan, and the actions and other matters contained in the plan, shall be in accordance with all laws, regulations, permits, orders, and agreements. The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:

(A) A description of the actions, including identification of specific projects, necessary to maintain or achieve compliance with Federal, State, or local environmental laws, regulations, permits, orders, and agreements.

(B) A description of the actions, including identification of specific projects, to be taken at each Department of Energy facility in order to implement environmental restoration activities planned for each such facility.

(C) A description of research and development activities for the expeditious and efficient environmental restoration of such facilities.

(D) A description of the technologies and facilities necessary to carry out the environmental restoration activities.

(E) A description of the waste management activities, including identification of specific projects, necessary to continue to operate the Department of Energy facilities or to decontaminate and decommission the facilities, as the case may be.

(F) A description of research and development activities for waste management.

(G) A description of the technologies and facilities necessary to carry out the waste management activities.

(H) A description of activities and practices that the Secretary is undertaking or plans to undertake to minimize the generation of waste.

(I) The estimated costs of, and personnel required for, each project, action, or activity contained in the plan.

(J) A description of the respects in which the plan differs from the preliminary form of that plan issued pursuant to paragraph (2), together with the reasons for any differences.

(K) A discussion of the implementation of the preceding annual five-year plan.

(L) Such other matters as the Secretary finds appropriate and in the public interest.

(5) The Secretary shall consult with the Administrator of the Environmental Protection Agency, Governors and Attorneys General of affected States, and appropriate representatives of affected Indian tribes in the preparation of the plan and the preliminary form of the plan pursuant to paragraphs (1) and (2). The Secretary shall include as an appendix to the plan (A) all comments submitted on the preliminary form of the plan by the Administrator, Governors and Attorneys General of affected States, and affected Indian tribes, and (B) a summary of comments submitted by the public.

(6) The first annual five-year plan issued pursuant to this section shall be issued in 1992.

(b) Treatment of plans under section 4332

The development and adoption of any part of any plan (including any preliminary form of any such plan) under subsection (a) of this section shall not be considered a major Federal action

for the purposes of subparagraph (C), (E), or (F) of section 4332(2) of this title. Nothing in this subsection shall affect the Department of Energy's ongoing preparation of a programmatic environmental impact statement on environmental restoration and waste management.

(c) Grants

The Secretary of Energy is authorized to award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to assist such States and tribes in participating in the development of the annual five-year plan (including the preliminary form of such plan).

(d) Funding

Of the funds authorized to be appropriated pursuant to section 3103, \$20,000,000 may be used for the purpose of carrying out subsection (c) of this section.

(e) Budget reports

Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the President shall submit to Congress a description of proposed activities and funding levels contained in the annual five-year plan (issued, pursuant to subsection (a)(1) of this section, in the year preceding the year in which the budget is submitted to Congress) that are not included in the budget or are included in the budget in a different form or at a different funding level, together with the reasons for such differences.

(Pub. L. 102-190, div. C, title XXXI, §3135, Dec. 5, 1991, 105 Stat. 1575; Pub. L. 103-337, div. C, title XXXI, §3160(a), Oct. 5, 1994, 108 Stat. 3094.)

REFERENCES IN TEXT

Section 3103, referred to in subsec. (d), is section 3103 of Pub. L. 102-190, div. C, title XXXI, Dec. 5, 1991, 105 Stat. 1566, which is not classified to the Code.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-337, §3160(a)(1), substituted “all facilities owned or operated by the Department of Energy except defense nuclear facilities” for “(A) defense nuclear facilities and (B) all other facilities owned or operated by the Department of Energy” in first sentence and inserted “such” after “restoration at all” in third sentence.

Subsec. (a)(4). Pub. L. 103-337, §3160(a)(2), substituted “The plan shall include, with respect to the Department of Energy facilities required by paragraph (1) to be covered by the plan, the following matters:” for “The plan shall contain the following matters:” in introductory provisions.

Subsec. (a)(6), (7). Pub. L. 103-337, §3160(a)(3), (4), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: “The Secretary shall include in the annual five-year plan issued in 1992 a discussion of the feasibility and need, if any, for the establishment of a contingency fund in the Department of Energy to provide funds necessary to meet the requirements in environmental laws, to remove an immediate threat to worker or public health and safety, to prevent or improve a condition where postponement of activity would lead to deterioration of the environment, and to

undertake additional environmental restoration activities at Department of Energy defense nuclear facilities that are not provided for in the budgets for fiscal years in which it is necessary to meet such requirements or undertake such activities.”

PUBLIC PARTICIPATION IN PLANNING

Section 3160(e) of Pub. L. 103-337 provided that: “The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in any planning conducted by the Secretary for environmental restoration and waste management at Department of Energy defense nuclear facilities.”

§ 7274h. Department of Energy defense nuclear facilities workforce restructuring plan

(a) In general

Upon determination that a change in the workforce at a defense nuclear facility is necessary, the Secretary of Energy (hereinafter in sections 7274h to 7274j of this title referred to as the “Secretary”) shall develop a plan for restructuring the workforce for the defense nuclear facility that takes into account—

- (1) the reconfiguration of the defense nuclear facility; and
- (2) the plan for the nuclear weapons stockpile that is the most recently prepared plan at the time of the development of the plan referred to in this subsection.

(b) Consultation

(1) In developing a plan referred to in subsection (a) of this section and any updates of the plan under subsection (e) of this section, the Secretary shall consult with the Secretary of Labor, appropriate representatives of local and national collective-bargaining units of individuals employed at Department of Energy defense nuclear facilities, appropriate representatives of departments and agencies of State and local governments, appropriate representatives of State and local institutions of higher education, and appropriate representatives of community groups in communities affected by the restructuring plan.

(2) The Secretary shall determine appropriate representatives of the units, governments, institutions, and groups referred to in paragraph (1).

(c) Objectives

In preparing the plan required under subsection (a) of this section, the Secretary shall be guided by the following objectives:

- (1) Changes in the workforce at a Department of Energy defense nuclear facility—
 - (A) should be accomplished so as to minimize social and economic impacts;
 - (B) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and
 - (C) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.
- (2) Employees whose employment in positions at such facilities is terminated shall, to

the extent practicable, receive preference in any hiring of the Department of Energy (consistent with applicable employment seniority plans or practices of the Department of Energy and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1682)).

(3) Employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at such facilities or other facilities of the Department of Energy.

(4) The Department of Energy should provide relocation assistance to employees who are transferred to other Department of Energy facilities as a result of the plan.

(5) The Department of Energy should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

(6) The Department of Energy should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with—

(A) programs carried out by the Department of Labor pursuant to the Job Training Partnership Act (29 U.S.C. 1501 et seq.);

(B) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (division D of Public Law 101-510; 10 U.S.C. 2391 note); and

(C) programs carried out by the Department of Commerce pursuant to title IX of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3241 et seq.).

(d) Implementation

The Secretary shall, subject to the availability of appropriations for such purpose, work on an ongoing basis with representatives of the Department of Labor, workforce bargaining units, and States and local communities in carrying out a plan required under subsection (a) of this section.

(e) Plan updates

Not later than one year after issuing a plan referred to in subsection (a) of this section and on an annual basis thereafter, the Secretary shall issue an update of the plan. Each updated plan under this subsection shall—

- (1) be guided by the objectives referred to in subsection (c) of this section, taking into account any changes in the function or mission of the Department of Energy defense nuclear facilities and any other changes in circumstances that the Secretary determines to be relevant;
- (2) contain an evaluation by the Secretary of the implementation of the plan during the year preceding the report; and
- (3) contain such other information and provide for such other matters as the Secretary determines to be relevant.

(f) Submittal to Congress

(1) The Secretary shall submit to Congress a plan referred to in subsection (a) of this section with respect to a defense nuclear facility within

90 days after the date on which a notice of changes described in subsection (c)(1)(B) of this section is provided to employees of the facility, or 90 days after October 23, 1992, whichever is later.

(2) The Secretary shall submit to Congress any updates of the plan under subsection (e) of this section immediately upon completion of any such update.

(Pub. L. 102-484, div. C, title XXXI, § 3161, Oct. 23, 1992, 106 Stat. 2644; Pub. L. 103-337, div. A, title X, § 1070(c)(2), Oct. 5, 1994, 108 Stat. 2857.)

REFERENCES IN TEXT

Section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, referred to in subsec. (c)(2), is section 3152 of Pub. L. 101-189, which is not classified to the Code.

The Job Training Partnership Act, referred to in subsec. (c)(6)(A), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Public Works and Economic Development Act of 1965, referred to in subsec. (c)(6)(C), is Pub. L. 89-136, Aug. 26, 1965, 79 Stat. 552, as amended. Title IX of the Act is classified generally to subchapter IX (§3241 et seq.) of chapter 38 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103-337, § 1070(c)(2)(B), substituted “workforce” for “work force” in section catchline.

Subsec. (a). Pub. L. 103-337, § 1070(c)(2)(A), substituted “workforce for” for “work force for” in introductory provisions.

Subsec. (c)(1). Pub. L. 103-337, § 1070(c)(2)(A), substituted “workforce” for “work force” in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 103-337, § 1070(c)(2)(C), substituted “division D” for “Part D”.

Subsec. (d). Pub. L. 103-337, § 1070(c)(2)(A), substituted “workforce” for “work force”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(c) of Pub. L. 103-337 provided that the amendment made by that section is effective as of Oct. 23, 1992, and as if included in the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, as enacted.

SEMIANNUAL REPORT TO CONGRESS OF LOCAL IMPACT ASSISTANCE

Pub. L. 105-85, div. C, title XXXI, § 3153(f), Nov. 18, 1997, 111 Stat. 2044, provided that: “The Secretary of Energy shall submit to Congress every six months a report setting forth a description of, and the amount or value of, all local impact assistance provided during the preceding six months under section 3161(c)(6) of the National Defense Authorization Act of 1993 [National Defense Authorization Act for Fiscal Year 1993] (42 U.S.C. 7274h(c)(6)).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2297h-8, 7274j of this title.

§ 7274i. Program to monitor Department of Energy workers exposed to hazardous and radioactive substances

(a) In general

The Secretary shall establish and carry out a program for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of the exposure of such employees to hazardous or radioactive substances during such employment.

(b) Implementation of program

(1) The Secretary shall, with the concurrence of the Secretary of Health and Human Services, issue regulations under which the Secretary shall implement the program. Such regulations shall, to the extent practicable, provide for a process to—

(A) identify the hazardous substances and radioactive substances to which current and former Department of Energy employees may have been exposed as a result of such employment;

(B) identify employees referred to in subparagraph (A) who received a level of exposure identified under paragraph (2)(B);

(C) determine the appropriate number, scope, and frequency of medical evaluations and laboratory tests to be provided to employees who have received a level of exposure identified under paragraph (2)(B) to permit the Secretary to evaluate fully the extent, nature, and medical consequences of such exposure;

(D) make available the evaluations and tests referred to in subparagraph (C) to the employees referred to in such subparagraph;

(E) ensure that privacy is maintained with respect to medical information that personally identifies any such employee; and

(F) ensure that employee participation in the program is voluntary.

(2)(A) In determining the most appropriate means of carrying out the activities referred to in subparagraphs (A) through (D) of paragraph (1), the Secretary shall consult with the Secretary of Health and Human Services under the agreement referred to in subsection (c).

(B) The Secretary of Health and Human Services, with the assistance of the Director of the Centers for Disease Control and the Director of the National Institute for Occupational Safety and Health, and the Secretary of Labor shall identify the levels of exposure to the substances referred to in subparagraph (A) of paragraph (1) that present employees referred to in such subparagraph with significant health risks under Federal and State occupational, health, and safety standards;

(3) In prescribing the guidelines referred to in paragraph (1), the Secretary shall consult with representatives of the following entities:

(A) The American College of Occupational and Environmental Medicine.

(B) The National Academy of Sciences.

(C) The National Council on Radiation Protection.

(D) Any labor organization or other collective bargaining agent authorized to act on the behalf of employees of a Department of Energy defense nuclear facility.

(4) The Secretary shall provide for each employee identified under paragraph (1)(D) and provided with any medical examination or test under paragraph (1)(E) to be notified by the appropriate medical personnel of the identification and the results of any such examination or test. Each notification under this paragraph shall be provided in a form that is readily understandable by the employee.

(5) The Secretary shall collect and assemble information relating to the examinations and tests carried out under paragraph (1)(E).

(6) The Secretary shall commence carrying out the program described in this subsection not later than 1 year after October 23, 1992.

(c) Agreement with Secretary of Health and Human Services

Not later than 180 days after October 23, 1992, the Secretary shall enter into an agreement with the Secretary of Health and Human Services relating to the establishment and conduct of the program required and regulations issued under this section.

(Pub. L. 102-484, div. C, title XXXI, § 3162, Oct. 23, 1992, 106 Stat. 2646.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102-531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2297h-8, 7274h, 7274j of this title.

§ 7274j. Definitions

For purposes of sections 7274h to 7274j of this title:

(1) The term “Department of Energy defense nuclear facility” means—

(A) a production facility or utilization facility (as those terms are defined in section 2014 of this title) that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the tritium loading facility at Savannah River, South Carolina, the 236 H facility at Savannah River, South Carolina; and the Mound Laboratory, Ohio), but the term does not include any facility that does not conduct atomic energy defense activities and does not include any facility or activity covered by Executive Order Number 12344, dated February 1, 1982, pertaining to the naval nuclear propulsion program;

(B) a nuclear waste storage or disposal facility that is under the control or jurisdiction of the Secretary;

(C) a testing and assembly facility that is under the control or jurisdiction of the Secretary and that is operated for national security purposes (including the Nevada Test Site, Nevada; the Pinnellas Plant, Florida; and the Pantex facility, Texas);

(D) an atomic weapons research facility that is under the control or jurisdiction of

the Secretary (including the Lawrence Livermore, Los Alamos, and Sandia National Laboratories); or

(E) any facility described in subparagraphs (A) through (D) that—

(i) is no longer in operation;

(ii) was under the control or jurisdiction of the Department of Defense, the Atomic Energy Commission, or the Energy Research and Development Administration; and

(iii) was operated for national security purposes.

(2) The term “Department of Energy employee” means any employee of the Department of Energy employed at a Department of Energy defense nuclear facility, including any employee of a contractor or subcontractor of the Department of Energy employed at such a facility.

(Pub. L. 102-484, div. C, title XXXI, § 3163, Oct. 23, 1992, 106 Stat. 2647; Pub. L. 104-106, div. A, title XV, § 1504(c)(2), Feb. 10, 1996, 110 Stat. 514.)

REFERENCES IN TEXT

Executive Order Number 12344, referred to in par. (1)(A), is set out as a note under section 7158 of this title.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1996—Par. (1)(E). Pub. L. 104-106 substituted “subparagraphs (A) through (D)” for “paragraphs (1) through (4)”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7274h of this title.

§ 7274k. Baseline environmental management reports

(a) Annual environmental restoration reports

(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on the activities and projects necessary to carry out the environmental restoration of all Department of Energy defense nuclear facilities.

(2) Reports under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than March 1, 1995.

(B) A report after the initial report shall be submitted in each year after 1995 during which the Secretary of Energy conducts, or plans to conduct, environmental restoration activities and projects, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(b) Biennial waste management reports

(1) The Secretary of Energy shall (in the years and at the times specified in paragraph (2)) submit to the Congress a report on all activities and projects for waste management, including

pollution prevention and transition of operational facilities to safe shutdown status, that are necessary for Department of Energy defense nuclear facilities.

(2) Reports required under paragraph (1) shall be submitted as follows:

(A) The initial report shall be submitted not later than June 1, 1995.

(B) A report after the initial report shall be submitted in each odd-numbered year after 1997, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(c) Contents of reports

A report required under subsection (a) or (b) of this section shall be based on compliance with all applicable provisions of law, permits, regulations, orders, and agreements, and shall—

(1) provide the estimated total cost of, and the complete schedule for, the activities and projects covered by the report;

(2) with respect to each such activity and project, contain—

(A) a description of the activity or project;

(B) a description of the problem addressed by the activity or project;

(C) the proposed remediation of the problem, if the remediation is known or decided;

(D) the estimated cost to complete the activity or project, including, where appropriate, the cost for every five-year increment;

(E) the estimated date for completion of the activity or project, including, where appropriate, progress milestones for every five-year increment; and

(F) a description of the personnel and facilities required to complete the activity or project; and

(3) contain a description of the research and development necessary to develop the technology to conduct the activities and projects covered by the report.

(d) Biennial status and variance reports

(1)(A) The Secretary of Energy shall (in the years and at the time specified in subparagraph (B)) submit to the Congress a status and variance report on environmental restoration and waste management activities and projects at Department of Energy defense nuclear facilities.

(B) A report under subparagraph (A) shall be submitted in 1995 and in each odd-numbered year thereafter during which the Secretary of Energy conducts environmental restoration and waste management activities, not later than 30 days after the date on which the President submits to the Congress the budget for the fiscal year beginning in that year.

(2) Each status and variance report under paragraph (1) shall contain the following:

(A) Information on each such activity and project for which funds were appropriated for the two fiscal years immediately before the fiscal year during which the report is submitted, including the following:

(i) Information on whether or not the activity or project has been completed, and information on the estimated date of comple-

tion for activities or projects that have not been completed.

(ii) The total amount of funds expended for the activity or project during such prior fiscal years, including the amount of funds expended from amounts made available as the result of supplemental appropriations or a transfer of funds, and an estimate of the total amount of funds required to complete the activity or project.

(iii) Information on whether the President requested an amount of funds for the activity or project in the budget for the fiscal year during which the report is submitted, and whether such funds were appropriated or transferred.

(iv) An explanation of the reasons for any projected cost variance between actual and estimated expenditures of more than 15 percent or \$10,000,000, or any schedule delay of more than six months, for the activity or project.

(B) For the fiscal year during which the report is submitted, a disaggregation of the funds appropriated for Department of Energy defense environmental restoration and waste management into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(C) For the fiscal year for which the budget is submitted, a disaggregation of the Department of Energy defense environmental restoration and waste management budget request into the activities and projects (including discrete parts of multiyear activities and projects) that the Secretary of Energy expects to accomplish during that fiscal year.

(e) Compliance tracking

In preparing a report under this section, the Secretary of Energy shall provide, with respect to each activity and project identified in the report, information which is sufficient to track the Department of Energy's compliance with relevant Federal and State regulatory milestones.

(f) Public participation in development of information

(1) The Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency, the Attorney General, Governors and Attorneys General of affected States, appropriate representatives of affected Indian tribes, and interested members of the public in the development of information necessary to complete the reports required by subsections (a), (b), and (d) of this section.

(2) Consultation under paragraph (1) shall not interfere with the timely submission to Congress of the budget for a fiscal year.

(3) The Secretary may award grants to, and enter into cooperative agreements with, affected States and affected Indian tribes to facilitate the participation of such entities in the development of information under this subsection. The Secretary may also take appropriate action to facilitate the participation of interested members of the public in such development under this subsection.

(Pub. L. 103-160, div. C, title XXXI, §3153, Nov. 30, 1993, 107 Stat. 1950; Pub. L. 103-337, div. C, title XXXI, §3160(b)-(d), Oct. 5, 1994, 108 Stat. 3094; Pub. L. 104-201, div. C, title XXXI, §3152, Sept. 23, 1996, 110 Stat. 2839; Pub. L. 105-85, div. C, title XXXI, §3160, Nov. 18, 1997, 111 Stat. 2048.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (b)(2)(B). Pub. L. 105-85 substituted “1997” for “1995”.

1996—Subsec. (b). Pub. L. 104-201, §3152(1), substituted “Biennial” for “Annual” in heading and “each odd-numbered year after 1995” for “each year after 1995” in par. (2)(B).

Subsec. (d). Pub. L. 104-201, §3152(2), substituted “Biennial” for “Annual” in heading, “each odd-numbered year” for “each year” in par. (1)(B), “two fiscal years immediately” for “the fiscal year immediately” in introductory provisions of par. (2)(A), and “prior fiscal years” for “prior fiscal year” in par. (2)(A)(ii).

1994—Subsec. (b)(1). Pub. L. 103-337, §3160(b), inserted “including pollution prevention and” after “waste management,” and struck out “and technology research and development related to such activities and projects” after “shutdown status.”

Subsec. (c)(2)(F). Pub. L. 103-337, §3160(c)(2)-(4), added subpar. (F).

Subsec. (c)(3). Pub. L. 103-337, §3160(c)(1), (5), added par. (3).

Subsec. (f). Pub. L. 103-337, §3160(d), added subsec. (f).

REQUIREMENT TO DEVELOP FUTURE USE PLANS FOR ENVIRONMENTAL MANAGEMENT PROGRAMS

Section 3153 of Pub. L. 104-201 provided that:

“(a) **AUTHORITY TO DEVELOP FUTURE USE PLANS.**—The Secretary of Energy may develop future use plans for any defense nuclear facility at which environmental restoration and waste management activities are occurring.

“(b) **REQUIREMENT TO DEVELOP FUTURE USE PLANS.**—The Secretary shall develop a future use plan for each of the following defense nuclear facilities:

“(1) Hanford Site, Richland, Washington.

“(2) Rocky Flats Plant, Golden, Colorado.

“(3) Savannah River Site, Aiken, South Carolina.

“(4) Idaho National Engineering Laboratory, Idaho.

“(c) **CITIZEN ADVISORY BOARD.**—(1) At each defense nuclear facility for which the Secretary of Energy intends or is required to develop a future use plan under this section and for which no citizen advisory board has been established, the Secretary shall establish a citizen advisory board.

“(2) The Secretary may authorize the manager of a defense nuclear facility for which a future use plan is developed under this section (or, if there is no such manager, an appropriate official of the Department of Energy designated by the Secretary) to pay routine administrative expenses of a citizen advisory board established for that facility. Such payments shall be made from funds available to the Secretary for program direction in carrying out environmental restoration and waste management activities necessary for national security programs.

“(d) **REQUIREMENT TO CONSULT WITH CITIZEN ADVISORY BOARD.**—In developing a future use plan under this section with respect to a defense nuclear facility, the Secretary of Energy shall consult with a citizen advisory board established pursuant to subsection (c) or a similar advisory board already in existence as of the date of the enactment of this Act [Sept. 23, 1996] for such facility, affected local governments (including any local future use redevelopment authorities), and other appropriate State agencies.

“(e) **50-YEAR PLANNING PERIOD.**—A future use plan developed under this section shall cover a period of at least 50 years.

“(f) **DEADLINES.**—For each facility listed in subsection (b), the Secretary of Energy shall develop a draft future use plan by October 1, 1997, and a final future use plan by March 15, 1998.

“(g) **REPORT.**—Not later than 60 days after completing development of a final plan for a site listed in subsection (b), the Secretary of Energy shall submit to Congress a report on the plan. The report shall describe the plan and contain such findings and recommendations with respect to the site as the Secretary considers appropriate.

“(h) **SAVINGS PROVISIONS.**—(1) Nothing in this section, or in a future use plan developed under this section with respect to a defense nuclear facility, shall be construed as requiring any modification to a future use plan with respect to a defense nuclear facility that was developed before the date of the enactment of this Act [Sept. 23, 1996].

“(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.”

DEFENSE NUCLEAR ENVIRONMENTAL CLEANUP AND MANAGEMENT

Subtitle E of title XXXI of div. C of Pub. L. 104-201, as amended by Pub. L. 105-85, div. C, title XXXI, §3159, Nov. 18, 1997, 111 Stat. 2047, provided that:

“**SEC. 3171. PURPOSE.**

“The purpose of this subtitle is to provide for the expedited environmental restoration and waste management of defense nuclear facilities through the use of cost-effective management mechanisms and innovative technologies.

“**SEC. 3172. APPLICABILITY.**

“(a) **IN GENERAL.**—The provisions of this subtitle shall apply to the following defense nuclear facilities:

“(1) Any defense nuclear facility for which the fiscal year 1996 environmental management budget was \$350,000,000 or more.

“(2) Any other defense nuclear facility if—

“(A) the chief executive officer of the State in which the facility is located submits to the Secretary a request that the facility be covered by the provisions of this subtitle; and

“(B) the Secretary approves the request.

“(b) **LIMITATION.**—The Secretary may not approve a request under subsection (a)(2) until 60 days after the date on which the Secretary notifies Congress of the Secretary’s receipt of the request.

“**SEC. 3173. SITE MANAGER.**

“(a) **APPOINTMENT.**—(1) Subject to paragraph (2), the Secretary shall expeditiously appoint a Site Manager for each defense nuclear facility (in this subtitle referred to as the ‘Site Manager’).

“(2) In the case of a defense nuclear facility at which another program, in addition to environmental management operations, is carried out, and such other program is subject to management by a site manager, field office manager, or operations office manager, the Secretary shall appoint such manager to be the Site Manager for such facility for purposes of this subtitle.

“(b) **AUTHORITY.**—(1) Except as provided in paragraph (5), in addition to other authorities provided for in this subtitle, the Secretary may delegate to the Site Manager of a defense nuclear facility authority to oversee and direct environmental management operations at the facility, including the authority to—

“(A) enter into and modify contractual agreements to enhance environmental restoration and waste management at the facility;

“(B) request that the Department headquarters submit to Congress a reprogramming package shifting funds among accounts in order to facilitate the most efficient and timely environmental restoration and waste management of the facility, and, in the event that the Department headquarters does not act upon the request within 60 days, submit such request to the appropriate congressional committees for review;

“(C) subject to paragraph (2), negotiate amendments to environmental agreements for the Department;

“(D) manage Department personnel at the facility;

“(E) consider the costs, risk reduction benefits, and other benefits for the purposes of ensuring protection of human health and the environment or safety, with respect to any environmental remediation activity the cost of which exceeds \$25,000,000; and

“(F) have assessments prepared for environmental restoration activities (in several documents or a single document, as determined by the Site Manager).

“(2) In using the authority described in paragraph (1)(C), a Site Manager may not negotiate an amendment that is expected to result in additional life cycle costs to the Department without the approval of the Secretary.

“(3) In using any authority described in paragraph (1), a Site Manager of a facility shall consult with the State where the facility is located and the advisory board for the facility.

“(4) The delegation of any authority pursuant to this subsection shall not be construed as restricting the Secretary's authority to delegate other authorities as necessary.

“(5) In the case of the Hanford Reservation, Richland, Washington, the Secretary shall delegate to the Site Manager the authority described in paragraph (1) for fiscal year 1998. The Secretary may withdraw the delegated authority if the Secretary—

“(A) determines that the Site Manager of the Hanford Reservation has misused or misapplied that authority; and

“(B) the Secretary submits to Congress a notification of the Secretary's intent to withdraw the authority.

“(C) INFORMATION TO SECRETARY.—The Site Manager of a defense nuclear facility shall regularly inform the Secretary, Congress, and the advisory board for the facility of the progress made by the Site Manager to achieve the expedited environmental restoration and waste management of the facility.

“SEC. 3174. DEPARTMENT OF ENERGY ORDERS.

“An order imposed after the date of the enactment of this Act [Sept. 23, 1996] relating to the execution of environmental restoration, waste management, or technology development activities at a defense nuclear facility under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) may be imposed by the Secretary at the defense nuclear facility only if the Secretary finds that the order is necessary for the protection of human health and the environment or safety, the fulfillment of current legal requirements, or the conduct of critical administrative functions.

“SEC. 3175. DEPLOYMENT OF TECHNOLOGY FOR REMEDIATION OF DEFENSE NUCLEAR WASTE.

“(a) IN GENERAL.—The Site Manager of each defense nuclear facility shall promote the deployment of innovative environmental technologies for remediation of defense nuclear waste at the facility.

“(b) CRITERIA.—To carry out subsection (a), the Site Manager of a defense nuclear facility shall establish a program at the facility for the testing and deployment of innovative environmental technologies for the remediation of defense nuclear waste at the facility. In establishing such a program, the Site Manager may—

“(1) establish a simplified, standardized, and timely process for the testing, verification, certification, and deployment of environmental technologies;

“(2) solicit applications to test and deploy environmental technologies suitable for environmental res-

toration and waste management activities at the facility, including prevention, control, characterization, treatment, and remediation of contamination;

“(3) consult and cooperate with the heads of existing programs at the facility for the verification and certification of environmental technologies at the facility;

“(4) pay the costs of the demonstration of such technologies;

“(5) enter into contracts and other agreements with other public and private entities to deploy environmental technologies at the facility; and

“(6) include incentives, such as product performance specifications, in contracts to encourage the implementation of innovative environmental technologies.

“(c) FOLLOW-ON CONTRACTS.—(1) If the Secretary and a person demonstrating a technology under the program enter into a contract for remediation of nuclear waste at a defense nuclear facility covered by this subtitle, or at any other Department facility, as a follow-on to the demonstration of the technology, the Secretary shall ensure that the contract provides for the Secretary to recoup from the contractor the costs incurred by the Secretary pursuant to subsection (b)(6) for the demonstration.

“(2) No contract between the Department and a contractor for the demonstration of technology under subsection (b) may provide for reimbursement of the costs of the contractor on a cost plus fee basis.

“(d) SAFE HARBORS.—In the case of an environmental technology tested, verified, certified, and deployed at a defense nuclear facility under a program established under subsection (b), the Site Manager of another defense nuclear facility may request the Secretary to waive or limit contractual or Department regulatory requirements that would otherwise apply in implementing the same environmental technology at such other facility.

“SEC. 3176. PERFORMANCE-BASED CONTRACTING.

“(a) PROGRAM.—The Secretary shall develop and implement a program for performance-based contracting for contracts entered into for environmental remediation at defense nuclear facilities. The program shall ensure that, to the maximum extent practicable and appropriate, such contracts include the following:

“(1) Clearly stated and results oriented performance criteria and measures.

“(2) Appropriate incentives for contractors to meet or exceed the performance criteria effectively and efficiently.

“(3) Appropriate criteria and incentives for contractors to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services.

“(4) Specific incentives for cost savings.

“(5) Financial accountability.

“(6) When appropriate, reduction of fee for failure to meet minimum performance criteria and standards.

“(b) CRITERIA AND MEASURES.—Performance criteria and measures should take into consideration, at a minimum, the following: managerial control; elimination or reduction of risk to public health and the environment; workplace safety; financial control; goal-oriented work scope; use of innovative and alternative technologies and techniques that result in cleanups being performed less expensively, more quickly, and within quality parameters; and performing within benchmark cost estimates.

“(c) CONSULTATION.—In implementing this section, the Secretary shall consult with interested parties.

“(d) DEADLINE.—The Secretary shall implement this section not later than October 1, 1997, unless the Secretary submits to Congress before that date a report with a schedule for completion of action under this section.

“SEC. 3177. DESIGNATION OF COVERED FACILITIES AS ENVIRONMENTAL CLEANUP DEMONSTRATION AREAS.

“(a) DESIGNATION.—Each defense nuclear facility is hereby designated as an environmental cleanup demonstration area to carry out the purposes of this subtitle, including the utilization and evaluation of new technologies to be used in environmental restoration and remediation at other defense nuclear facilities.

“(b) SENSE OF CONGRESS.—It is the sense of Congress that Federal and State regulatory agencies, members of the communities surrounding any defense nuclear facility, and other affected parties with respect to the facility should continue to—

“(1) develop expedited and streamlined processes and systems for cleaning up such facility;

“(2) eliminate unnecessary administrative complexity and unnecessary duplication of regulation with respect to the cleanup of such facility;

“(3) proceed expeditiously and cost-effectively with environmental restoration and remediation activities at such facility;

“(4) consider future land use in selecting environmental cleanup remedies at such facility; and

“(5) identify and recommend to Congress changes in law needed to expedite the cleanup of such facility.

“SEC. 3178. DEFINITIONS.

“In this subtitle:

“(1) The term ‘Secretary’ means the Secretary of Energy.

“(2) The term ‘Department’ means the Department of Energy.

“(3) The term ‘defense nuclear facility’ has the meaning given the term ‘Department of Energy defense nuclear facility’ in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

“SEC. 3179. TERMINATION.

“This subtitle is repealed effective September 30, 2001.

“SEC. 3180. REPORT.

“Not later than September 30, 2000, the Secretary shall submit to Congress a report on the effectiveness of this subtitle in expediting environmental restoration and waste management of defense nuclear facilities. The report shall include recommendations on whether this subtitle should remain in effect beyond September 30, 2001.”

ACCELERATED SCHEDULE FOR ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT ACTIVITIES

Pub. L. 104-106, div. C, title XXXI, §3156, Feb. 10, 1996, 110 Stat. 625, provided that:

“(a) ACCELERATED CLEANUP.—The Secretary of Energy shall accelerate the schedule for environmental restoration and waste management activities and projects for a site at a Department of Energy defense nuclear facility if the Secretary determines that such an accelerated schedule will achieve meaningful, long-term cost savings to the Federal Government and could substantially accelerate the release of land for local reuse.

“(b) CONSIDERATION OF FACTORS.—In making a determination under subsection (a), the Secretary shall consider the following:

“(1) The cost savings achievable by the Federal Government.

“(2) The amount of time for completion of environmental restoration and waste management activities and projects at the site that can be reduced from the time specified for completion of such activities and projects in the baseline environmental management report required to be submitted for 1995 under section 3153 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7274k).

“(3) The potential for reuse of the site.

“(4) The risks that the site poses to local health and safety.

“(5) The proximity of the site to populated areas.

“(c) REPORT.—Not later than May 1, 1996, the Secretary shall submit to Congress a report on each site for which the Secretary has accelerated the schedule for environmental restoration and waste management activities and projects under subsection (a). The report shall include an explanation of the basis for the determination for that site required by such subsection, including an explanation of the consideration of the factors described in subsection (b).

“(d) SAVINGS PROVISION.—Nothing in this section may be construed to affect a specific statutory requirement for a specific environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment.”

§ 7274l. Authority to transfer certain Department of Energy property

(a) Authority to transfer

(1) Notwithstanding any other provision of law, the Secretary of Energy may transfer, for consideration, all right, title, and interest of the United States in and to the property referred to in subsection (b) of this section to any person if the Secretary determines that such transfer will mitigate the adverse economic consequences that might otherwise arise from the closure of a Department of Energy facility.

(2) The amount of consideration received by the United States for a transfer under paragraph (1) may be less than the fair market value of the property transferred if the Secretary determines that the receipt of such lesser amount by the United States is in accordance with the purpose of such transfer under this section.

(3) The Secretary may require any additional terms and conditions with respect to a transfer of property under paragraph (1) that the Secretary determines appropriate to protect the interests of the United States.

(b) Covered property

Property referred to in subsection (a) of this section is the following property of the Department of Energy that is located at a Department of Energy facility to be closed or reconfigured:

(1) The personal property and equipment at the facility that the Secretary determines to be excess to the needs of the Department of Energy.

(2) Any personal property and equipment at the facility (other than the property and equipment referred to in paragraph (1)) the replacement cost of which does not exceed an amount equal to 110 percent of the costs of relocating the property or equipment to another facility of the Department of Energy.

(Pub. L. 103-160, div. C, title XXXI, §3155, Nov. 30, 1993, 107 Stat. 1953.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7274m. Safety oversight and enforcement at defense nuclear facilities

(a) Safety at defense nuclear facilities

The Secretary of Energy shall take appropriate actions to ensure that—

(1) officials of the Department of Energy who are responsible for independent oversight of matters relating to nuclear safety at defense nuclear facilities and enforcement of nuclear safety standards at such facilities maintain independence from officials who are engaged in, or who are advising persons who are engaged in, management of such facilities;

(2) the independent, internal oversight functions carried out by the Department include activities relating to—

(A) the assessment of the safety of defense nuclear facilities;

(B) the assessment of the effectiveness of Department program offices in carrying out programs relating to the environment, safety, health, and security at defense nuclear facilities;

(C) the provision to the Secretary of oversight reports that—

(i) contain validated technical information; and

(ii) provide a clear analysis of the extent to which line programs governing defense nuclear facilities meet applicable goals for the environment, safety, health, and security at such facilities; and

(D) the development of clear performance standards to be used in assessing the adequacy of the programs referred to in subparagraph (C)(ii);

(3) the Department has a system for bringing issues relating to nuclear safety at defense nuclear facilities to the attention of the officials of the Department (including the Secretary of Energy) who have authority to resolve such issues in an adequate and timely manner; and

(4) an adequate number of qualified personnel of the Department are assigned to oversee matters relating to nuclear safety at defense nuclear facilities and enforce nuclear safety standards at such facilities.

(b) Report

Not later than 90 days after October 5, 1994, the Secretary shall submit to Congress a report describing the following:

(1) The actions that the Secretary has taken or will take to fulfill the requirements set forth in paragraphs (1), (2), and (3) of subsection (a) of this section.

(2) The actions in addition to the actions described under paragraph (1) that the Secretary could take in order to fulfill such requirements.

(3) The respective roles with regard to nuclear safety at defense nuclear facilities of the following officials:

(A) The Associate Deputy Secretary of Energy for Field Management.

(B) The Assistant Secretary of Energy for Defense Programs.

(C) The Assistant Secretary of Energy for Environmental Restoration and Waste Management.

(Pub. L. 103-337, div. C, title XXXI, §3163, Oct. 5, 1994, 108 Stat. 3097.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1995, and not as part

of the Department of Energy Organization Act which comprises this chapter.

REPORT AND PLAN FOR EXTERNAL OVERSIGHT OF NATIONAL LABORATORIES

Pub. L. 105-85, div. C, title XXXI, §3154, Nov. 18, 1997, 111 Stat. 2044, provided that:

“(a) REPORT.—Not later than July 1, 1999, the Secretary of Energy shall submit to Congress a report on the external oversight of the national laboratories.

“(b) MATTERS COVERED.—The report shall contain the following:

“(1) A description of the external oversight practices at the national laboratories and an analysis of the effectiveness of such practices, including the effect of such practices on the productivity of the laboratories and the research conducted by the laboratories.

“(2) Recommendations regarding the continuation, consolidation, or discontinuation of the external oversight practices described in paragraph (1), and the rationale for the recommendations.

“(3) Recommendations for any new external oversight practices that should be implemented, and the rationale for the recommendations.

“(4) A plan for carrying out the recommendations.

“(c) NATIONAL LABORATORIES COVERED.—For purposes of this section, the national laboratories are—

“(1) the Lawrence Livermore National Laboratory, Livermore, California;

“(2) the Los Alamos National Laboratory, Los Alamos, New Mexico; and

“(3) the Sandia National Laboratories, Albuquerque, New Mexico.”

SUBMITTAL OF ANNUAL REPORT ON STATUS OF SECURITY FUNCTIONS AT NUCLEAR WEAPONS FACILITIES

Pub. L. 105-85, div. C, title XXXI, §3162, Nov. 18, 1997, 111 Stat. 2049, provided that:

“(a) IN GENERAL.—Not later than September 1 each year, the Secretary of Energy shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and Committees on National Security and Appropriations of House of Representatives] the report entitled ‘Annual Report to the President on the Status of Safeguards and Security of Domestic Nuclear Weapons Facilities’, or any successor report to such report.

“(b) REQUIREMENT RELATING TO REPORTS THROUGH FISCAL YEAR 2000.—The Secretary shall include with each report submitted under subsection (a) in fiscal years 1998 through 2000 any comments on such report by the members of the Department of Energy Security Management Board established under section 3161 [42 U.S.C. 7251 note] that such members consider appropriate.”

§ 7274n. Projects to accelerate closure activities at defense nuclear facilities

(a) In general

The Secretary of Energy shall select and carry out closure-acceleration projects in accordance with this section.

(b) Purpose

The purpose of a closure-acceleration project shall be, within a fixed period of time, to clean up or decommission a Department of Energy defense nuclear facility or portion thereof and to make the facility safe by stabilizing, consolidating, treating, or removing nuclear materials from the facility in order to reduce significantly or eliminate future costs at the facility.

(c) Eligible projects

(1) The Secretary of Energy may establish a closure-acceleration project as eligible for selection under subsection (e) of this section by—

(A) developing a plan for the project that meets the criteria under paragraph (2); and

(B) determining that the project will achieve significant long-term cost savings to the Federal Government from the baseline cost estimate made by the Department of Energy for the project.

(2) A plan for a closure-acceleration project under this section shall—

(A) define a clear, delineated scope of work for completion of the project;

(B) demonstrate that, with respect to the site of the proposed project, there is a regulatory agreement between the Department of Energy and other appropriate authorities for the implementation of environmental remediation requirements that would allow for successful completion of the project;

(C) demonstrate, to the maximum extent possible, the support of State and local elected officials and the public for the project;

(D) contain performance-based provisions to be included in the contract for the project, including—

(i) clearly stated and results-oriented performance criteria and measures;

(ii) appropriate incentives for the contractor to meet and exceed the performance criteria effectively and efficiently;

(iii) appropriate criteria and incentives for the contractor to seek and engage subcontractors who may more effectively and efficiently perform either unique and technologically challenging tasks or routine and interchangeable services;

(iv) specific incentives for cost savings;

(v) financial accountability; and

(vi) when appropriate, reduction of fee for failure to meet minimum performance criteria and standards;

(E) demonstrate that the project will use new and innovative cleanup and waste management technology with potential for application to other locations and facilities without requiring the development of new technologies; and

(F) demonstrate that the project can be completed within 10 years from the date of its selection.

(d) Program administration

The Secretary of Energy, acting through the Assistant Secretary for Environmental Management, shall implement a program to carry out the provisions of this section.

(e) Selection of projects

(1) The Secretary of Energy shall select closure-acceleration projects to be carried out under this section from among those projects established as eligible under subsection (c) of this section that will result in the most significant long-term cost savings to the Government and the most significant reduction of imminent risk.

(2) For each project selected, the Secretary shall submit to Congress a report setting forth the reasons why the project was selected, based on the criteria under subsection (c)(2) of this section and paragraph (1) of this subsection.

(f) Multiyear contracts

Notwithstanding section 254c(d) of title 41, the Secretary of Energy may enter into multiyear

contracts to carry out projects selected under this section for up to 10 program years.

(g) Funding

(1) In the budget submitted to Congress under section 1105(a) of title 31 each year, the President shall set forth funds for carrying out closure-acceleration projects under this section as a separate item in the environmental restoration and waste management account of the Department of Energy budget.

(2) Funds appropriated for purposes of carrying out projects under this section shall remain available until expended.

(3) If a closure-acceleration project is being carried out at a defense nuclear facility with funds appropriated for such projects, the Secretary of Energy may not reduce the funds otherwise allocated to that defense nuclear facility for environmental restoration and waste management by reason of the funds being used for the project at that facility.

(4) Funds appropriated for purposes of carrying out projects under this section may not be used for an item for which Congress has specifically denied funds or for a new program or project that has not been authorized by Congress.

(h) Annual report

The Secretary of Energy shall submit each year to Congress a report on the status of each closure-acceleration project being carried out under this section. The report shall include, for each such project, the following:

(1) A description of the funding already provided for the project.

(2) A description of the extent of the cleanup, decommissioning, stabilization, consolidation, treatment, or removal activities completed.

(3) A comparison of the actual results of the project to the original proposal and the actual cost of the project to the originally proposed cost.

(4) A description of the funding needed in future fiscal years for completion of the project.

(i) Duration of program

No closure-acceleration project selected under this section may be carried out after the expiration of the 15-year period beginning on September 23, 1996.

(j) Savings provision

Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.

(Pub. L. 104-201, div. C, title XXXI, §3143, Sept. 23, 1996, 110 Stat. 2836.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1997, and not as part

of the Department of Energy Organization Act which comprises this chapter.

§ 7274o. Reports on critical difficulties at nuclear weapons laboratories and nuclear weapons production plants

(a) Reports by heads of laboratories and plants

In the event of a difficulty at a nuclear weapons laboratory or a nuclear weapons production plant that has a significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, the head of the laboratory or plant, as the case may be, shall submit to the Assistant Secretary of Energy for Defense Programs a report on the difficulty. The head of the laboratory or plant shall submit the report as soon as practicable after discovery of the difficulty.

(b) Transmittal by Assistant Secretary

Not later than 10 days after receipt of a report under subsection (a) of this section, the Assistant Secretary shall transmit the report (together with the comments of the Assistant Secretary) to the congressional defense committees, to the Secretary of Energy and the Secretary of Defense, and to the President.

(c) Omitted

(d) Definitions

In this section:

(1) The term “nuclear weapons laboratory” means the following:

(A) Lawrence Livermore National Laboratory, California.

(B) Los Alamos National Laboratory, New Mexico.

(C) Sandia National Laboratories.

(2) The term “nuclear weapons production plant” means the following:

(A) The Pantex Plant, Texas.

(B) The Savannah River Site, South Carolina.

(C) The Kansas City Plant, Missouri.

(D) The Y-12 Plant, Oak Ridge, Tennessee.

(Pub. L. 104-201, div. C, title XXXI, §3159, Sept. 23, 1996, 110 Stat. 2842; Pub. L. 105-85, div. A, title XIII, §1305(c), (d), Nov. 18, 1997, 111 Stat. 1954.)

CODIFICATION

Section is comprised of section 3159 of Pub. L. 104-201. Subsec. (c) of section 3159 of Pub. L. 104-201 amended section 179 of Title 10, Armed Forces.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1997, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-85 substituted “Not later than 10 days” for “As soon as practicable” and “committees,” for “committees and” and inserted before period at end “, and to the President”.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives, see section 3 of Pub. L. 104-201, 110 Stat. 2439.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7274p of this title.

§ 7274p. Advice to President and Congress regarding safety, security, and reliability of United States nuclear weapons stockpile

(a) Findings

Congress makes the following findings:

(1) Nuclear weapons are the most destructive weapons on earth. The United States and its allies continue to rely on nuclear weapons to deter potential adversaries from using weapons of mass destruction. The safety and reliability of the nuclear weapons stockpile are essential to ensure its credibility as a deterrent.

(2) On September 24, 1996, President Clinton signed the Comprehensive Test Ban Treaty.

(3) Effective as of September 30, 1996, the United States is prohibited by section 507 of the Energy and Water Development Appropriations Act, 1993 (Public Law 102-377; 42 U.S.C. 2121 note) from conducting underground nuclear tests “unless a foreign state conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted”.

(4) Section 1436(b) of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456; 42 U.S.C. 2121 note) requires the Secretary of Energy to “establish and support a program to assure that the United States is in a position to maintain the reliability, safety, and continued deterrent effect of its stockpile of existing nuclear weapons designs in the event that a low-threshold or comprehensive test ban on nuclear explosive testing is negotiated and ratified.”

(5) Section 3138(d) of the National Defense Authorization Act for Fiscal Year 1994¹ (Public Law 103-160; 42 U.S.C. 2121 note) required the President to submit an annual report to Congress which sets forth “any concerns with respect to the safety, security, effectiveness, or reliability of existing United States nuclear weapons raised by the Stockpile Stewardship Program of the Department of Energy”.

(6) President Clinton declared in July 1993 that “to assure that our nuclear deterrent remains unquestioned under a test ban, we will explore other means of maintaining our confidence in the safety, reliability, and the performance of our weapons”. This decision was incorporated in a Presidential Directive.

(7) Section 3138 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 42 U.S.C. 2121 note) also requires that the Secretary of Energy establish a “stewardship program to ensure the preservation of the core intellectual and technical competencies of the United States in nuclear weapons”.

(8) The plan of the Department of Energy to maintain the safety and reliability of the United States nuclear weapons stockpile is known as the Stockpile Stewardship and Management Program. The ability of the United

¹ See References in Text note below.

States to maintain and certify the safety, security, effectiveness, and reliability of the nuclear weapons stockpile without testing will require utilization of new and sophisticated computational capabilities and diagnostic technologies, methods, and procedures. Current diagnostic technologies and laboratory testing techniques are insufficient to certify the safety and reliability of the United States nuclear weapons stockpile into the future. Whereas in the past laboratory and diagnostic tools were used in conjunction with nuclear testing, in the future they will provide, under the Department of Energy's stockpile stewardship plan, the sole basis for assessing past test data and for making judgments on phenomena observed in connection with the aging of the stockpile.

(9) Section 7274o of this title requires that the directors of the nuclear weapons laboratories and the nuclear weapons production plants submit a report to the Assistant Secretary of Energy for Defense Programs if they identify a problem that has significant bearing on confidence in the safety or reliability of a nuclear weapon or nuclear weapon type, that the Assistant Secretary must transmit that report, along with any comments, to the congressional defense committees and to the Secretary of Energy and the Secretary of Defense, and that the Joint Nuclear Weapons Council advise Congress regarding its analysis of any such problems.

(10) On August 11, 1995, President Clinton directed “the establishment of a new annual reporting and certification requirement [to] ensure that our nuclear weapons remain safe and reliable under a comprehensive test ban”.

(11) On the same day, the President noted that the Secretary of Defense and the Secretary of Energy have the responsibility, after being “advised by the Nuclear Weapons Council, the Directors of DOE's nuclear weapons laboratories, and the Commander of United States Strategic Command”, to provide the President with the information regarding the certification referred to in paragraph (10).

(12) The Joint Nuclear Weapons Council established by section 179 of title 10 is responsible for providing advice to the Secretary of Energy and the Secretary of Defense regarding nuclear weapons issues, including “considering safety, security, and control issues for existing weapons”. The Council plays a critical role in advising Congress in matters relating to nuclear weapons.

(13) It is essential that the President receive well-informed, objective, and honest opinions, including dissenting views, from his advisers and technical experts regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(b) Policy

(1) In general

It is the policy of the United States—

- (A) to maintain a safe, secure, effective, and reliable nuclear weapons stockpile; and
- (B) as long as other nations control or actively seek to acquire nuclear weapons, to retain a credible nuclear deterrent.

(2) Nuclear weapons stockpile

It is in the security interest of the United States to sustain the United States nuclear weapons stockpile through a program of stockpile stewardship, carried out at the nuclear weapons laboratories and nuclear weapons production plants.

(3) Sense of Congress

It is the sense of Congress that—

(A) the United States should retain a triad of strategic nuclear forces sufficient to deter any future hostile foreign leadership with access to strategic nuclear forces from acting against the vital interests of the United States;

(B) the United States should continue to maintain nuclear forces of sufficient size and capability to implement an effective and robust deterrent strategy; and

(C) the advice of the persons required to provide the President and Congress with assurances of the safety, security, effectiveness, and reliability of the nuclear weapons force should be scientifically based, without regard for politics, and of the highest quality and integrity.

(c), (d) Omitted

(e) Advice and opinions regarding nuclear weapons stockpile

In addition to a director of a nuclear weapons laboratory or a nuclear weapons production plant (under section 7274o of this title), any member of the Joint Nuclear Weapons Council or the commander of the United States Strategic Command may also submit to the President, the Secretary of Defense, the Secretary of Energy, or the congressional defense committees advice or opinion regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(f) Expression of individual views

A representative of the President may not take any action against, or otherwise constrain, a director of a nuclear weapons laboratory or a nuclear weapons production plant, a member of the Joint Nuclear Weapons Council, or the Commander of United States Strategic Command for presenting individual views to the President, the National Security Council, or Congress regarding the safety, security, effectiveness, and reliability of the nuclear weapons stockpile.

(g) Definitions

In this section:

(1) The term “representative of the President” means the following:

(A) Any official of the Department of Defense or the Department of Energy who is appointed by the President and confirmed by the Senate.

(B) Any member of the National Security Council.

(C) Any member of the Joint Chiefs of Staff.

(D) Any official of the Office of Management and Budget.

(2) The term “nuclear weapons laboratory” means any of the following:

(A) Lawrence Livermore National Laboratory, California.

(B) Los Alamos National Laboratory, New Mexico.

(C) Sandia National Laboratories.

(3) The term “nuclear weapons production plant” means any of the following:

(A) The Pantex Plant, Texas.

(B) The Savannah River Site, South Carolina.

(C) The Kansas City Plant, Missouri.

(D) The Y-12 Plant, Oak Ridge, Tennessee.

(Pub. L. 105-85, div. A, title XIII, § 1305, Nov. 18, 1997, 111 Stat. 1952.)

REFERENCES IN TEXT

Section 3138(d) of the National Defense Authorization Act for Fiscal Year 1994, referred to in subsec. (a)(5), was repealed by Pub. L. 105-85, div. C, title XXXI, § 3152(e)(1), Nov. 18, 1997, 111 Stat. 2042.

CODIFICATION

Section is comprised of section 1305 of Pub. L. 105-85. Subsecs. (c) and (d) of section 1305 of Pub. L. 105-85 amended section 7274o of this title.

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of the Department of Energy Organization Act which comprises this chapter.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives, see section 3 of Pub. L. 105-85, 111 Stat. 1645.

§ 7274q. Transfers of real property at certain Department of Energy facilities

(a) Transfer regulations

(1) The Secretary of Energy shall prescribe regulations for the transfer by sale or lease of real property at Department of Energy defense nuclear facilities for the purpose of permitting the economic development of the property.

(2) The Secretary of Energy may not transfer real property under the regulations prescribed under paragraph (1) until—

(A) the Secretary submits a notification of the proposed transfer to the congressional defense committees; and

(B) a period of 30 days has elapsed following the date on which the notification is submitted.

(b) Indemnification

(1) Except as provided in paragraph (3) and subject to subsection (c) of this section, in the sale or lease of real property pursuant to the regulations prescribed under subsection (a) of this section, the Secretary of Energy may hold harmless and indemnify a person or entity described in paragraph (2) against any claim for injury to person or property that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located. Before entering into any agreement for such a sale or lease, the Secretary shall notify the person or entity that the Sec-

retary has authority to provide indemnification to the person or entity under this subsection. The Secretary shall include in any agreement for such a sale or lease a provision stating whether indemnification is or is not provided.

(2) Paragraph (1) applies to the following persons and entities:

(A) Any State that acquires ownership or control of real property of a defense nuclear facility.

(B) Any political subdivision of a State that acquires such ownership or control.

(C) Any other person or entity that acquires such ownership or control.

(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

(c) Conditions

(1) No indemnification on a claim for injury may be provided under this section unless the person or entity making a request for the indemnification—

(A) notifies the Secretary of Energy in writing within two years after such claim accrues;

(B) furnishes to the Secretary copies of pertinent papers received by the person or entity;

(C) furnishes evidence or proof of the claim;

(D) provides, upon request by the Secretary, access to the records and personnel of the person or entity for purposes of defending or settling the claim; and

(E) begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Secretary.

(2) For purposes of paragraph (1)(A), the date on which a claim accrues is the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property referred to in subsection (b)(1) of this section was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of Department of Energy activities at the defense nuclear facility on which the real property is located.

(d) Authority of Secretary of Energy

(1) In any case in which the Secretary of Energy determines that the Secretary may be required to indemnify a person or entity under this section for any claim for injury to person or property referred to in subsection (b)(1) of this section, the Secretary may settle or defend the claim on behalf of that person or entity.

(2) In any case described in paragraph (1), if the person or entity that the Secretary may be required to indemnify does not allow the Secretary to settle or defend the claim, the person or entity may not be indemnified with respect to that claim under this section.

(e) Relationship to other law

Nothing in this section shall be construed as affecting or modifying in any way section 9620(h) of this title.

(f) Definitions

In this section:

(1) The term “defense nuclear facility” has the meaning provided by the term “Department of Energy defense nuclear facility” in section 2286g of this title.

(2) The terms “hazardous substance”, “release”, and “pollutant or contaminant” have the meanings provided by section 9601 of this title.

(Pub. L. 105-85, div. C, title XXXI, §3158, Nov. 18, 1997, 111 Stat. 2046.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1998, and not as part of the Department of Energy Organization Act which comprises this chapter.

“CONGRESSIONAL DEFENSE COMMITTEES” DEFINED

Congressional defense committees means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives, see section 3 of Pub. L. 105-85, 111 Stat. 1645.

§ 7275. Definitions

As used in sections 7275 to 7276c of this title:

(1) The term “Administrator” means the Administrator of the Western Area Power Administration.

(2) The term “integrated resource planning” means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

(3) The term “least cost option” means an option for providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing such service. To the extent practicable, energy efficiency and renewable resources may be given priority in any least-cost option.

(4) The term “long-term firm power service contract” means any contract for the sale by Western Area Power Administration of firm capacity, with or without energy, which is to be delivered over a period of more than one year.

(5) The terms “customer” or “customers” means any entity or entities purchasing firm capacity with or without energy, from the Western Area Power Administration under a long-term firm power service contract. Such terms include parent-type entities and their distribution or user members.

(6) For any customer, the term “applicable integrated resource plan” means the integrated resource plan approved by the Administrator under sections 7275 to 7276c of this title for that customer.

(Pub. L. 98-381, title II, §201, as added Pub. L. 102-486, title I, §114, Oct. 24, 1992, 106 Stat. 2799.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7275, Pub. L. 98-381, title II, §201, Aug. 17, 1984, 98 Stat. 1340, related to energy conservation program of Western Area Power Administration, prior to the general amendment of title II of Pub. L. 98-381 by section 114 of Pub. L. 102-486.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7276, 7276a, 7276b, 7276c of this title.

§ 7276. Regulations to require integrated resource planning

(a) Regulations

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer purchasing electric energy under a long-term firm power service contract with the Western Area Power Administration to implement, within 3 years after October 24, 1992, integrated resource planning in accordance with the requirements of sections 7275 to 7276c of this title.

(b) Certain small customers

Notwithstanding subsection (a) of this section, for customers with total annual energy sales or usage of 25 Gigawatt Hours or less which are not members of a joint action agency or a generation and transmission cooperative with power supply responsibility, the Administrator may establish different regulations and apply such regulations to customers that the Administrator finds have limited economic, managerial, and resource capability to conduct integrated resource planning. The regulations under this subsection shall require such customers to consider all reasonable opportunities to meet their future energy service requirements using demand-side techniques, new renewable resources and other programs that will provide retail customers with electricity at the lowest possible cost, and minimize, to the extent practicable, adverse environmental effects.

(Pub. L. 98-381, title II, §202, as added Pub. L. 102-486, title I, §114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

PRIOR PROVISIONS

A prior section 7276, Pub. L. 98-381, title II, §202, Aug. 17, 1984, 98 Stat. 1341, related to regulations of Western

Area Power Administration, including amendment of regulations after notice and comment, evaluation of energy conservation programs, and allowance by Western for incorporation of elements of such programs, prior to the general amendment of title II of Pub. L. 98-381 by section 114 of Pub. L. 102-486.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276a, 7276b, 7276c of this title.

§ 7276a. Technical assistance

The Administrator may provide technical assistance to customers to, among other things, conduct integrated resource planning, implement applicable integrated resource plans, and otherwise comply with the requirements of sections 7275 to 7276c of this title. Technical assistance may include publications, workshops, conferences, one-to-one assistance, equipment loans, technology and resource assessment studies, marketing studies, and other mechanisms to transfer information on energy efficiency and renewable energy options and programs to customers. The Administrator shall give priority to providing technical assistance to customers that have limited capability to conduct integrated resource planning.

(Pub. L. 98-381, title II, § 203, as added Pub. L. 102-486, title I, § 114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276, 7276b, 7276c of this title.

§ 7276b. Integrated resource plans

(a) Review by Western Area Power Administration

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to submit an integrated resource plan to the Administrator within 12 months after such regulations are amended. The regulation shall require a revision of such plan to be submitted every 5 years after the initial submission. The Administrator shall review the initial plan in accordance with a schedule established by the Administrator (which schedule will provide for the review of all initial plans within 24 months after such regulations are amended), and each revision thereof within 120 days after his receipt of the plan or revision and determine whether the customer has in the development of the plan or revision, complied with sections 7275 to 7276c of this title. Plan amendments may be submitted to the Administrator at any time and the Administrator shall review each such amendment within 120 days after receipt thereof to determine whether the customer in amending its plan has complied with sections 7275 to 7276c of this title. If the Administrator determines

that the customer, in developing its plan, revision, or amendment, has not complied with the requirements of sections 7275 to 7276c of this title, the customer shall resubmit the plan at any time thereafter. Whenever a plan or revision or amendment is resubmitted the Administrator shall review the plan or revision or amendment within 120 days after his receipt thereof to determine whether the customer has complied with sections 7275 to 7276c of this title.

(b) Criteria for approval of integrated resource plans

The Administrator shall approve an integrated resource plan submitted as required under subsection (a) of this section if, in developing the plan, the customer has:

(1) Identified and accurately compared all practicable energy efficiency and energy supply resource options available to the customer.

(2) Included a 2-year action plan and a 5-year action plan which describe specific actions the customer will take to implement its integrated resource plan.

(3) Designated "least-cost options" to be utilized by the customer for the purpose of providing reliable electric service to its retail consumers and explained the reasons why such options were selected.

(4) To the extent practicable, minimized adverse environmental effects of new resource acquisitions.

(5) In preparation and development of the plan (and each revision or amendment of the plan) has provided for full public participation, including participation by governing boards.

(6) Included load forecasting.

(7) Provided methods of validating predicted performance in order to determine whether objectives in the plan are being met.

(8) Met such other criteria as the Administrator shall require.

(c) Use of other integrated resource plans

Where a customer or group of customers are implementing integrated resource planning under a program responding to Federal, State, or other initiatives, including integrated resource planning considered and implemented pursuant to section 2621(d) of title 16, in evaluating that customer's integrated resource plan under sections 7275 to 7276c of this title, the Administrator shall accept such plan as fulfillment of the requirements of sections 7275 to 7276c of this title to the extent such plan substantially complies with the requirements of sections 7275 to 7276c of this title.

(d) Compliance with integrated resource plans

Within 1 year after October 24, 1992, the Administrator shall, by regulation, revise the Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs published in the Federal Register on August 21, 1985 (50 F.R. 33892), or any subsequent amendments thereto, to require each customer to fully comply with the applicable integrated resource plan and submit an annual report to the Administrator (in such form and containing such information as the Administrator

may require) describing the customer's progress to the goals established in such plan. After the initial review under subsection (a) of this section the Administrator shall periodically conduct reviews of a representative sample of applicable integrated resource plans and the customer's implementation of the applicable integrated resource plan to determine if the customers are in compliance with their plans. If the Administrator finds a customer out-of-compliance, the Administrator shall impose a surcharge under this section on all electric energy purchased by the customer from the Western Area Power Administration or reduce such customer's power allocation by 10 percent, unless the Administrator finds that a good faith effort has been made to comply with the approved plan.

(e) Enforcement

(1) No approved plan

If an integrated resource plan for any customer is not submitted before the date 12 months after the guidelines are amended as required under this section or if the plan is disapproved by the Administrator and a revised plan is not resubmitted by the date 9 months after the date of such disapproval, the Administrator shall impose a surcharge of 10 percent of the purchase price on all power obtained by that customer from the Western Area Power Administration after such date. The surcharge shall remain in effect until an integrated resource plan is approved for that customer. If the plan is not submitted for more than one year after the required date, the surcharge shall increase to 20 percent for the second year (or any portion thereof prior to approval of the plan) and to 30 percent thereafter until the plan is submitted or the contract for the purchase of power by such customer from the Western Area Power Administration terminates.

(2) Failure to comply with approved plan

After approval by the Administrator of an applicable integrated resource plan for any customer, the Administrator shall impose a 10 percent surcharge on all power purchased by such customer from the Western Area Power Administration whenever the Administrator determines that such customer's activities are not consistent with the applicable integrated resource plan. The surcharge shall remain in effect until the Administrator determines that the customer's activities are consistent with the applicable integrated resource plan. The surcharge shall be increased to 20 percent if the customer's activities are out of compliance for more than one year and to 30 percent after more than 2 years, except that no surcharge shall be imposed if the customer demonstrates, to the satisfaction of the Administrator, that a good faith effort has been made to comply with the approved plan.

(3) Reduction in power allocation

In the case of any customer subject to a surcharge under paragraph (1) or (2), in lieu of imposing such surcharge the Administrator may reduce such customer's power allocation from the Western Area Power Administration by 10

percent. The Administrator shall provide by regulation the terms and conditions under which a power allocation terminated under this subsection may be reinstated.

(f) Integrated resource planning cooperatives

With the approval of the Administrator, customers within any State or region may form integrated resource planning cooperatives for the purposes of complying with sections 7275 to 7276c of this title, and such customers shall be allowed an additional 6 months to submit an initial integrated resource plan to the Administrator.

(g) Customers with more than 1 contract

If more than one long-term firm power service contract exists between the Administrator and a customer, only one integrated resource plan shall be required for that customer under sections 7275 to 7276c of this title.

(h) Program review

Within 1 year after January 1, 1999, and at appropriate intervals thereafter, the Administrator shall initiate a public process to review the program established by this section. The Administrator is authorized at that time to revise the criteria set forth in subsection (b) of this section to reflect changes, if any, in technology, needs, or other developments.

(Pub. L. 98-381, title II, §204, as added Pub. L. 102-486, title I, §114, Oct. 24, 1992, 106 Stat. 2800.)

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276, 7276a, 7276c of this title.

§ 7276c. Miscellaneous provisions

(a) Environmental impact statement

The provisions of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] shall apply to actions of the Administrator implementing sections 7275 to 7276c of this title in the same manner and to the same extent as such provisions apply to other major Federal actions significantly affecting the quality of the human environment.

(b) Annual reports

The Administrator shall include in the annual report submitted by the Western Area Power Administration (1) a description of the activities undertaken by the Administrator and by customers under sections 7275 to 7276c of this title and (2) an estimate of the energy savings and renewable resource benefits achieved as a result of such activities.

(c) State regulated investor-owned utilities

Any State regulated electric utility (as defined in section 2602(18) of title 16) shall be exempt from the provisions of sections 7275 to 7276c of this title.

(d) Rural Electrification Administration requirements

Nothing in sections 7275 to 7276c of this title shall require a customer to take any action in-

consistent with a requirement imposed by the Rural Electrification Administration¹

(Pub. L. 98-381, title II, § 205, as added Pub. L. 102-486, title I, § 114, Oct. 24, 1992, 106 Stat. 2803.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Hoover Power Plant Act of 1984, and not as part of the Department of Energy Organization Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7275, 7276, 7276a, 7276b of this title.

§ 7277. Report concerning review of United States coal imports

(a) In general

The Energy Information Administration shall issue a report quarterly, and provide an annual summary of the quarterly reports to the Congress, on the status of United States coal imports. Such quarterly reports may be published as a part of the Quarterly Coal Report published by the Energy Information Administration.

(b) Contents

Each report required by this section shall—

(1) include current and previous year data on the quantity, quality (including heating value, sulfur content, and ash content), and delivered price of all coals imported by domestic electric utility plants that imported more than 10,000 tons during the previous calendar year into the United States;

(2) identify the foreign nations exporting the coal, the domestic electric utility plants receiving coal from each exporting nation, the domestically produced coal supplied to such plants, and the domestic coal production, by State, displaced by the imported coal;

(3) identify (to the extent allowed under disclosure policy), at regional and State levels of aggregation, transportation modes and costs for delivery of imported coal from the exporting country port of origin to the point of consumption in the United States; and

(4) specifically highlight and analyze any significant trends of unusual variations in coal imports.

(c) Date of reports

The first report required by this section shall be submitted to Congress in March 1986. Subsequent reports shall be submitted within 90 days after the end of each quarter.

(d) Limitation

Information and data required for the purpose of this section shall be subject to the law regarding the collection and disclosure of such data.

(Pub. L. 99-58, title II, § 202, July 2, 1985, 99 Stat. 107.)

¹ So in original. Probably should be followed by a period.

CODIFICATION

Section was enacted as part of the Energy Policy and Conservation Amendments Act of 1985, and also as part of the National Coal Imports Reporting Act of 1985, and not as part of the Department of Energy Organization Act which comprises this chapter.

SHORT TITLE

Section 201 of title II of Pub. L. 99-58 provided that: "This title [enacting this section and provisions set out as a note below] may be cited as the 'National Coal Imports Reporting Act of 1985'."

ANALYSIS OF UNITED STATES COAL IMPORT MARKET; REPORT BY SECRETARY OF ENERGY TO CONGRESS

Section 203 of Pub. L. 99-58 provided that:

"(a) IN GENERAL.—The Secretary of Energy shall, through the Energy Information Administration, conduct a comprehensive analysis of the coal import market in the United States and report the findings of such analysis to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives, within nine months of the date of enactment of this Act [July 2, 1985]."

"(b) CONTENTS.—The report required by this section shall—

"(1) contain a detailed analysis of potential domestic markets for foreign coals, by producing nation, between 1985 and 1995;

"(2) identify potential domestic consuming sectors of imported coal and evaluate the magnitude of any potential economic disruptions for each impacted State, including analysis of direct and indirect employment impact in the domestic coal industry and resulting income loss to each State;

"(3) identify domestically produced coal that potentially could be replaced by imported coal;

"(4) identify contractual commitments of domestic utilities expiring between 1985 and 1995 and describe spot buying practices of domestic utilities, fuel cost patterns, plant modification costs required to burn foreign coals, proximity of navigable waters to utilities, demand for compliance coal, availability of less expensive purchased power from Canada, and State and local considerations;

"(5) evaluate increased coal consumption by domestic electric utilities resulting from increased power sales and analyze the potential coal import market represented by this increased coal consumption, including consumption by existing coal-fired plants, new coal-fired plants projected up to the year 1995, and plants planning to convert to coal by 1995;

"(6) identify existing authorities available to the Federal Government relating to coal imports, assess the potential impact of exercising each of these authorities, and describe executive branch plans and strategies to address coal imports;

"(7) identify and characterize the coal export policies of all major coal exporting nations, including the United States, Australia, Canada, Colombia, Poland, and South Africa, with specific analysis of—

"(A) direct or indirect Government subsidies to coal exporters;

"(B) health, safety, and environmental regulations imposed on each coal producer; and

"(C) trade policies relating to coal exports;

"(8) evaluate the excess capacity of foreign producers, potential development of new export-oriented coal mines in foreign nations, operating costs of foreign coal mines, capacity of ocean vessels to transport foreign coal, and constraints on importing coal into the United States because of port and harbor availability;

"(9) identify specifically the participation of all United States corporations involved in mining and exporting coal from foreign nations; and

"(10) identify the policies governing coal imports of all coal-importing industrialized nations (including the United States, Japan, and European nations) by

considering such factors as import duties or tariffs, import quotas, and other governmental restrictions or trade policies impacting coal imports.”

§ 7278. Availability of appropriations for Department of Energy for transportation, uniforms, security, and price support and loan guarantee programs; transfer of funds; acceptance of contributions

Appropriations for the Department of Energy under this title¹ in this and subsequent Energy and Water Development Appropriations Acts, on and after October 2, 1992, shall be available for hire of passenger motor vehicles; hire, maintenance and operation of aircraft; purchase, repair and cleaning of uniforms; and reimbursement to the General Services Administration for security guard services. From these appropriations, transfers of sums may on and after October 2, 1992, be made to other agencies of the United States Government for the performance of work for which this appropriation is made. None of the funds made available to the Department of Energy under this Act or subsequent Energy and Water Development Appropriations Acts shall be used to implement or finance authorized price support or loan guarantee programs unless specific provision is made for such programs in an appropriation Act. The Secretary is authorized on and after October 2, 1992, to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, private, or foreign.

(Pub. L. 102-377, title III, §301, Oct. 2, 1992, 106 Stat. 1338.)

REFERENCES IN TEXT

This title, referred to in text, is title III of Pub. L. 102-377, Oct. 2, 1992, 106 Stat. 1332. For complete classification of title III to Code, see Tables.

CODIFICATION

Section was enacted as part of the Energy and Water Development Appropriations Act, 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

SUBCHAPTER VII—TRANSITIONAL,
SAVINGS, AND CONFORMING PROVISIONS

§ 7291. Transfer and allocations of appropriations and personnel

(a) Except as otherwise provided in this chapter, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, subject to section 1531 of title 31, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function trans-

ferred by this chapter personnel occupying those positions on October 1, 1977, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312-5316) on October 1, 1977, shall be subject to the provisions of section 7293 of this title.

(Pub. L. 95-91, title VII, §701, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsections (a) and (b), was in the original “this Act”, meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

In subsection (a), “section 1531 of title 31” substituted for “section 202 of the Budget and Accounting Procedures Act of 1950 [31 U.S.C. 581c]” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 7292. Effect on personnel

(a) Full-time and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer pursuant to this subchapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this subchapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after August 4, 1977, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee’s option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

(b) Person who held position compensated in accordance with chapter 53 of title 5

Any person who, on October 1, 1977, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees holding reemployment rights acquired under section 786 of title 15

Employees transferred to the Department holding reemployment rights acquired under section 786 of title 15¹ or any other provision of

¹ See References in Text note below.

¹ See References in Text note below.

law or regulation may exercise such rights only within one hundred twenty days from October 1, 1977, or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

(Pub. L. 95-91, title VII, §702, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

This subchapter, referred to in subsec. (a), was in the original "this title" meaning title VII of Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 605, which enacted this subchapter and section 916 of Title 7, Agriculture, amended sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z-3 of Title 12, Banks and Banking, and sections 766, 790a, and 790d of Title 15, Commerce and Trade, repealed sections 2036 and 5818 of this title and sections 763, 768 and 786 of Title 15, enacted provisions set out as a note under 2201 of this title, and repealed provisions set out as a note under section 761 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 786 of title 15, referred to in subsec. (c), was repealed by Pub. L. 95-91, title VII, §709(a)(1), Aug. 4, 1977, 91 Stat. 607.

EX. ORD. NO. 12026. REINSTATEMENT RIGHTS OF CERTAIN EMPLOYEES OF DEPARTMENT OF ENERGY

Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, provided: By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, the service of an employee of the Atomic Energy Commission or of the Energy Research and Development Administration pursuant to a Regular or Regular (Conditional) appointment, other than such service in an attorney position, who was transferred to the Department of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 *et seq.*) shall be considered as Career or Career-Conditional service, respectively, for purposes of eligibility for reinstatement in the competitive Civil Service.

JIMMY CARTER.

§ 7293. Agency terminations

Except as otherwise provided in this chapter, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this chapter, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313-5316), shall terminate.

(Pub. L. 95-91, title VII, §703, Aug. 4, 1977, 91 Stat. 606.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7291 of this title.

§ 7294. Incidental transfers

The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this chapter, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, as he may deem necessary to accomplish the purposes of this chapter.

(Pub. L. 95-91, title VII, §704, Aug. 4, 1977, 91 Stat. 606.)

§ 7295. Savings provisions

(a) Orders, determinations, rules, etc., in effect prior to effective date of this chapter

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

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter to the Department or the Commission after August 4, 1977, and

(2) which are in effect on October 1, 1977,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Proceedings or applications for licenses, permits, etc., pending at effective date of this chapter; regulations

(1) The provisions of this chapter shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending on October 1, 1977, before any department, agency, commission, or component thereof, functions of which are transferred by this chapter; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such pro-

ceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this chapter had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Suits commenced prior to effective date of this chapter

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to October 1, 1977, and

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

(d) Suits, actions, etc., commenced by or against any officer or agency or cause of action by or against any department or agency

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter.

(e) Suits with officers, departments, or agencies as parties

If, before October 1, 1977, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

(Pub. L. 95-91, title VIII, §705, Aug. 4, 1977, 91 Stat. 606.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7341 of this title.

§ 7296. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

(Pub. L. 95-91, title VII, §706, Aug. 4, 1977, 91 Stat. 607.)

§ 7297. Cross references

With respect to any functions transferred by this chapter and exercised after October 1, 1977, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this chapter vests such functions.

(Pub. L. 95-91, title VII, §707, Aug. 4, 1977, 91 Stat. 607.)

§ 7298. Presidential authority

Except as provided in subchapter IV of this chapter, nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before October 1, 1977; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(Pub. L. 95-91, title VII, §708, Aug. 4, 1977, 91 Stat. 607.)

§ 7299. Transition

With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this chapter.

(Pub. L. 95-91, title VII, §711, Aug. 4, 1977, 91 Stat. 609.)

§ 7300. Report to Congress; effect on personnel

The Civil Service Commission shall, as soon as practicable but not later than one year after October 1, 1977, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this chapter which shall include—

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this chapter;

(2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this chapter;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

(Pub. L. 95-91, title VII, §712, Aug. 4, 1977, 91 Stat. 609.)

TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 7301. Environmental impact statements

The transfer of functions under subchapters III and IV of this chapter shall not affect the valid-

ity of any draft environmental impact statement published before October 1, 1977.

(Pub. L. 95-91, title VII, §713, Aug. 4, 1977, 91 Stat. 610.)

SUBCHAPTER VIII—ENERGY PLANNING

§ 7321. National Energy Policy Plan

(a) Preparation by President and submission to Congress; formulation and review

The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this subchapter referred to as a “proposed Plan”) as provided in subsection (b) of this section;

(2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Biennial transmittal to Congress; contents

Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to

taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) Submission of report to Congress; contents

The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

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

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

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

(d) Consultation with consumers, small businesses, etc.

The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

(Pub. L. 95-91, title VIII, §801, Aug. 4, 1977, 91 Stat. 610.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12006, 13382, 13522 of this title.

§ 7322. Congressional review

(a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

(Pub. L. 95-91, title VIII, §802, Aug. 4, 1977, 91 Stat. 611.)

SUBCHAPTER IX—EFFECTIVE DATE AND
INTERIM APPOINTMENTS

§ 7341. Effective date

The provisions of this chapter shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after August 4, 1977, (1) any of the officers provided for in subchapters II and IV of this chapter may be nominated and appointed, as provided in those subchapters, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 7295(b)(2) of this title at any time after August 4, 1977. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this chapter, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(Pub. L. 95-91, title IX, §901, Aug. 4, 1977, 91 Stat. 612.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EXECUTIVE ORDER NO. 12009

Ex. Ord. No. 12009, Sept. 13, 1977, 42 F.R. 46267, which prescribed Oct. 1, 1977, as the effective date of this chapter, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 7342. Interim appointments

In the event that one or more officers required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on October 1, 1977, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to October 1, 1977, to act in such office until the office is filled as provided in this chapter. While so acting such persons shall receive compensation at the rates provided by this chapter for the respective offices in which they act.

(Pub. L. 95-91, title IX, §902, Aug. 4, 1977, 91 Stat. 612.)

SUBCHAPTER X—SUNSET PROVISIONS

§ 7351. Submission of comprehensive review

Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 7270 of this title,

for such programs for the fiscal year beginning October 1, 1982.

(Pub. L. 95-91, title X, § 1001, Aug. 4, 1977, 91 Stat. 612.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7352 of this title.

§ 7352. Contents of review

Each comprehensive review prepared for submission under section 7351 of this title shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding

for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

(Pub. L. 95-91, title X, §1002, Aug. 4, 1977, 91 Stat. 612.)

SUBCHAPTER XI—ENERGY TARGETS

§§ 7361 to 7364. Repealed. Pub. L. 102-486, title XVI, § 1606, Oct. 24, 1992, 106 Stat. 3003

Section 7361, Pub. L. 96-294, title III, §301, June 30, 1980, 94 Stat. 712, related to preparation of energy targets.

Section 7362, Pub. L. 96-294, title III, §302, June 30, 1980, 94 Stat. 712, related to congressional consideration.

Section 7363, Pub. L. 96-294, title III, §303, June 30, 1980, 94 Stat. 714, set out energy target form and definitions.

Section 7364, Pub. L. 96-294, title III, §304, June 30, 1980, 94 Stat. 715, set out general provisions regarding targets.

SUBCHAPTER XII—RENEWABLE ENERGY INITIATIVES

CODIFICATION

This subchapter was enacted as part of title IV of the Energy Security Act, which title is known as the Renewable Energy Resources Act of 1980, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7371. Statement of purpose

The purpose of this subchapter is to establish incentives for the use of renewable energy resources, to improve and coordinate the dissemination of information to the public with respect to renewable energy resources, to encourage the use of certain cost effective solar energy systems and conservation measures by the Federal Government, to establish a program for the promotion of local energy self-sufficiency, to broaden the existing program for accelerating the procurement and use of photovoltaic systems, and to provide further encouragement for the development of small hydroelectric power projects.

(Pub. L. 96-294, title IV, §402, June 30, 1980, 94 Stat. 715.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title IV of Pub. L. 96-294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980. For complete classification of title IV to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 401 of title IV Pub. L. 96-294 provided that: “This title [enacting this subchapter, amending sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacting a provision set out as a note under section 2701 of Title 16] may be cited as the ‘Renewable Energy Resources Act of 1980.’”

§ 7372. “Secretary” and “renewable energy resource” defined

For purposes of this subchapter—

(1) the term “Secretary” means the Secretary of Energy; and

(2) the term “renewable energy resource” means any energy resource which has recently originated in the sun, including direct and indirect solar radiation and intermediate solar energy forms such as wind, ocean thermal gradients, ocean currents and waves, hydropower, photovoltaic energy, products of photosynthetic processes, organic wastes, and others.

(Pub. L. 96-294, title IV, §403, June 30, 1980, 94 Stat. 716.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title IV of Pub. L. 96-294, June 30, 1980, 94 Stat. 715, known as the Renewable Energy Resources Act of 1980, which enacted this subchapter, amended sections 8255, 8271, and 8274 to 8276 of this title and sections 2705 and 2708 of Title 16, Conservation, and enacted a provision set out as a note under section 2701 of Title 16. For complete classification of title IV to the Code, see Short Title note set out under section 7371 of this title and Tables.

§ 7373. Coordinated dissemination of information on renewable energy resources and conservation

In order to improve the effectiveness of Federal information dissemination activities in the fields of renewable energy resources and energy conservation with the objective of developing and promoting better public understanding of these resources and their potential uses, the Secretary shall—

(1) take affirmative steps to coordinate all of the activities of the Department of Energy, whether conducted by the Department itself or by other public or private entities with assistance from the Department, which are aimed at or involve the dissemination of information with respect to renewable energy resources or energy conservation, and

(2) report annually to the Congress on the status of such activities, including a description of how the information dissemination activities and services of the Department of Energy in the fields of renewable energy resources and energy conservation are being coordinated with similar or related activities and services of other Federal agencies.

(Pub. L. 96-294, title IV, §404, June 30, 1980, 94 Stat. 716.)

§ 7374. Energy self-sufficiency initiatives

(a) Establishment of 3-year pilot program

There is hereby established under the direction of the Secretary a 3-year pilot energy self-sufficiency program to demonstrate energy self-sufficiency through the use of renewable energy resources in one or more States in the United States.

(b) Establishment of subprograms to pilot programs; scope of subprograms

As a part of the pilot program, the Secretary shall establish such subprograms as the Secretary determines are necessary to achieve the purpose of this section, including subprograms—

(1) to promote the development and utilization of synergistic combinations of different renewable energy resources in specific projects aimed at reducing fossil fuel importation;

(2) to initiate and encourage energy self-sufficiency at appropriate levels of government;

(3) to stimulate private industry participation in the realization of the objective stated in subsection (a) of this section; and

(4) to stimulate the utilization of abandoned or underutilized industrial facilities for the generation of energy from any locally available renewable resource, such as municipal solid waste, agricultural waste, or forest products waste.

(c) Implementation of subprograms; preparation of plan of program and additional Federal actions

In carrying out the provisions of this section, the Secretary is authorized to assign to an existing office in the Department of Energy the responsibility of undertaking and carrying out the subprograms established under subsection (b) of this section. In addition, the Secretary shall prepare a detailed plan within one hundred eighty days of June 30, 1980, setting forth (1) the 3-year pilot program itself, and (2) any additional Federal actions needed to encourage and promote the adoption of programs for energy self-sufficiency.

(d) Submission of plan and implementation report to Congress

The Secretary shall submit to the Congress, within one year after June 30, 1980, the plan prepared under the second sentence of subsection (c) of this section along with a report suggesting the legislative initiatives needed to fully implement such plan.

(Pub. L. 96-294, title IV, § 406, June 30, 1980, 94 Stat. 716.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7375 of this title.

§ 7375. Authorization of appropriations

(a) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to exceed \$10,000,000 for loans under section 402 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2702], in addition to any amounts authorized for such loans by that Act; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(b) There is authorized to be appropriated for each of the fiscal years 1981 and 1982 not to exceed \$100,000,000 for loans under section 403 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2703]; and the amounts appropriated pursuant to this subsection shall remain available until expended.

(c) There is authorized to be appropriated for the fiscal year 1981 not to exceed \$10,000,000 to carry out section 7374 of this title (relating to energy self-sufficiency initiatives).

(Pub. L. 96-294, title IV, § 409, June 30, 1980, 94 Stat. 719.)

REFERENCES IN TEXT

That Act, referred to in subsec. (a), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117, as amended, known as the Public Utility Regulatory Policies Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

SUBCHAPTER XIII—DEPARTMENT OF ENERGY SCIENCE EDUCATION PROGRAMS

CODIFICATION

This subchapter was enacted as part of part E (§§ 3161-3168) of title XXXI of div. C of the National Defense Authorization Act for Fiscal Year 1991, known as the Department of Energy Science Education Enhancement Act, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7381. Findings and purposes

(a) Findings

The Congress finds the following:

(1) Scientific, technical, and engineering competence is essential to the Nation's future well-being.

(2) The scientific, technical, and engineering capability at the Federal laboratories is unmatched throughout the world.

(3) Superb research, development, testing, and evaluation occur in Department of Energy research and development facilities.

(4) Department of Energy research and development facilities will play an increasing role in assuring that the United States remains competitive in world markets.

(5) Improvements in mathematics, science, and engineering education are needed desperately to provide the trained and educated citizenry essential to the future competitiveness of the United States.

(6) The future health and vitality of the economy of the United States is predicated on the availability of an adequate supply of scientists, mathematicians, and engineers to provide for growing needs and to replenish the workforce.

(7) United States college and university enrollment in science, mathematics, and engineering programs is sharply declining at undergraduate, graduate, and post-graduate levels.

(8) The Federal Government is the largest United States employer of research scientists, mathematicians, and engineers, and the Department of Energy has a growing need for scientists, mathematicians, and engineers at a time when these enrollments are declining.

(9) Women and minorities are grossly underrepresented in science and mathematics fields, and this group represents more than 80 percent of the projected increase in the national workforce through the year 2000.

(b) Purposes

The purposes of this subchapter are—

(1) to encourage the development and implementation of science, mathematics, and engineering education programs at the Department of Energy and at its research and development facilities as part of a national effort to improve science, mathematics, and engineering education; and

(2) to provide more efficient coordination among science, mathematics, and engineering education programs.

(Pub. L. 101-510, div. C, title XXXI, § 3162, Nov. 5, 1990, 104 Stat. 1840.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original "this part", meaning part E of title XXXI of

div. C of Pub. L. 101-510, which is classified principally to this subchapter. For complete classification of part E to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 3161 of Pub. L. 101-510 provided that: "This part [part E (§§3161-3168) of title XXXI of div. C of Pub. L. 101-510, enacting this subchapter and amending section 7112 of this title] may be cited as the 'Department of Energy Science Education Enhancement Act'."

UNIVERSITY-BASED RESEARCH COLLABORATION PROGRAM

Pub. L. 105-85, div. C, title XXXI, §3155, Nov. 18, 1997, 111 Stat. 2044, provided that:

"(a) FINDINGS.—Congress makes the following findings:

"(1) The maintenance of scientific and engineering competence in the United States is vital to long-term national security and the defense and national security missions of the Department of Energy.

"(2) Engaging the universities and colleges of the Nation in research on long-range problems of vital national security interest will be critical to solving the technology challenges faced within the defense and national security programs of the Department of Energy in the next century.

"(3) Enhancing collaboration among the national laboratories, universities and colleges, and industry will contribute significantly to the performance of these Department of Energy missions.

"(b) PROGRAM.—The Secretary of Energy shall establish a university program at a location that can develop the most effective collaboration among national laboratories, universities and colleges, and industry in support of scientific and engineering advancement in key Department of Energy defense and national security program areas.

"(c) FUNDING.—Of the funds authorized to be appropriated in this title [see Tables for classification] to the Department of Energy for fiscal year 1998, the Secretary shall make \$5,000,000 available for the establishment and operation of the program under subsection (b)."

§ 7381a. Science education programs

(a) Programs

The Secretary is authorized to establish programs to enhance the quality of mathematics, science, and engineering education. Any such programs shall be operated at or through the support of Department research and development facilities, shall use the scientific resources of the Department, and shall be consistent with the overall Federal plan for education and human resources in science and technology developed by the Federal Coordinating Council for Science, Engineering, and Technology.

(b) Relationship to other Department activities

The programs described in subsection (a) of this section shall supplement and be coordinated with current activities of the Department, but shall not supplant them.

(Pub. L. 101-510, div. C, title XXXI, §3164, Nov. 5, 1990, 104 Stat. 1841.)

§ 7381b. Laboratory cooperative science centers and other authorized education activities

(a) Activities

The Secretary is authorized to:

(1) Support research appointments for college and university science and engineering students, and for faculty-student teams, at Department research and development facilities.

(2) Support research appointments for high school science teachers at Department research and development facilities.

(3) Support research apprenticeship appointments at Department research and development facilities for students underrepresented in science and technology careers.

(4) Support research experience programs at Department research and development facilities for nationally selected high school honor students.

(5) Operate mathematics and science education programs for elementary and secondary students at Department research and development facilities.

(6) Establish a museum-based science education program.

(7) Establish collaborative inner-city and rural partnership programs designed to meet the special mathematics and science education needs of students in inner-city and rural areas.

(8) Provide paid administrative leave for employees of the Department or Department research and development facilities who volunteer to interact with schools, colleges, universities, teachers, or students for the purpose of science, mathematics, and engineering education.

(9) Establish a talent pool of volunteer scientists, mathematicians, and engineers who have retired from the Department or Department research and development facilities to serve at schools and school districts for the purpose of (A) assisting teachers, with activities such as experiments, lectures, or the preparation of materials; (B) serving as counselors to students on science, mathematics, and engineering; and (C) otherwise assisting science, mathematics, and engineering classes. The Secretary, acting through Department research and development facilities, shall, wherever possible, identify and match schools and school districts with retired scientists, mathematicians, and engineers.

(10) Establish a Young Americans' Summer Science Camp Program to provide secondary school students with a hands-on science experience as well as exposure to working scientists and career counseling.

(11) Establish a program for mathematics and science teachers to provide teachers serving large numbers of disadvantaged students with new strategies for mathematics and science instruction.

(12) Support graduate students and, through university-based cooperative programs, undergraduate students for the purpose of encouraging more students to pursue scientific and technical careers, with a particular focus on the recruitment of women and minority students.

(13) Establish a prefreshman enrichment program in which middle-school students attend summer workshops on mathematics, science, and engineering conducted by universities on their campuses.

(b) Use of facilities

Any of the activities authorized by subsection (a) of this section may be conducted through Department research and development facilities.

The Secretary may designate facilities conducting such education activities as “Laboratory Cooperative Science Centers”.

(c) Funding

The Secretary is authorized to accept non-Federal funds to finance education activities described in subsection (a) of this section.

(Pub. L. 101-510, div. C, title XXXI, §3165, Nov. 5, 1990, 104 Stat. 1841; Pub. L. 102-25, title VII, §704(d), Apr. 6, 1991, 105 Stat. 120.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-25, §704(d)(1), redesignated subpars. (J) to (M) as pars. (10) to (13), respectively.

Subsec. (b). Pub. L. 102-25, §704(d)(2), inserted “such” before “education activities” in second sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-25 applicable as if included in enactment of Pub. L. 101-510, see section 704(e) of Pub. L. 102-25, set out as a note under section 12321 of Title 10, Armed Forces.

§ 7381c. Education partnerships

(a) Education partnerships

The Secretary may authorize each Department research and development facility, to the extent practicable and consistent with the provisions of the laboratory’s management and operating contract, to enter into education partnership agreements with educational institutions in the United States (including local educational agencies, colleges, and universities) for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education.

(b) Types of assistance

Under a partnership agreement entered into with an educational institution under subsection (a) of this section and as authorized by the Secretary, a Department research and development facility may provide assistance to the educational institution by—

- (1) loaning equipment to the institution;
- (2) transferring to the institution equipment determined by the director of the Department research and development facility to be surplus;
- (3) making personnel of Department research and development facilities available to teach science courses or to assist in the development of science courses and materials for the institution;
- (4) involving faculty and students of the institution in research programs of Department research and development facilities;
- (5) cooperating with the institution in developing a program under which students may be given academic credit for work on research projects of Department research and development facilities; and
- (6) providing academic and career advice and assistance to students of the institution.

(Pub. L. 101-510, div. C, title XXXI, §3166, Nov. 5, 1990, 104 Stat. 1843.)

§ 7381d. Definitions

In this subchapter:

(1) The term “Secretary” means the Secretary of Energy.

(2) The term “Department” means the Department of Energy.

(3) The term “Department research and development facilities” means all Department of Energy single-purpose and multipurpose National Laboratories and research and development facilities and programs, and any other facility or program operated by a contractor funded from the Office of Energy Research of the Department of Energy.

(4) The term “local educational agency” has the meaning given that term by section 2891(12)¹ of title 20.

(Pub. L. 101-510, div. C, title XXXI, §3167, Nov. 5, 1990, 104 Stat. 1843.)

REFERENCES IN TEXT

Section 2891(12) of title 20, referred to in par. (4), was in the original “section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12))”, Pub. L. 89-10, and was omitted in the general amendment of that Act by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. See section 8801 of Title 20, Education.

§ 7381e. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out university research support and other science, mathematics, and engineering education programs authorized by this subchapter and administered by the Office of Energy Research of the Department of Energy, \$40,000,000 for fiscal year 1991.

(Pub. L. 101-510, div. C, title XXXI, §3168, Nov. 5, 1990, 104 Stat. 1843.)

SUBCHAPTER XIV—ALBERT EINSTEIN
DISTINGUISHED EDUCATOR FELLOWSHIPS

CODIFICATION

This subchapter was enacted as part A (§§511-518) of title V of the Improving America’s Schools Act of 1994, known as the Albert Einstein Distinguished Educator Fellowship Act of 1994, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7382. Findings

The Congress finds that—

- (1) the Department of Energy has unique and extensive mathematics and science capabilities that contribute to mathematics and science education programs throughout the Nation;
- (2) a need exists to increase understanding, communication, and cooperation between the Congress, the Department of Energy, other Federal agencies, and the mathematics and science education community;
- (3) elementary and secondary school mathematics and science teachers can provide practical insight to the legislative and executive branches in establishing and operating education programs; and
- (4) a pilot program that placed elementary and secondary school mathematics and science teachers in professional staff positions in the

¹ See References in Text note below.

Senate and the House of Representatives has proven successful and demonstrated the value of expanding the program.

(Pub. L. 103-382, title V, §512, Oct. 20, 1994, 108 Stat. 4042.)

SHORT TITLE

Section 511 of Pub. L. 103-382 provided that: "This part [part A (§§511-518) of title V of Pub. L. 103-382, enacting this subchapter] may be cited as the 'Albert Einstein Distinguished Educator Fellowship Act of 1994.'"

§ 7382a. Purpose; designation

(a) Purpose

The purpose of this subchapter is to establish within the Department of Energy a national fellowship program for elementary and secondary school mathematics and science teachers.

(b) Designation

A recipient of a fellowship under this subchapter shall be known as an "Albert Einstein Fellow".

(Pub. L. 103-382, title V, §513, Oct. 20, 1994, 108 Stat. 4042.)

§ 7382b. Definitions

As used in this subchapter—

- (1) the term "elementary school" has the meaning provided by section 8801 of title 20;
- (2) the term "local educational agency" has the meaning provided by section 8801 of title 20;
- (3) the term "secondary school" has the meaning provided by section 8801 of title 20;
- (4) the term "Secretary" means the Secretary of Energy.

(Pub. L. 103-382, title V, §514, Oct. 20, 1994, 108 Stat. 4042.)

§ 7382c. Fellowship Program

(a) In general

(1) Establishment

The Secretary shall establish the Albert Einstein Distinguished Educator Fellowship Program (hereafter in this subchapter referred to as the "Program") to provide 12 elementary or secondary school mathematics or science teachers with fellowships in each fiscal year in accordance with this subchapter.

(2) Order of priority

The Secretary may reduce the number of fellowships awarded under this subchapter for any fiscal year in which the amount appropriated for the Program is insufficient to support 12 fellowships. If the number of fellowships awarded under this subchapter is reduced for any fiscal year, then the Secretary shall award fellowships based on the following order of priority:

- (A) Three fellowships in the Department of Energy.
- (B) Two fellowships in the Senate.
- (C) Two fellowships in the House of Representatives.
- (D) One fellowship in each of the following entities:
 - (i) The Department of Education.

- (ii) The National Institutes of Health.
- (iii) The National Science Foundation.
- (iv) The National Aeronautics and Space Administration.
- (v) The Office of Science and Technology Policy.

(3) Terms of fellowships

Each fellowship awarded under this subchapter shall be awarded for a period of ten months that, to the extent practicable, coincide with the academic year.

(4) Eligibility

To be eligible for a fellowship under this subchapter, an elementary or secondary school mathematics or science teacher must demonstrate—

- (A) that such teacher would bring unique and valuable contributions to the Program;
- (B) that such teacher is recognized for excellence in mathematics or science education; and
- (C)(i) a sabbatical leave from teaching will be granted in order to participate in the Program; or
 - (ii) the teacher will return to a teaching position comparable to the position held prior to participating in the Program.

(b) Administration

The Secretary shall—

- (1) provide for the development and administration of an application and selection process for fellowships under the Program, including a process whereby final selections of fellowship recipients are made in accordance with subsection (c) of this section;
- (2) provide for the publication of information on the Program in appropriate professional publications, including an invitation for applications from teachers listed in the directories of national and State recognition programs;
- (3) select from the pool of applicants 12 elementary and secondary school mathematics teachers and 12 elementary and secondary school science teachers;
- (4) develop a program of orientation for fellowship recipients under this subchapter; and
- (5) not later than August 31 of each year in which fellowships are awarded, prepare and submit an annual report and evaluation of the Program to the appropriate Committees of the Senate and the House of Representatives.

(c) Selection

(1) In general

The Secretary shall arrange for the 24 semifinalists to travel to Washington, D.C., to participate in interviews in accordance with the selection process described in paragraph (2).

(2) Final selection

- (A) Not later than May 1 of each year preceding each year in which fellowships are to be awarded, the Secretary shall select and announce the names of the fellowship recipients.
- (B) The Secretary shall provide for the development and administration of a process to select fellowship recipients from the pool of semifinalists as follows:
 - (i) The Secretary shall select three fellowship recipients who shall be assigned to the Department of Energy.

(ii) The Majority Leader of the Senate and the Minority Leader of the Senate, or their designees, shall each select a fellowship recipient who shall be assigned to the Senate.

(iii) The Speaker of the House of Representatives and the Minority Leader of the House of Representatives, or their designees, shall each select a fellowship recipient who shall be assigned to the House of Representatives.

(iv) Each of the following individuals, or their designees, shall select one fellowship recipient who shall be assigned within the department, office, agency, or institute such individual administers:

- (I) The Secretary of Education.
- (II) The Director of the National Institutes of Health.
- (III) The Director of the National Science Foundation.
- (IV) The Administrator of the National Aeronautics and Space Administration.
- (V) The Director of the Office of Science and Technology Policy.

(Pub. L. 103-382, title V, §515, Oct. 20, 1994, 108 Stat. 4042.)

§ 7382d. Fellowship awards

(a) Fellowship recipient compensation

Each recipient of a fellowship under this subchapter shall be paid during the fellowship period at a rate of pay that shall not exceed the minimum annual rate payable for a position under GS-13 of the General Schedule.

(b) Local educational agency

The Secretary shall seek to ensure that no local educational agency penalizes a teacher who elects to participate in the Program.

(Pub. L. 103-382, title V, §516, Oct. 20, 1994, 108 Stat. 4044.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5, Government Organization and Employees.

§ 7382e. Waste management education research consortium (WERC)

(a)¹ In general

The Secretary is authorized to establish a partnership of Department of Energy laboratories, academic institutions, and private sector industries to conduct environmentally-related education programs, including programs involving environmentally conscious manufacturing and waste management activities that have undergraduate and graduate educational training as a component.

(Pub. L. 103-382, title V, §517, Oct. 20, 1994, 108 Stat. 4044.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7382f of this title.

¹ So in original. No subsec. (b) has been enacted.

§ 7382f. Authorization of appropriations

(a) In general

There are authorized to be appropriated for the Program \$700,000 for fiscal year 1995, and such sums as may be necessary for each of the four succeeding fiscal years.

(b) WERC program

There are authorized to be appropriated for the WERC program under section 7382e of this title such sums as may be necessary for fiscal year 1995 and each of the four succeeding fiscal years.

(Pub. L. 103-382, title V, §518, Oct. 20, 1994, 108 Stat. 4044.)

CHAPTER 85—AIR POLLUTION PREVENTION AND CONTROL

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

PART A—AIR QUALITY AND EMISSION LIMITATIONS

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| Sec. | |
| 7401. | Congressional findings and declaration of purpose. <ul style="list-style-type: none"> (a) Findings. (b) Declaration. (c) Pollution prevention. |
| 7402. | Cooperative activities. <ul style="list-style-type: none"> (a) Interstate cooperation; uniform State laws; State compacts. (b) Federal cooperation. (c) Consent of Congress to compacts. |
| 7403. | Research, investigation, training, and other activities. <ul style="list-style-type: none"> (a) Research and development program for prevention and control of air pollution. (b) Authorized activities of Administrator in establishing research and development program. (c) Air pollutant monitoring, analysis, modeling, and inventory research. (d) Environmental health effects research. (e) Ecosystem research. (f) Liquefied Gaseous Fuels Spill Test Facility. (g) Pollution prevention and emissions control. (h) NIEHS studies. <ul style="list-style-type: none"> (i) Coordination of research. (j) Continuation of national acid precipitation assessment program. (k) Air pollution conferences. |
| 7404. | Research relating to fuels and vehicles. <ul style="list-style-type: none"> (a) Research programs; grants; contracts; pilot and demonstration plants; by-products research. (b) Powers of Administrator in establishing research and development programs. (c) Clean alternative fuels. |
| 7405. | Grants for support of air pollution planning and control programs. <ul style="list-style-type: none"> (a) Amounts; limitations; assurances of plan development capability. (b) Terms and conditions; regulations; factors for consideration; State expenditure limitations. (c) Maintenance of effort. (d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant. (e) Notice and opportunity for hearing when affected by adverse action. |