United States
Department of
Agriculture

Forest
Service

The Principal Laws Relating To Forest Service Activities

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1993 Version

Principal Laws Relating to Forest Service Activities

A Preface

The Principal Laws Relating to Forest Service Activities is a reference for people interested in Forest Service programs and policies. This is the fourth version of the book.

As the title implies, it contains laws or portions of laws whose provisions have national application in terms of agency compliance or agency authority or discretion to act.

The arrangement of the laws is chronological, but the book contains two Tables of Contents: (1) chronologically and (2) alphabetically. Alphabetical listing is by statutory name if cited in the law or by popular name or subject reference, such as "Organic Administration Act" or "Twenty-five Percent Fund." Some laws are called by more than one name and we have tried to include the statutory name and common name (and versions thereof) in the alphabetical table. An example is the Forest Rangeland Renewable Resources Planning Act of 1974 which is also known as the "Resources Planning Act," "RPA", and occasionally, the Humphrey-Rarick Act.

References to the Public Law number and citations to the United States Statutes at Large and the United States Code are provided in parentheses. For example, the National Forest Management Act will be cited as follows:

- "Act of October 22, 1976 (P.L. 94-588, 90 Stat. 2949, as amended, 16 U.S.C. 472a, 476, 513-516, 518, 521b, 528(note), 576b, 594-29(note), 1600(note), 1602(note), 1600-1602, 1604, 1606, 1608-1674)"

The citation provides the following information:

- Act of October 22, 1976 = The date the act was signed.
- P.L. 94-588 = The public law number assigned—it was the 588th statute of the 94th Congress signed into law. (Note: Laws enacted prior to 1957 were designated by a chapter number.)
- 90 Stat. 2949 = Indicates volume 90 of the United States Statutes at Large, page 2949.

- As amended = Indicates this is not the original act, but contains one or more amendments.
- 16 U.S.C. 472a et al = Title and section numbers in which the law is codified in the United States Code.

The * * * * within the body of the act indicates that sections of the Act did not apply to the Forest Service, therefore they were not included in this book.

The United States Statutes at Large and the United States Code are found in virtually all law libraries and most comprehensive libraries.

Readers should not infer anything more about the contents of this volume than what the plain reading of its title indicates. Enactment of a law is only one means of formulating public policy. There are other ways. In the legislative branch, public policy is also formulated in the budgetary process, particularly in appropriation acts. In the executive branch, public policy is routinely formulated in administrative rule making, in preparing the president's annual budget request, and through issuance of internal policy and direction. Finally, much public policy is made in adjudicating lawsuits in the judicial branch. Legal precedents are set which establish a body of case law.

One way to consider the body of law contained in the subsequent pages is to examine the four basic activities of the Forest Service, namely: national forest system, state and private forestry, research, and international forestry. Each is authorized by specific pieces of legislation. Administration of the national forests today is guided primarily through four laws:

- the Multiple Use-Sustained Yield Act which established the multiple-use and sustained-yield polices for management of the national forests;

- the National Environmental Policy Act which committed the federal government to a policy of creating and maintaining "conditions under which man and nature can exist in productive harmony;"

- the Forest and Rangeland Renewable Resources Planning Act which called for preparation of a strategic plan for all Forest Service activities every five years based on an assessment of renewable natural resources on all land ownerships every ten year; and

- the National Forest Management Act which provided standards and

guidelines for national forest planning and management.

These four laws are supported by a rich legal history, including other laws such as:

- the Creative Act of 1891 which authorized the president to set aside public lands as forest reserves;

- the Organic Administration Act of 1897, which specified the purposes for which forest reserves might be established and provided for their protection and management;

- the Transfer Act of 1905 which transferred administration of the forest reserves from the Department of the Interior to the Department of Agriculture; and,

- the Weeks Law of 1911 which authorized purchase of forested, cutover, or denuded lands within the watersheds of navigable streams.

The state and private forestry activities of the Forest Service are authorized by the Cooperative Forestry Assistance Act of 1978 which recodified in one statute, authority for ten existing programs in cooperative forestry assistance to states and private forest landowners. The act was amended by Title XII of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Farm Bill) which, among other things, substantially increased educational, technical, and financial assistance for nonindustrial private forest landowners under the "Forest Stewardship Program", established a conservation easement program called "the Forest Legacy Program", and expanded educational and technical assistance for urban and community forestry programs.

The Forest and Rangeland Renewable Resources Act of 1978 provides an updated and expanded authority for research by the Forest Service, which was formerly authorized under the McSweeney-McNary Act of 1928. The former statute was also modestly amended by Title XII of the 1990 Farm Bill.

International Forestry activities of the Forest Service are conducted under the authority of Title VI of the Foreign Operations Appropriations Act of Fiscal Year 1991 (P.L. 101-513) which was further expanded upon by Title XXIV of the 1990 Farm Bill. There was no statutory precedent to this legislation.

So what do the following pages offer you? A handy reference source. But for a comprehensive understanding of any particular Forest Service program or activity, you must also be familiar with committee reports, hearing records, appropriation acts, presidential budget requests, federal regulations, court decisions, and the Forest Service directives system.

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ACTS OF THE 1800'S

U.S. Mining Laws (Public Domain Lands)

- **Act of May 10, 1872 (Ch. 152, 17 Stat. 91; 30 U.S.C. 22, 28, 28b)**

Note—The U.S. Mining Laws, Act of May 10, 1872 (17 Stat. 91), as amended (30 U.S.C. 22, 28), unless otherwise provided by law, apply to all mineral deposits in (1) National Forest lands reserved from the public domain or which were acquired by exchange under the Act of March 20, 1922 (42 Stat. 465; 16 U.S.C. 485), or similar law, by the terms of which "public land" or the timber thereon is granted and in exchange for land of equal value, and (2) National Grasslands and other Title III lands transferred from the public domain by Executive Order or otherwise, for administration under Title III of the Bankhead-Jones Farm Tenant Act, except (a) oil, gas, oil shale, coal, potassium, sodium, phosphate, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), and sulphur in Louisiana and New Mexico, which are commonly referred to as the "leasing act" minerals and (b) mineral materials (including but not limited to common varieties of sand, stone, gravel, pumice, pumicite, or cinders), which are commonly referred to as "common varieties", and to deposits of petrified wood. The "leasing act" minerals in public lands are subject to disposal by the Secretary of the Interior under the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181-287). Common varieties on lands reserved from the public domain are subject to disposal by the Secretary of Agriculture under the Materials Act of July 31, 1947, as amended (30 U.S.C. 602-604, 611).

The mining laws do not apply to lands situated in Minnesota, Michigan, Wisconsin (30 U.S.C. 48); Alabama (30 U.S.C. 171); Missouri and Kansas (30 U.S.C. 49); and certain lands in Oklahoma (43 U.S.C. 1098, 1100, 1131). Similarly, they do not apply to lands within reclamation withdrawals (43 U.S.C. 416, 432); Federal power withdrawals, except under certain conditions (16 U.S.C. 818, 30 U.S.C. 621); Federal game refuges; military reservations; or to lands otherwise specifically withdrawn from their operation. There are a number of acts which modify the mining laws as applied to local areas by prohibiting entry altogether or by limiting or restricting the use which may be made of the surface and the right, title, or interest which may pass through patent. (Legal advice may be required to determine whether or not the mining laws are applicable to a particular tract of National Forest land, National Grassland or other Title III land.)

The Act of July 23, 1955 (30 U.S.C. 612-615) limited the use of subsequently located mining claims prior to patent to purposes of prospecting, mining, or processing, and uses reasonably incident thereto; provided for management and disposal of timber and other vegetative surface resources and management of other surface resources (except mineral deposits subject to location) by the United States; and provided for a determination of surface rights on claims existing prior to July 23, 1955.

Lands Open to Purchase by Citizens

Sec. 1. Except as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners, in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States. (30 U.S.C. 22)

* * * *

Mining District Regulations by Miners

Sec. 5. That the miners of each mining district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the passage of this act, and until a patent shall have been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year. On all claims located prior to the passage of this act, $10 worth of labor shall be performed or improvements made each year for each one hundred feet in length along the vein until a patent shall have been issued therefor; but where such claims are held in common such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made; *Providing*, That the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after such failure and before such location. Upon the failure of any one of several coowners to contribute his proportion of the expenditures required by this act, the coowners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent coowner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the

expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure to comply with this act, his interest in the claim shall become the property of his co-owners who have made the required expenditures. That the period within which the work required to be done annually on all unpatented mineral claims located since May 10, 1872, including such claims in the Territory of Alaska, shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of such claim....(30 U.S.C. 28)

Annual Assessment Work on Mining Claims

The performance of not less than $100 worth of labor or the making of improvements aggregating such amount, which labor or improvements are required under the provisions of section 2324 of the Revised Statutes of the United States to be made during each year, may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof. (30 U.S.C. 28b)

Right of Eminent Domain
(Condemnation of Property)

- **Act of August 1, 1888 (Ch. 782, 25 Stat. 357, as amended; 40 U.S.C. 257)**

In every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of the Secretary of the Treasury, or such other officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice. (40 U.S.C. 257)

Note—The Condemnation Act itself is not an authority to acquire land. Lands or interests therein may be acquired by condemnation only where such acquisition is otherwise authorized by statute; i.e., Weeks Law, Federal Highway Act, or other applicable statute.

Note—The Wilderness Act, the Eastern Wilderness Act, the National Trails System Act, and the Wild and Scenic Rivers Act, which are included in their entirety in this Handbook, have provisions limiting the use of condemnation.

Organic Administration Act

- **Act of June 4, 1897 (Ch. 2, 30 Stat. 11, as amended; 16 U.S.C. 473-475, 477-482, 551)**

Note—The following provisions originated as parts of Section 1 of the Sundry Civil Expenses Appropriation Act for Fiscal Year 1898.

Creation of National Forests

The President of the United States is authorized and empowered to revoke, modify, or suspend any and all Executive orders and proclamations, or any part thereof, issued under section 471 of this title, from time to time as he shall deem best for the public interests. By such modification he may reduce the area or change the boundary lines or may vacate altogether any order creating such national forest. (16 U.S.C. 473)

Note—The National Forest Management Act of 1976 contained the following:

"Notwithstanding the provisions of the act of June 4, 1897 (30 Stat. 34; 16 U.S.C. 473), no land now or hereafter reserved or withdrawn from the public domain as national forests pursuant to the Act of March 3, 1891 (26 Stat. 1103; 16 U.S.C. 471 (now repealed)), or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an act of Congress. (U.S.C. 1609)"

Note—The original authority for creation of Forest Reserves (National Forests) was provided for in an act commonly referred to as the Creative Act of 1891 (Ch. 561, 26 Stat. 1103; 16 U.S.C. 471) which stated:

"**Sec. 24**, That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public land wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof."

This section was repealed by Section 704(a) of P.L. 94-579, FLPMA.

Authority to Conduct Surveys

Surveys, field notes, and plats returned from the survey of public lands designated as national forests undertaken under the supervision of the Director of the United States Geological Survey in accordance with provisions of this Act, chapter 2, section 1, Thirtieth Statutes, pages 34, shall have the same legal force and effect as surveys, field notes, and plats returned through the Field Surveying Service; and such surveys, which include subdivision surveys under the rectangular system, shall be approved by the

Secretary of the Interior or such officer as he may designate as in other cases, and properly certified copies thereof shall be filed in the respective land offices of the districts in which such lands are situated, as in other cases. All laws inconsistent with the provisions hereof are declared inoperative as respects such survey. A copy of every topographic map and other maps showing the distribution of the forests, together with such field notes as may be taken relating thereto, shall be certified thereto by the Director of the Survey and filed in the Bureau of Land Management. (16 U.S.C. 474)

Designation and Purposes of National Forests

All public lands designated and reserved prior to June 4, 1897, by the President of the United States under the provisions of the Act of March 3, 1891, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public land that may hereafter be set aside and reserved as national forests under said Act, shall be as far as practicable controlled and administered in accordance with the following provisions. No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the Act, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes. (16 U.S.C. 475)

Use of Timber and Stone

The Secretary of Agriculture may permit, under regulations to be prescribed by him, the use of timber and stone found upon national forests, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as may be needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such national forests may be located. (16 U.S.C. 477)

Access

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of national forests, or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of Agriculture. Nor shall anything herein prohibit any person from entering upon such national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: Such persons must comply with the rules and regulations covering such national forests. (16 U.S.C. 479)

Sites for Schools and Churches

The settlers residing within the exterior boundaries of National Forests, or in the vicinity thereof, may maintain schools and churches

within such national forests, and for that purpose may occupy any part of the said national forests, not exceeding two acres for each schoolhouse and one acre for a church. (16 U.S.C. 479)

Civil and Criminal Jurisdiction

The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their right and privileges as citizens or be absolved from their duties as citizens of the State. (16 U.S.C. 480)

Water use

All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder. (16 U.S.C. 481)

Mining location and entry

Upon the recommendation of the Secretary of the Interior, with the approval of the President, after sixty days notice thereof, published in two papers of general circulation in the State or Territory wherein any national forest is situated, and near the said national forests, any public lands embraced within the limits of any such forest which, after due examination by personal inspection of a competent person appointed for the purpose by the Secretary of the Interior, shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain. And any mineral lands in any national forest which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and rules and regulations applying thereto, shall continue to be subject to such location and entry, notwithstanding any provisions herein contained. (16 U.S.C. 482)

Rules and Regulations

The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests which may have been set aside or which may be hereafter set aside under the provisions of the Act of March 3, 1891, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this Act or such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b) to (e) of Title 18. (16 U.S.C. 551)

Note—Authority to issue permits for rights-of-way was repealed by section 706(a) of

the Federal Land Policy and Management Act of 1976. The language does not change but FLMPA precluded issuance of permits for Rights-of-Way under this section.

Mineral Springs Leasing

- **Act of February 28, 1899 (Ch. 221, 30 Stat. 908; 16 U.S.C. 495)**

The Secretary of Agriculture is authorized, under such rules and regulations as he from time to time may make, to rent or lease to responsible persons or corporations applying therefore suitable spaces and portions of ground near, or adjacent to, mineral, medicinal, or other springs, within any national forest established within the United States, or hereafter to be established, and where the public is accustomed or desires to frequent, for health or pleasure, for the purpose of erecting upon such leased ground sanitariums or hotels, to be opened for the reception of the public. And he is further authorized to make such regulations, for the convenience of people visiting such springs, with reference to spaces and locations, for the erection of tents or temporary dwelling houses to be erected or constructed for the use of those visiting such springs for health or pleasure. And the Secretary of Agriculture is authorized to prescribe the terms and duration and the compensation to be paid for the privileges granted under the provisions of this Act. (16 U.S.C. 495)

Public Land Surveys

- **Act of March 3, 1899 (Ch. 424, 30 Stat. 1074; 16 U.S.C. 488)**

On and after March 3, 1899, all standard, meander, township, and section lines of the public-land surveys shall be established under the direction and supervision of the Secretary of the Interior or such officer as he may designate, whether the lands to be surveyed are within or without national forests, except that where the exterior boundaries of national forests are required to be coincident with standard, township, or section lines, such boundaries may, if not previously established in the ordinary course of the public-land surveys, be established and marked under the supervision of the Director of the United States Geological Survey whenever necessary to complete the survey of such exterior boundaries. (16 U.S.C. 488)

ACTS OF 1900 – 1909

Transfer Act

- **Act of February 1, 1905 (P.L. 58–33, Ch. 288, 33 Stat. 628; 16 U.S.C. 472, 554)**

Laws Affecting National Forest Land

Sec. 1. The Secretary of the Department of Agriculture shall execute or cause to be executed all laws affecting public lands reserved under the provisions of section twenty-four of the Act entitled "An Act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands. (16 U.S.C. 472)

* * * *

Forest Supervisors and Rangers

Sec. 3. Forest supervisors and rangers shall be selected, when practicable, from qualified citizens of the States or Territories in which the national forests respectively, are situated. (16 U.S.C. 554)

Note—Laws relating to surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting are administered by the Secretary of the Interior.

Note—The following is quoted from a letter sent to the Chief of the Forest Service by Secretary of Agriculture James Wilson on February 1, 1905, the date the above Transfer Act was approved by the President:

"In the administration of the forest reserves it must be clearly borne in mind that all land is to be devoted to its most productive use for the permanent good of the whole people and not for the temporary benefit of individuals or companies. All the resources of forest reserves are for use, and this use must be brought about in a thoroughly prompt and businesslike manner, under such restrictions only as will insure the permanence of these resources.

"The vital importance of forest reserves to the great industries of the western states will be largely increased in the near future by the continued steady advance in settlement and development. The permanence of the resources of the reserves is therefore indispensable to continue prosperity, and the policy of this Department for their protection and use will invariably be guided by this fact, always bearing in mind that the conservative use of these resources in no way conflicts with their permanent value.

"You will see to it that the water, wood, and forage of the reserves are conserved and wisely used for the benefit of the home-builder first of all;

upon whom depends the best permanent use of the lands and resources alike. The continued prosperity of the agricultural, lumbering, mining, and livestock interests is directly dependent upon a permanent and accessible supply of water, wood, and forage, as well as upon the present and future use of these resources under businesslike regulations, enforced with promptness, effectiveness and common sense.

"In the management of each reserve local questions will be decided upon local grounds; the dominant industry will be considered first, but with as little restriction to minor industries as may be possible; sudden changes in industrial conditions will be avoided by gradual adjustment after due notice; and where conflicting interests must be reconciled, the question will always be decided from the standpoint of the greatest good of the greatest number in the long run."

Law Enforcement Authority
(Agricultural Appropriations)

- **Act of March 3, 1905 (P.L. 58–138, Ch. 1405, 33 Stat. 861; 16 U.S.C. 559)**

All persons employed in the Forest Service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the national forests, and any person so arrested shall be taken before the nearest United States magistrate, within whose jurisdiction the forest is located, for trial; and upon sworn information by any competent person any United States magistrate in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws and regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said laws and regulations. (16 U.S.C. 559)

Preservation of American Antiquities

- **Act of June 8, 1906 (P.L. 59-209, Ch. 3060, 34 Stat. 225; 16 U.S.C. 432, 433)**

* * * *

American Antiquities

Sec. 1. Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than $500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court. (16 U.S.C. 433)

* * * *

Permits to Examine Ruins

Sec. 3. Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulations as they may prescribe: *Provided,* That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums. (16 U.S.C. 432)

Regulations

Sec. 4. That the Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act. (16 U.S.C. 432)

Disposition of Receipts From National Forest Revenues

- **Act of March 4, 1907 (P.L. 59–242, Ch. 2907, 34 Stat. 1270, as amended; 16 U.S.C. 499)**

All money received by or on account of the Forest Service for timber, or from any other source of national–forest revenue, including moneys received from sale of products from or for the use of lands in national forests created under the authority of section 9 of the Clarke-McNary Act, and moneys received on account of permits for hunting, fishing, or camping on lands acquired under authority of the Weeks Law shall be covered into the Treasury of the United States as a miscellaneous receipt, except as provided in sections 500 and 501 of title 16, there is appropriated and made available, as the Secretary of Agriculture may direct out of any funds in the Treasury not otherwise appropriated, so much as may be necessary to make refunds to depositors of money heretofore or hereafter deposited by them to secure the purchase price on the sale of any products or for the use of any land or resources of the national forests in excess of amounts found actually due from them to the United States and also so much as may be necessary to refund or pay over to the rightful claimants such sums as may be found by the Secretary of Agriculture to have been erroneously collected for the use of any lands, or for timber or other resources sold from lands located within, but not a part of, the National Forests, or for alleged illegal acts done upon such lands, which acts are subsequently found to have been proper and legal. (16 U.S.C. 499)

Twenty-Five Percent Fund

- **Act of May 23, 1908 (P.L. 60–136, Ch. 192, 35 Stat. 260, as amended; 16 U.S.C. 500, 553, 556d)**

Payment of Receipts for Schools and Roads

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided,* That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes. (16 U.S.C. 500)

Note—See Payments in Lieu of Taxes Act for additional provisions. (Now P.L. 97-258, Chapter 69)

Law Enforcement Assistance

Officials of the Forest Service designated by the Secretary of Agriculture shall, in all ways that are practicable, aid in the enforcement of the laws of the States and Territories with regard to stock, for the prevention and extinguishment of forest fires, and for the protection of fish and game, and, with respect to national forests, shall aid the other Federal bureaus and departments, on request from them, in the performance of the duties imposed on them by law. (16 U.S.C. 553)

Expenditures for Forest Fire Emergencies

Advances of money under any appropriation for the Forest Service may be made to the Forest Service and by authority of the Secretary of

Agriculture to chiefs of field parties for fighting forest fires in emergency cases and detailed accounts arising under such advances shall be rendered through and by the Department of Agriculture to the General Accounting Office. (16 U.S.C. 556d)

ACTS OF THE 1910'S

Indian Allotments

- **Act of June 25, 1910 (P.L. 61-313, Ch. 431, 36 Stat. 855; 25 U.S.C. 337)**

The Secretary of the Interior is hereby authorized, in his discretion, to make allotments within the national forests in conformity with the general allotment laws, to any Indian occupying, living on, or having improvements on land included within any such national forest who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof. All applications for allotments under the provisions of this section shall be submitted to the Secretary of Agriculture who shall determine whether the lands applied for are more valuable for agricultural or grazing purposes than for the timber found thereon; and if it be found that the lands applied for are more valuable for agricultural or grazing purposes, then the Secretary of Interior shall cause allotment to be made as herein provided. (25 U.S.C. 337)

Weeks Law

- **Act of March 1, 1911 (P.L. 61–435, Ch. 186, 36 Stat. 961, as amended; 16 U.S.C. 480, 500, 515, 516, 517, 517a, 518, 519, 521, 552, 563)**

Agreements to Conserve Forests and Water Supply

Sec. 1. Consent of the Congress of the United States is hereby given to each of the several States of the Union to enter into any agreement or compact, not in conflict with any law of the United States, with any other State or States for the purpose of conserving the forests and the water supply of the States entering into such agreement or compact. (16 U.S.C. 552)

Cooperative Fire Protection

Sec. 2. The Secretary of Agriculture is hereby authorized, and on such conditions as he deems wise, to stipulate and agree with any State or group of States to cooperate in the organization and maintenance of a system of fire protection on any private or State forest lands within such State or States and situated upon the watershed of a navigable river: No such stipulation or agreement shall be made with any State which has not provided by law for a system of forest-fire protection: In no case shall the amount expended in any State exceed in any fiscal year the amount appropriated by that State for the same purpose during the same fiscal year. (16 U.S.C. 563)

* * * *

Note—Sec. 4 and 5 were repealed by The National Forest Management Act of 1976 (90 Stat. 2949).

Land Acquisition

Sec. 6. The Secretary of Agriculture is hereby authorized and directed to examine, locate, and purchase such forested, cutover, or denuded lands within the watersheds of navigable streams as in his judgement may be necessary to the regulation of the flow of navigable streams or for the production of timber. No deed or other instrument of conveyance of lands referred to herein shall be accepted or approved by the Secretary of Agriculture under this Act until the legislature of the State in which the land lies shall have consented to the acquisition of such land by the United States for the purpose of preserving the navigability of navigable streams. (16 U.S.C. 515)

Land Exchange

Sec. 7. When the public interests will be benefitted thereby, the Secretary of Agriculture is hereby authorized, in his discretion, to accept on behalf of the United States title to any lands within the exterior boundaries of national forests which, in his opinion, are chiefly valuable for the purposes of this Act, and in

exchange therefore to convey by deed not to exceed an equal value of such national forest land in the same State, or he may authorize the grantor to cut and remove an equal value of timber within such national forests in the same State, the values in each case to be determined by him: *Provided,* That before any such exchange is effected notice of the contemplated exchange reciting the lands involved shall be published once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in some like newspaper published in any county in which may be situated any lands or timber to be given in such exchange. Timber given in such exchanges shall be cut and removed under the laws and regulations relating to such national forests, and under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture. Lands so accepted by the Secretary of Agriculture shall, upon acceptance, become parts of the national forests within whose exterior boundaries they are located, and be subjected to all provisions of this Act. (16 U.S.C. 516)

Payment in Condemnation Proceeding

Sec. 8. In condemnation proceeding, heretofore or hereafter prosecuted, for the acquisition of lands under this Act, in which a decree is entered vesting title thereto in the United States upon payment of the award into the registry of the court, the Secretary of Agriculture is authorized to make such payment when advised by the Attorney General that the proceedings and the decree are regular. (16 U.S.C. 517, 517a)

Rights-of-way, Easements

Sec. 9. Such acquisition by the United States shall in no case be defeated because of located or defined rights of way, easements, and reservations, which, from their nature will, in the opinion of the Secretary of Agriculture, in no manner interfere with the use of lands so encumbered, for the purposes of the Act. Such rights of way, easements, and reservations retained by the owner from whom the United States receives title, shall be subject to the rules and regulations prescribed by the Secretary of Agriculture for their occupation, use, operation, protection, and administration, and that such rules and regulations shall be expressed in and made part of the written instrument conveying title to the lands to the United States; and the use, occupation, and operation of such right-of-way, easements, and reservations shall be under, subject to, and in obedience with the rules and regulations so expressed. (16 U.S.C. 518)

Sale of Agricultural Land; Sale for Homesteads

Sec. 10. Inasmuch as small areas of land chiefly valuable for agriculture may of necessity or by inadvertence be included in tracts acquired under this Act, the Secretary of Agriculture may, in his discretion, and he is hereby authorized, upon application or otherwise, to examine and ascertain the location and extent of such areas as in his opinion may be occupied for agricultural purposes without injury to the forests or to stream flow and which are not needed for public purposes, and may list and describe the same by metes and bounds, or otherwise, and offer them for sale as homesteads at their true value, to be fixed by him,

to actual settlers, in tracts not exceeding eighty acres in area, under such joint rules and regulations as the Secretary of Agriculture may prescribe; and in case of such sale the jurisdiction over the lands sold shall, ipso facto, revert to the State in which the lands sold lie. And no right, title, interest, or claim in or to any lands acquired under this Act, or the waters thereon, or the products, resources, or use thereof after such lands shall have been so acquired, shall be initiated or perfected, except as in this section provided. (16 U.S.C. 519)

Designation of Acquired Land

Sec. 11. Subject to the provisions of the last preceding section, the lands acquired under this Act shall be permanently reserved, held, and administered as national forest lands under the provisions of section twenty-four of the Act approved March third, eighteen hundred and ninety-one (26 Stat. 1103), and Acts supplemental to and amendatory thereof. And the Secretary of Agriculture may from time to time divide the lands acquired under this Act into such specific national forests and so designate the same as he may deem best for administrative purposes. (16 U.S.C. 521)

Jurisdiction of the States

Sec. 12. (See Act of June 4, 1897) (16 U.S.C. 480)

Payments to States and Counties; Purchaser Credit

Sec. 13. (See Act of May 23, 1908) (16 U.S.C. 500)

Expenditures From Receipts

- **Act of March 4, 1913 (P.L. 62–430, Ch. 145, 37 Stat. 843, as amended; 16 U.S.C. 501, 502)**

Expenditures from Receipts for Roads and Trails

On or after March 4, 1913, ten per centum of all moneys received from the national forests during each fiscal year shall be available at the end thereof, to be expended by the Secretary of Agriculture for the construction and maintenance of roads and trails within the National Forests in the States from which such proceeds are derived; but the Secretary of Agriculture, whenever practicable, in the construction and maintenance of such roads, secure the cooperation or aid of the proper State or Territorial authorities in the furtherance of any system of highways of which such roads may be made a part. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. (16 U.S.C. 501)

Expenditures — Rental of Property from Employees

The Secretary of Agriculture is authorized, under such regulations as he may prescribe: (a) To hire or rent property from employees of the Forest Service for the use of that Service, whenever the public interest will be promoted thereby.

(b) To provide forage, care and housing for animals, and storage for vehicles and other equipment obtained by the Forest Service for the use of that service from employees.

(c) To contract with public and private agencies, corporations, firms, associations, or individuals to train, provide forage, care, and housing for, and to work pack stock owned and held in reserve by the Forest Service for fire emergency purposes and as all or part of the consideration thereof to permit such contractors to use the stock for their own purposes during the periods of nonuse by the Forest Service.

(d) To reimburse owners for loss, damage, or destruction of horses, vehicles, and other equipment obtained by the Forest Service for the use of that service from employees or other private owners: *Provided,* That payments or reimbursements herein authorized may be made from the applicable appropriations for the Forest Service: *And provided further,* That except for fire fighting emergencies no reimbursement herein authorized shall be made in an amount in excess of $50 to persons who were employees of the Forest Service prior to the time the equipment was obtained or $2,500 in any other case, unless the equipment was made available under a written agreement, contract, or lease. (16 U.S.C. 502)

Cooperative Funds

- **Act of June 30, 1914 (P.L. 63-122, Ch. 131, 38 Stat. 430, as amended; 16 U.S.C. 504)**

All moneys received as contributions toward cooperative work in forest investigations, or the protection and improvement of the national forests, shall be covered into the Treasury and shall constitute a special fund, which is hereby appropriated and made available until expended, as the Secretary of Agriculture may direct, for the payment of the expenses of said investigations, protection, or improvements by the Forest Service, and for refunds to the contributors of amounts theretofore or hereafter paid in by them in excess of their share of the cost of said investigations, protection or improvements. (16 U.S.C. 498)

That the provisions of section 5 of Title 41 [U.S. Code] shall not apply to any purchase by the Forest Service of forest tree seed or cones or of forage plant seed where the amount involved does not exceed $10,000, nor to any purchase of forest–tree nursery stock when the amount involved does not exceed $500, whenever, in the discretion of the Secretary of Agriculture, such method is in the public interest. (16 U.S.C. 504)

Occupancy Permits

- **Act of March 4, 1915 (P.L. 63-293, Ch. 144, 38 Stat. 1101, as amended; 16 U.S.C. 497)**

Note—P.L. 99-522 sets provisions for ski area permits, overriding provisions of this act.

The Secretary of Agriculture is authorized, under such regulations as he may make and upon such terms and conditions as he may deem proper,

(a) to permit the use and occupancy of suitable areas of land within the national forests, not exceeding eighty acres and for periods not exceeding thirty years, for the purpose of constructing or maintaining hotels, resorts, and any other structures or facilities necessary or desirable for recreation, public convenience, or safety;

(b) to permit the use and occupancy of suitable areas of land within the national forests, not exceeding five acres and for periods not exceeding thirty years, for the purpose of constructing or maintaining summer homes and stores;

(c) to permit the use and occupancy of suitable areas of land within the national forest, not exceeding eighty acres and for periods not exceeding thirty years, for the purpose of construction, or maintaining building, structures and facilities for industrial or commercial purposes whenever such use is related to or consistent with other uses of the national forests;

(d) to permit any State or political subdivision thereof, or any public or nonprofit agency, to use and occupy suitable areas of land within the national forests not exceeding eighty acres and for periods not exceeding thirty years, for the purpose of constructing or maintaining any buildings, structures, or facilities necessary or desirable for education or for any public use or in connection with any public activity. The authority provided by this paragraph shall be exercised in such manner as not to preclude the general public from full enjoyment of the natural, scenic, recreational, and other aspects of the national forests. (16 U.S.C. 497)

Deposits From Brush Disposal

- **Act of August 11, 1916 (P.L. 64-190, Ch. 313, 39 Stat. 462, as amended; 16 U.S.C. 490)**

Purchasers of national forest timber may be required by the Secretary of Agriculture to deposit the estimated cost to the United States of disposing of brush and other debris resulting from their cutting operations, such deposits to be covered into the Treasury and constitute a special fund, which is appropriated and shall remain available until expended: *Provided,* That any deposits in excess of the amount expended for disposal shall be transferred to miscellaneous receipts, national forests fund, to be credited to the receipts of the year in which such transfer is made. (16 U.S.C. 490)

Wildlife Game Refuges

- **Act of August 11, 1916 (P.L. 64–190, Ch. 313, 39 Stat. 476, as amended; 16 U.S.C. 683)**

The President of the United States is hereby authorized to designate such areas on any lands which have been, or which may hereafter be, purchased by the United States under the provisions of the Act of March 1, 1911 (36 Stat. 961), and Acts supplementary thereto and amendatory thereof, as should, in his opinion, be set aside for the protection of game animals, birds, or fish; and, except under such rules and regulations as the Secretary of Agriculture may from time to time prescribe, it shall be unlawful for any person to hunt, catch, trap, willfully disturb or kill any kind of game animal, game or non-game bird, or fish, or take the eggs of any such bird on any lands so set aside, or in or on the waters thereof. (16 U.S.C. 683)

Mineral Resources on Weeks Law Lands

- **Act of March 4, 1917 (P.L. 64–390, Ch. 179, 39 Stat. 1149; 16 U.S.C. 520)**

The Secretary of the Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, utilization of the mineral resources of the lands acquired under the Act of March 1, 1911 (36 Stat. 961), known as the Weeks Law, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States; and all moneys received on account of charges, if any, made under this Act shall be disposed of as is provided by existing law for the disposition of receipts from national forests. (16 U.S.C. 520)

Note—See transfer provisions below.

Section 402 of Reorganization Plan No. 3, of July 16, 1946 (60 Stat. 1097, 1099; 5 U.S.C. Appendix)

The functions of the Secretary of Agriculture and the Department of Agriculture with respect to the uses of mineral deposits in certain lands pursuant to the provisions of the Act of March 4, 1917, (39 Stat. 1134, 1150; 16 U.S.C. 520) . . . . are hereby transferred to the Secretary of the Interior and shall be performed by him or, subject to his direction and control, by such officers and agencies of the Department of the Interior as he may designate: *Provided*, That mineral development on such lands shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes. The provisions of law governing the crediting and distribution of revenues derived from the said lands shall be applicable to revenues derived in connection with the functions transferred by this section. To the extent necessary in connection with the performance of the functions transferred by this section, the Secretary of the Interior and his representatives shall have access to the title records of the Department of Agriculture relating to the lands affected by this section.

Note—Functions relating to common varieties of mineral materials in acquired and certain other lands were transferred back to the Secretary of Agriculture by Sec. 1(1) of the Act of June 11, 1960 (74 Stat. 205; 7 U.S.C. 220 (note))

Migratory Bird Treaty Act of 1918

- **Act of July 3, 1918 (P.L. 65-186, Ch. 128, 40 Stat. 755; 16 U.S.C. 703-712)**

Short Title

Sec. 1. That this Act shall be known by the short title of the "Migratory Bird Treaty Act."

Taking, Killing, or Possessing

Sec. 2. Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or in part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August sixteenth, nineteen hundred and sixteen, (39 Stat. 1702), The United States and the United Mexican States for the protection of migratory birds and game mammals, concluded February 7, 1936, and the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972. (16 U.S.C. 703)

When and How Birds May Be Taken

Sec. 3. That subject to the provisions and in order to carry out the purposes of the convention, the Secretary of Interior is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the convention to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President. (16 U.S.C. 704)

Transportation or Importation

Sec. 4. That it shall be unlawful to ship, transport or carry, by any means whatever, from one State, Territory, or District to or through another State, Territory, or District, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the

State, Territory, or District in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried. (16 U.S.C. 705)

Arrests; Search Warrants

Sec. 5. That any employee of the Department of Interior authorized by the Secretary of Interior to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of the Act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulations made pursuant thereto shall, when found, be seized and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulation made pursuant thereto, shall be forfeited to the United States and disposed of by the Secretary of the Interior in such manner as he deems appropriate. (16 U.S.C. 706)

Violations and Penalties; Forfeitures

Sec. 6. (a) Except as otherwise provided in this section, any person, association, partnership, or corporation who shall violate any provisions of said conventions or of this subchapter, or who shall violate or fail to comply with any regulation made pursuant to this subchapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or be imprisoned not more than six months, or both.

(b) Whoever, in violation of this subchapter, shall—

(1) take by any manner whatsoever any migratory bird with intent to sell, offer to sell, barter or offer to barter such bird, or

(2) sell, offer for sale, barter or offer to barter, any migratory bird shall be guilty of a felony and shall be fined not more than $2,000 or imprisoned not more than two years, or both.

(c) All guns, traps, nets and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or attempting to take, capture, or kill any migratory bird in violation of this subchapter with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of this subchapter shall be

forfeited to the United States and may be seized and held pending the prosection of any person arrested for violating this subchapter and upon conviction for such violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of this subchapter. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary of the Interior. (16 U.S.C. 707)

State or Territorial Laws

Sec. 7. Nothing in this Act shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said convention or of this Act, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section three of this Act. (16 U.S.C. 708)

Sec. 8. Omitted (16 U.S.C. 709)

Appropriations

Sec 9. There is authorized to be appropriated, from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and to accomplish the purpose of said conventions and of this Act and regulations made pursuant thereto, and the Secretary of the Interior is authorized out of such moneys to employ in the city of Washington and elsewhere such persons and means as he may deem necessary for such purposes and may cooperate with local authorities in the protection of migratory birds and make the necessary investigations connected therewith. (16 U.S.C. 709a)

Partial Invalidity

Sec. 10. That if any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered. (16 U.S.C. 710)

Inconsistent Laws Repealed

Sec. 11. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed. (16 U.S.C. 712(note))

Breeding and Sale for Food

Sec. 12. Nothing in this Act shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulation for the purpose of increasing the food supply. (16 U.S.C. 711)

Treaty and Convention Implementing Regulations

Sec. 13. (1) In accordance with the various migratory bird treaties and conventions with Canada, Japan, Mexico, and the Union of Soviet Socialist Republics, the Secretary of the Interior is authorized to issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska,

shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.

(2) The Secretary of the Interior is authorized to issue such regulations as may be necessary to implement the provisions of the convention between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the convention between the United States and the United Mexican states for the protection of migratory birds and game mammals concluded February 7, 1936, the convention between the United States and the Government of Japan for the protection of migratory birds in danger of extinction, and their environment concluded March 4, 1972, and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environment concluded November 19, 1976. (16 U.S.C. 712)

ACTS OF THE 1920'S

Mineral Leasing Act

- **Act of February 25, 1920 (P.L. 66-146, 41 Stat. 437, as amended; 30 U.S.C. 181(note)), 181–187, 187a–b, 188–195, 201–202, 202a, 203-208, 208–1, 208–2, 209, 211–214, 221–226, 226–2, 226–3, 227–229, 229a, 241, 251, 261–263**

Lands Subject to Disposition

Sec. 1. Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas, and lands containing such deposits owned by the United States, including those in National Forests, but excluding lands acquired under the authority of the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those in incorporated cities, towns, and villages and in National Parks and Monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by Chapter 3, Title 30, United States Code to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs or regulations of which deny similar or like privileges to citizens or corporations of this country shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of said sections.

The term "oil" shall embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

The term "combined hydrocarbon lease" shall refer to a lease issued in a special tar sand area pursuant to section 226 of this title after November 16, 1981.

The term "special tar sand area" means—

(1) an area designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800-76801) and January 21, 1981 (46 FR 6077-6078) as containing substantial deposits of tar sand.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of said sections, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof. (30 U.S.C. 181)

Note.—This Act applies to (1) National Forest lands reserved from the public domain or which were acquired by exchange under the Act of March 20, 1922 (42 Stat. 465; 16 U.S.C. 485), or similar law, by terms of which "public land" or the timber thereon is granted in exchange, and (2) national grasslands and other

Title III, Bankhead-Jones Farm Tenant Act lands, reserved from the public domain. It does not apply to "acquired" lands in either category.

The Bureau of Land Management, Department of the Interior, is responsible for leasing under this Act. Technical administration of leases and permits is the responsibility of the U.S. Geological Survey. By interdepartmental agreement all applications to lease lands under Forest Service jurisdiction are referred to the Forest Service for review, recommendation or consent, and special stipulations to protect the surface and subsurface functions.

Leases and Exploration

Sec. 2. (a)(1) The Secretary of the Interior is authorized to divide any lands subject to this chapter which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.). No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on he fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgement as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

(2)(A) The Secretary shall not issue a lease or leases under the terms of this chapter to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or

corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 207(b) of this title, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.

(B) Any lease proposal which permits surface coal mining within the boundaries of National Forest which the Secretary proposes to issue under this chapter shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this chapter before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-uses plan, the lease sale can be held if the lands containing the coal deposits have been included in either comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared, the responsible State entity shall consult with appropriate State agencies and local governments and the general public and shall provide an opportunity for public hearing on proposed plans prior to their adoption, if requested by any person having an interest which is, or may be, adversely affected by the adoption of such plans.

(iii) Leases covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon consent of the other Federal agency

and upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(B) Each land-use plan prepared by the Secretary (or in the case of lands within the National Forest System, the Secretary of Agriculture pursuant to subparagraph (A)(i)) shall include an assessment of the amount of coal deposits in such land, identifying the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations.

(C) Prior to issuance of any coal lease, the Secretary shall consider effects which mining of the proposed lease might have on an impacted community or area, including, but not limited to, impacts on the environment, on agricultural and other economic activities, and on public services. Prior to issuance of a lease, the Secretary shall evaluate and compare the effects of recovering coal by deep mining, by surface mining, and by any other method to determine which method or methods or sequence of methods achieves the maximum economic recovery of the coal within the proposed leasing tract. This evaluation and comparison by the Secretary shall be in writing but shall not prohibit the issuance of a lease; however, no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal within the tract. Public hearings in the area shall be held by the Secretary prior to the lease sale.

(D) No lease sale shall be held until after the notice of the proposed offering for lease has been given once a week for three consecutive weeks in a newspaper of general circulation in the county in which the lands are situated in accordance with regulations prescribed by the Secretary.

(E) Each coal lease shall contain provisions requiring compliance with the Federal Water Pollution Control Act (33 U.S.C. 1151-1175)(33 U.S.C. 1251 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.).

(b)(1) The Secretary may, under such regulations as he may prescribe, issue to any person an exploration license. No person may conduct coal exploration for commercial purposes for any coal on lands subject to this chapter without such an exploration license. Each exploration license shall be for a term of not more than two years and shall be subject to a reasonable fee. An exploration license shall confer no right to a lease under this chapter. The issuance of exploration licenses shall not preclude the Secretary from issuing coal leases at such times and locations and to such persons as he deems appropriate. No exploration license will be issued for any land on which a coal lease has been issued. A separate exploration license will be required for exploration in each State. An application for an exploration license shall identify general areas and probable methods of exploration. Each exploration license shall contain such reasonable conditions as the Secretary may require, including conditions to insure the protection of the environment, and shall be subject to all applicable Federal, State, and local laws and regulations. Upon violation of any such conditions or laws the Secretary may revoke the exploration license.

(2) A licensee may not cause substantial disturbance to the natural land surface. He may not remove any coal for sale but may remove a reasonable amount of coal from the lands subject to this chapter included under his license for analysis and

study. A licensee must comply with all applicable rules and regulations of the Federal agency having jurisdiction over the surface of the lands subject to this chapter. Exploration licenses covering lands the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior may be issued only upon such conditions as it may prescribe with respect to the use and protection of the nonmineral interests in those lands.

(3) The licensee shall furnish to the Secretary copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during such exploration. The Secretary shall maintain the confidentiality of all data so obtained until after the areas involved have been leased or until such time as he determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

(4) Any person who willfully conducts coal exploration for commercial purposes on lands subject to this chapter without an exploration license issued hereunder shall be subject to a fine of not more than $1,000 for each day of violation. All data collected by said person on any Federal lands as a result of such violation shall be made immediately available to the Secretary, who shall make the data available to the public as soon as it is practicable. No penalty under this subsection shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. (30 U.S.C. 201)

(c) No company or corporation operating a common-carrier railroad shall be given or hold a permit or lease under the provisions of this chapter for any coal deposits except for its own use for railroad purposes; and such limitations of use shall be expressed in all permits and leases issued to such companies or corporations; and no such company or corporation shall receive or hold under permit or lease more than ten thousand two hundred and forty acres in the aggregate nor more than one permit or lease for each two hundred miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

Nothing in this section and section 201 of this title shall preclude such a railroad of less than two hundred miles in length from securing one permit or lease thereunder but no railroad shall hold a permit or lease for lands in any State in which it does not operate main or branch lines. (30 U.S.C. 202)

(d)(1) The Secretary, upon determining that maximum economic recovery of the coal deposit or deposits is served thereby, may approve the consolidation of coal leases into logical mining unit. Such consolidation may only take place after a public hearing, if requested by any person whose interest is or may be adversely affected. A logical mining unit is an area of land in which the coal resources can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of coal reserves and other resources. A logical mining unit may consist of one or more Federal leaseholds, and may include intervening or adjacent lands in which the United States does not own the coal resources, but all the lands in a logical mining unit must be under the effective control of a single

operator, be able to be developed and operated as a single operational and be contiguous.

(2) After the Secretary has approved the establishment of a logical mining unit, any mining plan approved for that unit must require such diligent development, operation, and production that the reserves of the entire unit will be mined within a period established by the Secretary which shall not be more than forty years.

(3) In approving a logical mining unit, the Secretary may provide, among other things, that (i) diligent development, continuous operation, and production on any Federal lease or non-Federal land in the logical mining unit shall be construed as occurring on all Federal leases in that logical mining unit, and (ii) the rentals and royalties for all Federal leases in a logical mining unit may be combined, and advanced royalties paid for any lease within logical mining unit may be credited against such combined royalties.

(4)The Secretary may amend the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit.

(5) Leases issued before the date of enactment of this Act may be included with the consent of all lessees in such logical mining unit, and, if so included, shall be subject to the provisions of this section.

(6) By regulation the Secretary may require a lessee under this chapter to form a logical mining unit, and may provide for determination of participating acreage within a unit.

(7) No logical mining unit shall be approved by the Secretary if the total acreage (both Federal and non-Federal) of the unit would exceed twenty-five thousand acres.

(8) Nothing in this section shall be construed to waive the acreage limitations for coal leases contained in section 184(a) of this title. (30 U.S.C. 202a)

Additional Contiguous or Cornering Lands

Sec. 3. Any person, association, or corporation holding a lease of coal lands or coal deposits under the provisions of this chapter may with the approval of interest of the United States, secure modifications of the original coal lease by including additional coal lands or coal deposits contiguous or concerning to those embraced in such lease, but in no event shall the total area added by such modifications to an existing coal lease exceed one hundred sixty acres, or add acreage larger than that in the original lease. The Secretary shall prescribe terms and conditions which shall be consistent with this chapter and applicable to all of the acreage in such modified lease except that nothing in this section shall require the Secretary to apply the production or mining plan requirement of section 202a(2) and 207(c) of this title. The minimum royalty provisions of section 207(a) of this title shall not apply to any lands covered by this modified lease prior to a modification until the term of the original lease or extension thereof which became effective prior to the effective date of this Act has expired. (30 U.S.C 203)

Sec. 4. Repealed. Pub.L. 94-377, Sec. 13(a), Aug. 4, 1976, 90 Stat. 1090 (30 U.S.C. 204)

Consolidation of Leases

Sec. 5. If, in the judgment of the Secretary of the Interior, the public interest will be subserved thereby,

lessees holding under lease areas not exceeding the maximum permitted under this chapter may consolidate their leases through the surrender of the original leases and the inclusion of such areas in a new lease of not to exceed two thousand five hundred and sixty acres of contiguous lands. (30 U.S.C. 205)

Noncontiguous Coal or Phosphate tracts in Single Lease

Sec. 6. Where coal or phosphate lands aggregating two thousand five hundred and sixty acres and subject to lease hereunder do not exist as contiguous areas, the Secretary of the Interior is authorized, if, in his opinion the interests of the public and of the lessee will be thereby subserved, to embrace in a single lease noncontiguous tracts which can be operated as a single mine or unit. (30 U.S.C. 206)

Conditions of Lease

Sec. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall by regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12 1/2 per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advance royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which advance royalties may be accepted in lieu of the condition of continued operation shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advance royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of a lease shall be used to reduce a production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) of this section relating to commencement of production at the end of ten years.

(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three

years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval. (30 U.S.C. 207)

Sec. 8. In order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with this chapter as in his opinion will safeguard the public interests. This privilege shall not extend to any corporations. In the case of municipal corporations the Secretary of the Interior may issue such limited license or permit, for not to exceed three hundred and twenty acres for a municipality of less than one hundred thousand population, and not to exceed one thousand two hundred and eighty acres for a municipality of not less than one hundred thousand and not more than one hundred and fifty thousand population; and not to exceed two thousand five hundred and sixty acres for a municipality of one hundred and fifty thousand population or more, the land to be selected within the State wherein the municipal applicant may be located, upon condition that such municipal corporations will mine the coal therein under proper conditions and dispose of the same without profit to residents of such municipality for household use: *Provided*, That the acquisition or holding of a lease under sections 181, 201, and 202 to 207 of this title shall be no bar to the holding of such tract or operation of such mine under said limited license. (30 U.S.C. 208)

Exploratory Program for Evaluation of Known Recoverable Coal Resources

Sec. 8A. (a) The Secretary is authorized and directed to conduct a comprehensive exploratory program designed to obtain sufficient data and information to evaluate the extent, location, and potential for developing the known recoverable coal resources within the coal lands subject to this chapter. This program shall be designed to obtain the resource information necessary for determining whether commercial quantities of coal are present and the geographical extent of the coal fields and for estimating the amount of such coal which is recoverable by deep mining operations and the amount of such coal which is recoverable by surface mining operations in order to provide a basis for

(1) developing a comprehensive land use plan pursuant to section 2;

(2) improving the information regarding the value of public resources and revenues which should be expected from leasing;

(3) increasing competition among producers of coal, or products derived from the conversion of coal, by providing data and information to all potential bidders equally and equitably;

(4) providing the public with information on the nature of the coal deposits and the associated stratum and the value of the public resources being offered for sale; and

(5) providing the basis for the assessment of the amount of coal

deposits in those lands subject to this chapter under subparagraph (B) of section 201(a)(3) of this title.

(b) The Secretary, through the United States Geological Survey, is authorized to conduct seismic, geophysical, geochemical, or stratigraphic drilling, or to contract for or purchase the results of such exploratory activities from commercial or other sources which may be needed to implement the provisions of this section.

(c) Nothing in this section shall limit any person from conduction exploratory geophysical surveys including seismic, geophysical, chemical surveys to the extent permitted by section 201(b) of this title. The information obtained from the exploratory drilling carried out by a person not under contract with the United States Government for such drilling prior to award of a lease shall be provided the confidentiality pursuant to subsection (d) of this section.

(d) The Secretary shall make available to the public by appropriate means all data, information, maps, interpretations, and surveys which are obtained directly by the Department of the Interior or under a service contract pursuant to subsection (b) of this section. The Secretary shall maintain a confidentiality of all proprietary data or information purchased from commercial sources while not under contract with the United States Government until after the areas involved have been leased.

(e) All Federal departments or agencies are authorized and directed to provide the Secretary with any information or data that may be deemed necessary to assist the Secretary in implementing the exploratory program pursuant to this section. Proprietary information or data provided to the Secretary under the provisions of this subsection shall remain confidential for such period of time as agreed to by the head of the department or agency from whom the information is requested. In addition, the Secretary is authorized and directed to utilize the existing capabilities and resources of other Federal departments and agencies by appropriate agreement.

(f) The Secretary is directed to prepare, publish, and keep current a series of detailed geological, and geophysical maps of, and reports concerning, all coal lands to be offered for leasing under this chapter, based on data and information compiled pursuant to this section. Such maps and reports shall be prepared and revised at reasonable intervals beginning eighteen months after the date of enactment of this Act. Such maps and reports shall be made available on a continuing basis to any person on request.

(g) Within six months after the date of enactment of this Act, the Secretary shall develop and transmit to Congress an implementation plan for the coal lands exploration program authorized by this section, including procedures for making the data and information available to the public pursuant to subsection (d) of this section, and maps and reports pursuant to subsection (f) of this section. The implementation plan shall include a projected schedule of exploratory activities and identification of the regions and areas which will be explored under the coal lands exploration program during the first five years following the enactment of this section. In addition, the implementation plan shall include estimates of the appropriations and staffing required to implement the coal lands exploration program.

(h) The stratigraphic drilling authorized in subsection (b) of this section shall be carried out in such a manner as to obtain information

pertaining to all recoverable reserves. For the purpose of complying with subsection (a) of this section, the Secretary shall require all those authorized to conduct stratigraphic drilling pursuant to subsection (b) of this section to supply a statement of the results of test boring of core sampling including logs of the drill holes; the thickness of the coal seams found; an analysis of the chemical properties to such coal; and an analysis of the strata layers lying above all the seams of coal. All drilling activities shall be conducted using the best current technology and practices. (30 U.S.C. 208-1)

Report to Congress on Leasing and Production of Coal Lands

Sec. 8B. Within six months after the end of each fiscal year, the Secretary shall submit to the Congress a report on the leasing and production of coal lands subject to this chapter during such fiscal year; a summary of management, supervision, and enforcement activities; and recommendations to the Congress for improvements in management, environmental safeguards, and amount of production in leasing and mining operations on coal lands subject to this chapter. Each submission shall also contain a report by the Attorney General of the United States on competition in the coal and energy industries, including an analysis of whether the antitrust provisions of this chapter and the antitrust laws are effective in preserving or promoting competition in the coal or energy industry. (30 U.S.C. 208-2)

Phosphate Deposits

Sec. 9. (a) The Secretary of the Interior is authorized to lease to any applicant qualified under this chapter, through advertisement, competitive bidding, or such other methods as he may by general regulations adopt, and phosphate deposits of the United States, and lands containing such deposits, including associated and related minerals, when in his judgement the public interest will be served thereby. The lands shall be leased under such terms and conditions as are herein specified, in units reasonably compact in form of not to exceed two thousand five hundred and sixty acres.

(b) Where prospecting or exploratory work is necessary to determine the existence or workability of phosphate deposits in any unclaimed, undeveloped area, the Secretary of the Interior is authorized to issue, to any applicant qualified under this chapter, a prospecting permit which shall give the exclusive right to prospect for phosphate deposits, including associated minerals, for a period of two years, for not more than two thousand five hundred and sixty acres; and if prior to the expiration of the permit the permittee shows to the Secretary that valuable deposits of phosphate have been discovered within the area covered by his permit, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit.

(c) Any phosphate permit issued under this section may be extended by the Secretary for such an additional period, not in excess for four years, as he deems advisable, if he finds that the permittee has been unable, with reasonable diligence, to determine the existence or workability of phosphate deposits in the area covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such an extension in the opinion of the Secretary. (30 U.S.C. 211)

Surveys; Royalties; Term of Leases

Sec. 10. Each lease shall describe the leased lands by the legal subdivisions of the public-land surveys. All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the Secretary of the Interior in advance of offering the same, at not less than 5 per centum of the gross value of the output of phosphates or phosphate rock and associated or related minerals. Royalties shall be due and payable as specified in the lease either monthly or quarterly on the last day of the month next following the month or quarter in which the minerals are sold or removed from the leased land. Each lease shall provide for the payment of a rental payable at the date of the lease and annually thereafter which shall be not less than 25 cents per acre for the first year, 50 cents per acre for the second and third years, respectively, and $1 per acre for each year thereafter, during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year. Leases shall be for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such reasonable readjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods. Leases shall be conditioned upon minimum annual production or the payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior may permit suspension of operations under any such leases when marketing conditions are such that the leases cannot be operated except at a loss. (30 U.S.C. 212)

Royalties for Use of Deposits of Silica, Limestone, or Other Rock

Sec. 11. Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of section 211 to 214 of this title shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the phosphates, phosphate rock, and associated or related minerals mined from the leased lands or from other lands upon payments of such royalty as may be determined by the Secretary of the Interior, which royalty may be stated in the lease or, as to the leases already issued, may be provided for in an attachment to the lease to be duly executed by the lessor and the lessee. (30 U.S.C. 213)

Use of Surface of Other Public Lands

Sec. 12. The holder of any lease or permit issued under the provisions of section 211 to 214 of this title shall have the right to use so much of the surface of unappropriated and unentered public lands not a part of his lease or permit, not exceeding eighty acres in area, as may be determined by the Secretary to be necessary or convenient for the extraction, treatment, and removal of the mineral deposits, but this provision shall not be applicable to national forest lands. (30 U.S.C. 214)

Sec. 13. Section expired. (30 U.S.C. 221)

Note.—The original provisions of Section 13 have been removed and superceded by subsequent amendments to the Act and no longer apply to the leasing of Oil and Gas. However, most existing Oil and Gas leases that are producing or are capable of producing oil and gas were issued under provisions of Section 13. These provisions are included below for reference.

That the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this Act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land wherein such deposits belong to the United States and are not within any known geological structure of a producing oil or gas field upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits or oil or gas shall be sooner discovered. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land be an unsurveyed tract, the length of which shall not exceed two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the

boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby: *Provided*, That in the Territory of Alaska prospecting permits not more than five in number may be granted to any qualified applicant for periods not exceeding four years, actual drilling operations shall begin within two years from date of permit, and oil and gas wells shall be drilled to a depth of not less than five hundred feet, unless valuable deposits of oil or gas shall be sooner discovered, within three years from date of the permit and to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered, within four years from date of permit: *Provided further*, That in said Territory the applicant shall have a preference right over others to a permit for land identified by temporary monuments and notice posted on or near the same for six months following such marking and posting, and upon receiving a permit he shall mark the corners of the tract described in the permit upon the ground with substantial monuments within one year after receiving such permit.

Leases; Amount and Survey of Land; Term of Lease; Royalties and Annual Rental

Sec. 14. Upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee, shall be in reasonably compact form and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the Government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives. Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of $1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, and shall continue in force otherwise as prescribed in section 226 of this title for leases issued prior to August 21, 1935. The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12 1/2 per centum in amount or value of the production nor more than the royalty rate prescribed by regulation in force on January 1, 1935, for secondary leases issued under this section, and under such other conditions as are fixed for oil or gas leases issued under section 226 of this title the

royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided further*, That the Secretary shall have the right to reject any or all bids. (30 U.S.C. 223)

Payments for Oil or Gas Taken Prior to Application for Lease

Sec. 15. Until the permittee shall apply for lease to the one quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition. (30 U.S.C. 224)

Condition of Lease, Forfeiture for Violation

Sec. 16. All leases of lands containing oil or gas, made or issued under the provisions of this chapter, shall be subject to the condition that the lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the lease, to be enforced as provided in this chapter. (30 U.S.C. 225)

Lease of Oil and Gas Lands

Sec. 17. (a) All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.

(b)(1)(A) All lands to be leased which are not subject to leasing under paragraphs (2) and (3) of this subsection shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than 2,560 acres, except in Alaska, where units shall be not more than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding. Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary. A lease shall be conditioned upon the payment of a royalty at a rate of not less than 12.5 percent in amount or value of the production removed or sold from the lease. The Secretary shall accept the highest bid from a responsible qualified bidder which is equal to or greater than the national minimum acceptable bid, without evaluation of the value of the lands proposed for lease. Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year. All bids for less than the national minimum acceptable bid shall be rejected. Lands for which no bids are received or for which the highest bid is less than the national minimum acceptable bid shall be offered promptly within 30 days for leasing under subsection (c) of this section and shall remain available for leasing for a period of 2 years after the competitive lease sale.

(B) The national minimum acceptable bid shall be $2 per acre for a period of 2 years from December 22, 1987. Thereafter, the Secretary may establish by regulation a

higher national minimum acceptable bid for all leases based upon a finding that such action is necessary:

(i) to enhance financial returns to the United States; and

(ii) to promote more efficient management of oil and gas resources on Federal lands.

Ninety days before the Secretary makes any change in the national minimum acceptable bid, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The proposal or promulgation of any regulation to establish a national minimum acceptable bid shall not be considered a major Federal action subject to the requirements of section 4332(2)(C) of Title 42.

(2) If the lands to be leased are within a special tar sand area, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than five thousand one hundred and twenty acres, which shall be as nearly compact as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary. Royalty shall be 12 1/2 per centum in amount or value of production removed or sold from the lease, subject to subsection (k)(1)(c) of this section. The Secretary may lease such additional lands in special tar sand area as may be required in support of any operations necessary for the recovery of tar sands.

(3)(A) If the United States held a vested future interest in a mineral estate that, immediately prior to becoming a vested present interest, was subject to a lease under which oil or gas was being produced, or had a well capable of producing, in paying quantities at an annual average production volume per well per day of either not more than 15 barrels per day of oil or condensate, or not more than 60,000 cubic feet of gas, the holder of lease may elect to continue the lease as a noncompetitive lease under subsection (c)(1) of this section.

(B) An election under this paragraph is effective—

(i) in the case of an interest which vested after January 1, 1990, and on or before October 24, 1992, if the election is made before the date that is 1 year after October 24, 1992;

(ii) in the case of an interest which vests within 1 year after October 24, 1992, if the election is made before the date that is 2 years after October 24, 1992; and

(iii) in any case other than those described in clause (i) or (ii), if the election is made prior to the interest becoming a vested present interest.

(C) Notwithstanding the consent requirement referenced in section 352 of this title, the Secretary shall issue a noncompetitive lease under subsection (c)(1) of this section to a holder who makes an election under subparagraph (A) and who is qualified to hold a lease under this chapter. Such lease shall be subject to all terms and conditions under this chapter that are applicable to leases issued under subsection (c)(1) of this section.

(D) A lease issued pursuant to this paragraph shall continue so long as oil or gas continues to be produced in paying quantities.

(E) This paragraph shall apply only to those lands under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and following).

(c)(1) If the lands to be leased are not leased under subsection

(b)(1) of this section, or are not subject to competitive leasing under subsection (b)(2) of this section, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least $75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of 12.5 percent in amount or value of the production removed or sold from the lease. Leases shall be issued within 60 days of the date on which the Secretary identifies the first responsible qualified applicant.

(2)(A) Lands (i) which were posted for sale under subsection (b)(1) of this section but for which no bids were received or for which the highest bid was less than the national minimum acceptable bid and (ii) for which, at the end of the period referred to in subsection (b)(1) of this section no lease has been issued and no lease application is pending under paragraph (1) of this subsection, shall again be available for leasing only in accordance with subsection (b)(1) of this section.

(B) The land in any lease which is issued under paragraph (1) of this subsection or under subsection (b)(1) of this section which lease terminates, expires, is canceled or is relinquished shall again be available for leasing only in accordance with subsection (b)(1) of this section.

(d) All leases issued under this section as amended by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, shall be conditioned upon payment by the lessee of a rental of not less than $1.50 per acre per year for the first through fifth years of the lease and not less than $2.00 per acre per year for each year thereafter. A minimum royalty in lieu of rental of not less than the rental which otherwise would be required for that lease year shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased.

(e) Competitive and noncompetitive leases issued under this section shall be for a primary term of ten years: *Provided*, however, That competitive leases issued in special tar sand areas shall also be for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.

(f) At least 45 days before offering lands for lease under this section, and at least 30 days before approving applications for permits to drill under the provisions of a lease or substantially modifying the terms of any lease issued under this section, the Secretary shall provide notice of the proposed action. Such notice shall be posted in the appropriate local office of the leasing and land management agency. Such notice shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all the leases already issued

in the general area. The requirements of this subsection are in addition to any public notice required by other law.

(g) The Secretary of the Interior, or for National Forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter, and shall determine reclamation and other actions as required in the interests of conservation of surface resources. No permit to drill on an oil and gas lease issued under this chapter may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. The Secretary shall not issue a lease or leases or approve the assignment of any lease or leases under the terms of this section to any person, association, corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation, during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such entity has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any such entity, the concerned Secretary shall provide such entity with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the entity has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such entity under this chapter.

(h) The Secretary of Interior may not issue any lease on National Forest System Lands reserved from the public domain over the objection of the Secretary of Agriculture.

(i) No lease issued under this section which is subject to termination because of cessation of production shall be terminated for this cause so long as reworking or drilling operations which were commenced on the land prior to or within 60 days after cessation of production are conducted thereon with reasonable diligence, or so long as oil or gas is produced in paying quantities as a result of such operations. No lease issued under this section shall expire because operations or production is suspended under any order, or with the consent of the Secretary. No lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same until the lessee is allowed a reasonable time, which shall be not less than 60 days after notice by registered or certified mail, within which to place such well in producing status or unless, after such status is established, production is discontinued on the lease premises without permission granted by the Secretary under the provisions of this chapter.

(j) Whenever it appears to the Secretary that lands owned by the United States are being drained of

oil or gas by wells drilled on adjacent lands, he may negotiate agreements whereby the United States, or the United States and its lessees, shall be compensated for such drainage. Such agreement shall be made with the consent of the lessees, if any, affected thereby. If such agreement is entered into, the primary term of any lease for which compensatory royalty is being paid, or any extension of primary term, shall be extended for the period during which such compensatory royalty is paid and for a period of one year from discontinuance of such payment and so long thereafter as oil or gas is produced in paying quantities. The Secretary shall report to Congress at the beginning of each regular session all such agreements entered into during the previous year which involve unleased Government lands.

(k) If, during the primary term or extended term of any lease issued under this section, a verified statement is filed by any mining claimant pursuant to subsection (c) of section 527 of this title, whether such filing occurred prior to September 2, 1960 or thereafter, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted as to any lands covered by the lease, the running of time under such lease shall be suspended as to the lands involved from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

(l) The Secretary of the Interior shall upon timely application therefor, issue a new lease in exchange for any lease issued for a term of 20 years, or any renewal thereof, or any lease issued prior to August 8, 1946, in exchange for a 20 year lease, such new lease to be for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and at a royalty rate of not less than 12.5 percent in amount or value of the production removed or sold from such leases, except that the royalty rate shall be 12.5 percent in amount or value of the production removed or sold from said leases as to (1) such leases, or such parts of the lands subject thereto and the deposits underlying the same, are not believed to be within the productive limits of any producing oil or gas deposits, as such productive limits are found by the Secretary to have existed on August 8, 1946; and (2) any production on a lease from an oil or gas deposit which was discovered after May 27, 1941 by a well or wells drilled within the boundaries of the lease, and which is determined by the Secretary to be a new deposit; and (3) any production on or allocated to a lease pursuant to an approved cooperative or unit plan of development or operation from an oil or gas deposit which was discovered after May 27, 1941, on land committed to such plan, and which is determined by the Secretary to be a new deposit, where such lease, or a lease for which it is exchanged, was included in such plan at the time of discovery or was included in a duly executed and filed application for the approval of such plan at the time of discovery.

(m) For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or

operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States.

Any plan authorized by the preceding paragraph which includes lands owned by the United States may, in the discretion of the Secretary, contain a provision whereby authority is vested in the Secretary of the Interior, or any such person, committee, or State or Federal officer or agency as may be designated in the plan, to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under such plan. All leases operated under any such plan approved or prescribed by the Secretary shall be excepted in determining holdings or control under the provisions of any section of this chapter.

When separate tracts cannot be independently developed and operated in conformity with an established well-spacing or development program, any lease or a portion thereof, may be pooled with other lands, whether or not owned by the United States, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the Secretary of the Interior to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

Any lease issued for a term of twenty years, or any renewal thereof, or any portion of such lease that has become the subject of a cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the Secretary of the Interior, shall continue in force until the termination of such plan. Any other lease issued under any section of this chapter which has heretofore or may hereafter be committed to any such plan that contains a general provision for allocation of oil or gas shall continue in force and effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production is had in paying quantities under the plan prior to the expiration date of the term of such lease. Any lease heretofore or hereafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided*, however, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as

oil and gas is produced in paying quantities. The minimum royalty or discovery rental under any lease that has become subject to any cooperative or unit plan of development or operation, or other plan that contains a general provision for allocation of oil or gas, shall be payable only with respect to the lands subject to such lease to which oil or gas shall be allocated under such plan. Any lease which shall be eliminated from any such approved or prescribed plan, of from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities.

The Secretary of the Interior is hereby authorized, on such conditions as he may prescribe, to approve operating, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, associations, or corporations whenever, in his discretion, the conservation of natural products or the public convenience or necessity may require it or the interests of the United States may be best subserved thereby. All leases operated under such approved operating, drilling, or development contracts, and interests thereunder, shall be excepted in determining holdings or control under the provision of this chapter.

The Secretary of the Interior, to avoid waste or to promote conservation of natural resources, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under this chapter. Such authorization may provide for the payment of a storage fee or rental on such stored oil or gas or, in lieu of such fee or rental, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(n)(1)(A) The owner of (1) an oil and gas lease issued prior to November 16, 1981, or (2) a valid claim to any hydrocarbon resources leasable under this section based on a mineral location made prior to January 21, 1926, and located within a special tar sand area shall be entitled to convert such lease or claim to a combined hydrocarbon lease for a primary term of ten years upon the filing of an application within two years from November 16, 1981, containing an acceptable plan of operations which assures reasonable protection of the environment and diligent development of those resources requiring enhanced recovery methods of development or mining. For purposes of conversion, no claim shall be deemed invalid solely because it was located as a placer location rather than a lode location or vice versa, notwithstanding any previous adjudication on that issue.

(B) The Secretary shall issue final regulations to implement this section within six months of November 16, 1981. If any oil and gas lease eligible for conversion under this section would otherwise expire after November 16, 1981, and before six months following the issuance of implementing regulations, the lessee may preserve his conversion right under such lease for a period ending six months after

the issuance of implementing regulations by filing with the Secretary, before the expiration of the lease, a notice of intent to file an application for conversion. Upon submission of a complete plan of operations in substantial compliance with the regulations promulgated by the Secretary for the filing of such plans, the Secretary shall suspend the running of the terms of any oil and gas lease proposed for conversion until the plan is finally approved or disapproved. The Secretary shall act upon a proposed plan of operations within fifteen months of its submittal.

(C) When an existing oil and gas lease is converted to a combined hydrocarbon lease, the royalty shall be that provided for in the original oil and gas lease and for a converted mining claim, 12.5 per centum in amount or value of production removed or sold from the lease.

(2) Except as provided in this section, nothing in the Combined Hydrocarbon Leasing Act of 1981 shall be construed to diminish or increase the rights of any lessee under any oil and gas lease issued prior to November 16, 1981.

(o)(1) Prior to the commencement of surface-disturbing activities relating to the development of oil and gas deposits on lands described under paragraph (5), the Secretary of Agriculture shall require, pursuant to regulations promulgated by the Secretary, that such activities be subject to terms and conditions as provided under paragraph (2).

(2) The terms and conditions referred to in paragraph (1) shall require that reasonable advance notice be furnished to the Secretary of Agriculture at lease 60 days prior to the commencement of surface disturbing activities.

(3) Advance notice under paragraph (2) shall include each of the following items of information:

(A) A designated field representative.

(B) A map showing the location and dimensions of all improvements, including but not limited to, well sites and road and pipeline accesses.

(C) A plan of operations, of an interim character if necessary, setting forth a schedule for construction and drilling.

(D) A plan of erosion and sedimentation control.

(E) Proof of ownership of mineral title. Nothing in this subsection shall be construed to affect any authority of the State in which the lands concerned are located to impose any requirements with respect to such oil and gas operations.

(4) The person proposing to develop oil and gas deposits on lands described under paragraph (5) shall either—

(A) permit the Secretary to market merchantable timber owned by the United States on lands subject to such activities; or

(B) arrange to purchase merchantable timber on lands subject to such surface disturbing activities from the Secretary of Agriculture, or otherwise arrange for the disposition of such merchantable timber, upon such terms and upon such advance notice of the items referred to in subparagraphs (A) through (E) of paragraph (3) as the Secretary may accept.

(5)(A) The lands referred to in this subsection are those lands referenced in subparagraph (B) which are under the administration of the Secretary of Agriculture where the United States acquired an interest in such lands pursuant to the Act of March 1, 1911 (36 Stat. 961 and

following), but does not have an interest in oil and gas deposits that may be present under such lands. This subsection does not apply to any such lands where, under the provisions of its acquisition of an interest in the lands, the United States is to acquire any oil and gas deposits that may be present under such lands in the future but such interest has not yet vested with the United States.

(B) This subsection shall only apply in the Allegheny National Forest. (30 U.S.C. 226)

Sec. 18. Omitted. (This section authorized the United States to issue leases for a period of twenty years to persons who relinquished all rights claimed or possessed prior to July 3, 1910 under preexisting placer mining law provided relinquishment was filed in the General Land Office within six months after Feb. 25, 1920.) (30 U.S.C. 227)

Prospecting Permits and Leases to Persons of Lands Not Withdrawn

Sec. 19. Any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands are not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to February 25, 1920, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of $250 for each location if application thereof shall be made within six months from February 25, 1920, shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this chapter, or where any such person has made such discovery, prior to said February 25, 1920, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for in section 227 of this title: *Provided,* That where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12 1/2 per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided, however,* That the provisions of this section shall not apply to lands reserved for the use of the Navy. No claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall insure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear. (30 U.S.C. 228)

Preference Right to Permits or Leases of Claimants of Agricultural Land

Sec. 20. In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein

provided, in case of discovery; and within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than 12 1/2 per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under section 223 of this title. (30 U.S.C. 229)

Leases of Lands

Sec. 21. (a) The Secretary of the Interior is hereby authorized to lease to any person or corporation qualified under this chapter any deposits of oil shale, and gilsonite (including all vein-type solid hydrocarbons) belonging to the United States and the surface of so much of the public lands containing such deposits, or land adjacent thereto, as may be required for the extraction and reduction of the leased minerals, under such rules and regulations, not inconsistent with this chapter, as he may prescribe. No lease hereunder shall exceed five thousand one hundred and twenty acres of land, to be described by the legal subdivisions of the public-land surveys, or if unsurveyed, to be surveyed by the United States, at the expense of the applicant, in accordance with regulations to be prescribed by the Secretary of the Interior. Leases may be indeterminate periods, upon such conditions as may be imposed by the Secretary of the Interior, including covenants relative to methods of mining, prevention of waste, and productive development. For the privilege of mining, extracting, and disposing of the oil or other minerals covered by a lease under this section the lessee shall pay to the United States such royalties as shall be specified in the lease and an annual rental, payable at the beginning of each year, at the rate of 50 cents per acre per annum, for the lands included in the lease, the rental paid for any one year to be credited against the royalties accruing for that year; such royalties to be subject to readjustment at the end of each twenty-year period by the Secretary of Interior. For the purpose of encouraging the production of petroleum products from shales the Secretary may, in his discretion, waive the payment of any royalty and rental during the first five years of any lease. Any person having a valid claim to such minerals under existing laws on January 1, 1919, shall, upon the relinquishment of such claim, be entitled to a lease under the provisions of this section for such an area of the land relinquished as shall not exceed the maximum area authorized by this section to be leased to an individual or corporation. No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section. Not more than one lease shall be granted under this section to any one person, association, or corporation except that with respect to leases for gilsonite (including all vein-type solid hydrocarbons) no person, association, or corporation shall acquire or hold more than seven thousand six hundred eighty acres in any one State without respect to number of leases.

(b) If an offer for a lease under the provisions of this section for deposits other than oil shale is based

upon a mineral location, the validity of which might be questioned because the claim was based on a placer location rather than on a lode location, or vice versa, the offeror shall have a preference right to a lease of the offer is filed not more than one year after September 2, 1960.

(c) With respect to gilsonite (including all vein-type solid hydrocarbons) a lease under the multiple use principle may issue notwithstanding the existence of an outstanding lease issued under any other provision of this chapter.

(d)(1) The Secretary may within the State of Colorado lease to the holder of the Federal oil shale lease known as Federal Prototype Tract C-a additional lands necessary for the disposal of oil shale wastes and the materials removed from the mined lands, and for the building of plants, reduction works, and other facilities connected with oil shale operations (which lease shall be referred to hereinafter as an "offsite lease"). The Secretary may only issue one offsite lease not to exceed six thousand four hundred acres. An offsite lease may not serve more than one Federal oil shale lease and may not be transferred except in conjunction with the transfer of the Federal oil shale lease that it serves.

(2) The Secretary may issue one offsite lease of not more than three hundred and twenty acres to any person, association or corporation which has the right to develop oil shale on non-Federal lands. An offsite lease serving non-Federal oil shale land may not serve more than one oil shale operation and may not be transferred except in conjunction with the transfer of the non-Federal oil shale land that it serves. Not more than two offsite leases may be issued under this paragraph.

(3) An offsite lease shall include no rights to any mineral deposits.

(4) The Secretary may issue offsite leases after consideration of the need for such lands, impacts of the environment and other resource values, and upon a determination that the public interest will be served thereby.

(5) An offsite lease for lands the surface of which is under the jurisdiction of a Federal agency other than the Department of the Interior shall be issued only with the consent of that other Federal agency and shall be subject to such terms and conditions as it may prescribe.

(6) An offsite lease shall be for such periods of time and shall include such lands, subject to the acreage limitations contained in this subsection, as the Secretary determines to be necessary to achieve the purposes for which the lease is issued, and shall contain such provisions as he determined are needed for protection of environmental and other resource values.

(7) An offsite lease shall provide for the payment of an annual rental which shall reflect the fair market value of the rights granted and which shall be subject to such revisions as the Secretary, in his discretion, determines may be needed from time to time to continue to reflect the fair market value.

(8) An offsite lease may, at the option of the lessee, include provisions for payments on any year which payments shall be credited against any portion of the annual rental for a subsequent year to the extent that such payment is payable by the Secretary of the Treasury under section 191 of this title to the State within the boundaries of which the leases lands are located. Such funds shall be paid by the Secretary

of the Treasury to the appropriate State in accordance with section 191 of this title, and such funds shall be distributed by the State only to those counties, municipalities, or jurisdictional subdivisions impacted by oil shale development and/or where the lease is sited.

(9) An offsite lease shall remain subject to leasing under the other provisions of this chapter where such leasing would be incompatible with the offsite lease.

(e) In recognition of the unique character of oil shale development:

(1) In determining whether to offer or issue an offsite lease under subsection (d) of this section, the Secretary shall consult with the Governor and appropriate State, local, and tribal officials of the State where the lands to be leased are located, and of any additional State likely to be affected significantly by the social, economic, or environmental effects of development under such a lease, in order to coordinate Federal and State planning processes, minimize duplication of permits, avoid delays, and anticipate and mitigate likely impacts of development.

(2) The Secretary may issue an offsite lease under this subsection after consideration of (A) the need for leasing, (B) impacts on the environment and other resources values, (C) socioeconomic factors, and (D) information from consultations with the Governors of the affected States.

(3) Before determining whether to offer an offsite lease under subsection (d) of this section, the Secretary shall seek the recommendation of the Governor of the State in which the lands to be leased are located as to whether or not to lease such lands, what alternative actions are available, and what special conditions could be added to the proposed lease to mitigate impacts. The Secretary shall accept the recommendations of the Governor if he determines that they provide for a reasonable balance between the national interest and the State's interests. The Secretary shall communicate to the Governor, in writing, and publish in the Federal Register the reasons for his determination to accept or reject such Governor's recommendations. (30 U.S.C. 241)

Leases to Claimants of Withdrawn Lands

Sec. 22. Any bona fide occupant or claimant of oil or gas bearing lands in the Territory of Alaska, who, or whose predecessors in interest, prior to withdrawal had compiled otherwise with the requirements of the mining laws, but had made no discovery of oil or gas in wells and who prior to withdrawal had made substantial improvements for the discovery of oil or gas on or for each location or had prior to February 25, 1920 expended not less than $250 in improvements on or for each location shall be entitled, upon relinquishment or surrender to the United States within one year from February 25, 1920, or within six months after final denial or withdrawal of application for patent, to a lease or leases, under this chapter covering such lands, not exceeding five leases in number and not exceeding an aggregate of one thousand two hundred and eighty acres in each: *Provided*, That the annual lease rentals for lands in the Territory of Alaska not within any known geological structure of a producing oil or gas field and the royalty payments from production of oil or gas sold or removed from such lands shall be identical with those prescribed for such leases covering similar lands in the States of the United States, except that leases which may issue pursuant to applications or offers to lease such

lands, which applications or offers were filed prior to and were pending on May 3, 1958, shall require the payment of 25 cents per acre as lease rental for the first year of such leases; but the aforesaid exception shall not apply in any way to royalties to be required under leases which may issue pursuant to offers or applications filed prior to May 3, 1958.

The Secretary of the Interior shall neither prescribe nor approve any cooperative or unit plan of development or operation nor any operating, drilling, or development contract establishing different royalty or rental rates for Alaska lands than for similar lands within the States of the United States.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section. (30 U.S.C. 251)

Prospecting Permits; Lands Included; Acreage

Sec. 23. The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to grant to any qualified applicant a prospecting permit which shall give the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in lands belonging to the United States for a period of not exceeding two years: *Provided*, That the area to be included in such a permit shall not exceed two thousand five hundred and sixty acres of land in reasonably compact form. (30 U.S.C. 261)

Leases to Permittees; Survey of Lands; Royalties and Annual Rentals

Sec. 24. Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 261 of this title have been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit at a royalty of not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market; the lands in such lease to be taken in compact form by legal subdivisions of the public land surveys or, if the land be not surveyed, by survey executed at the cost of the permittee in accordance with regulations prescribed by the Secretary of the Interior. Lands known to contain valuable deposits of one of the substances enumerated in section 261 of this title and not covered by permits or leases shall be subject to lease by the Secretary of the Interior through advertisement, competitive bidding, or such other methods as he may by general regulations adopt and in such areas as he shall fix, not exceeding two thousand five hundred and sixty acres. All leases under this section shall be conditioned upon the payment by the lessee of such royalty as may be fixed in the lease, not less than 2 per centum of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market, and the payment in advance of a rental of 25 cents per acre for the first calendar year or fraction thereof, 50 cents pr acre for the second, third, fourth, and fifth calendar years respectively; and $1 per acre per annum thereafter during the continuance of the lease, such rental for

any one year to be credited against royalties accruing for that year. Leases under this section shall be for a period of twenty years, with preferential right in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such period: *Provided*, That nothing in this chapter shall prohibit the mining and sale of sodium compounds under potassium leases issued pursuant to sub chapter VII [141 et seq.] of chapter 3 of this title and subchapter IX of this chapter, nor the mining and sale of potassium compounds as a by-product from sodium leases taken under this section: *Provided further*, That on application by any lessee the Secretary of the Interior is authorized to modify the rental and royalty provisions stipulated in any existing sodium lease to conform to the provisions of this section. (30 U.S.C. 262)

Permits to Use or Lease of Nonmineral Lands

Sec. 25. In addition to areas of such mineral land which may be included in any such prospecting permits or leases, the Secretary of the Interior, in his discretion, may grant to a permittee or lessee of lands containing sodium deposits, and subject to the payment of an annual rental of not less than 25 cents per acre, the exclusive right to use, during the life of the permit or lease, a tract of unoccupied nonmineral public land, not exceeding forty acres in area, for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease. (30 U.S.C. 263)

Cancellation of Prospecting Permits

Sec. 26. The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this chapter appropriate provisions for its cancellation by him. (30 U.S.C. 183)

Limitations on Leases

Sec. 27. (a)(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided further*, that in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holding, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand

acres within the United States.

(2) Repealed. P.L. 94-377, sec. 11(b), Aug. 4, 1976, 90 Stat. 1090.

(b)(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, sodium leases or permits on an aggregate of more than five thousand one hundred and twenty acres in any one State.

(2) The Secretary may, in his discretion, where the same is necessary in order to secure the economic mining of sodium compounds leasable under this chapter, permit a person, association, or corporation to take or hold sodium leases or permits on up to fifteen thousand three hundred and sixty acres in any one State.

(c) No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, phosphate leases or permits on an aggregate of more than twenty thousand four hundred and eighty acres in the United States.

(d)(1) No person, association, or corporation, except as otherwise provided in the chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska. *Provided*, however, That acreage held in special tar sand areas shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) No person, association, or corporation shall take, hold, own, or control at one time options to acquire interests in oil or gas leases under the provisions of this chapter which involve, in the aggregate, more than two hundred thousand acres of land in any one State other than Alaska or, in the case of Alaska, more than two hundred thousand acres in each of its two leasing districts, as hereinbefore described. No option to acquire any interest in such an oil or gas lease shall be enforceable if entered into for a period of more than three years (which three years shall be inclusive of any renewal period if a right to renew is reserved by any party to the option) without the prior approval of the Secretary. In any case in which an option to acquire the optionor's entire interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. In any case in which an option to acquire a part of the optionor's interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be fully charged to the optionor and a share thereof shall also be charged to the optionee as his interest may appear, but after the option is exercised said acreage shall be charged to the parties pro

rata as their interests may appear. In any case in which an assignment is made of a part of a lessee's interest in the whole or part of the acreage under a lease or an application for a lease, the acreage shall be charged to the parties pro rata as their interests may appear. No option or renewal thereof shall be enforceable until notice thereof has been filed with the Secretary or an officer or employee of the Department of the Interior designated by him to receive the same. Each such notice shall include, in addition to any other matters prescribed by the Secretary, the names and addresses of the parties thereto, the serial number of the lease or application for a lease to which the option is applicable, and a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto and shall be subscribed by all parties to the option or their duly authorized agents. An option which has not been exercised shall remain charged as hereinbefore provided until notice of its relinquishment or surrender has been filed, by wither party, with the Secretary or any officer or employee of the Department of the Interior designated by him to receive the same. In addition, each holder of any such option shall file with the Secretary or an officer or employee of the Department of the Interior as aforesaid within ninety days after the 30th day of June and the 31st day of December in each year a statement showing, in addition to any other matters prescribed by the Secretary, his name, the name and address of each grantor of an option held by him, the serial number of every lease or application for a lease to which such an option is applicable, the number of acres covered by each such option, the total acreage in each State to which such options are applicable, and his interest and obligation under each such option. The failure of the holder of an option so to file shall render the option unenforceable by him. The unenforcibility of any option under the provisions of this paragraph shall no diminish the number of acres deemed to be held under option by any person, association, or corporation in computing the amount chargeable under the first sentence of this paragraph and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. The Secretary may prescribe forms on which the notice and statements required by this paragraph shall be made.

(e)(1) No person, association, or corporation shall take, hold, own or control at one time any interest as a member of an association or as a stockholder in a corporation holding a lease, option, or permit under the provisions of this chapter which, together with the area embraced in any direct holding, ownership or control by him of such a lease, option, or permit or any other interest which he may have as a member of other associations or as a stockholder in other corporations holding, owning or controlling such leases, options, or permits for any kind of minerals, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of such association or corporation, and except that within three years after September 2, 1960 no valid option in existence prior to September 2,

1960 held by a corporation or association on September 2, 1960 shall be chargeable to any stockholder of such corporation or to a member of such association so long as said option shall be so held by such corporation or association under the provisions of this chapter.

(2) No contract for development and operation of any lands leased under this chapter, whether or not coupled with an interest in such lease, and no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection between or among the contracting parties or those who hold, own or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this chapter. The total acreage so held, owned, or controlled in common by two or more parties shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter.

(f) Nothing contained in subsection (e) of this section shall be construed (i) to limit sections 227, 228, 251 of this title or (ii), subject to the approval of the Secretary, to prevent any number of lessees under this chapter from combining their several interests so far as may be necessary for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing, as a common carrier, a pipeline or railroad to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees under this chapter or in the transportation of coal or (iii) to increase the acreage which may be taken, held, owned, or controlled under this section.

(g) Any ownership or interest otherwise forbidden in this chapter which may be acquired by descent, will, judgment, or decree may be held for two years after its acquisition and no longer.

(h)(1) If any interest in any lease is owned, or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this chapter, the lease may be canceled, or the interest so owned may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in the United States district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

(2) The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation. If, in any such proceeding, an underlying lease, interest, option, or permit is canceled or forfeited to the Government the there are valid interests therein or valid options to acquire the lease or an interest therein

which are not subject to cancellation, forfeiture, or compulsory disposition, the underlying lease, interest, option, or permit shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, option, or permit is canceled or forfeited to the Government, the partial interests so canceled or forfeited shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations. If competitive bidding fails to produce a satisfactory offer the Secretary may, in either of these cases, sell the interest in question by such other method as he deems appropriate on terms not less favorable to the Government than those of the best competitive bid received.

(3) The commencement and conclusion of every proceeding under this subsection shall be promptly noted on the appropriate public records of the Bureau of Land Management.

(i) Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser.

(j) If during any such proceeding, a party thereto files with the Secretary a waiver of his rights under his lease (including particularly, where applicable, rights to drill and to assign) or if such rights are suspended by the Secretary pending a decision in the proceeding, whether initiated prior to enactment of this chapter or thereafter, payment of rentals and running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or suspension of the rights until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

(k) Except as otherwise provided in this chapter, if any lands or deposits subject to the provisions of this chapter shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this chapter, the lease, option, or permit shall be forfeited by appropriate court proceedings.

(*l*)(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this chapter, and at each stage in the issuance, renewal, and readjustment of coal leases under this chapter, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, not may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of Title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

(3) Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term "antitrust law" means–

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(C) The Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a). (30 U.S.C. 184)

Rights-of-way for Pipelines through Federal Lands

Sec. 28. (a) Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 1 of this Act, as amended, in accordance with the provisions of this section.

(b)(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal

reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c)(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(f) Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.

(g) The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

(h)(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) or

any other provision of the National Environmental Policy Act of 1969 (P.L. 91-190, 83 Stat. 852).

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to:

(A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land;

(B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law;

(C) requirements designed to control or prevent

(i) damage to the environment (including damage to fish and wildlife habitat),

(ii) damage to public or private property, and

(iii) hazards to public health and safety; and

(D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

(i) If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate to the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly by the affiliate.

(j) The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way or permit is requested in accordance with the requirements of this section.

(k) The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

(l) The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit

shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

(m) Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

(n) Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way, the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o)(1) Abandonment of a right-of-way or noncompliance with any provisions of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to Title 5, United States Code, section 554, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the

effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r)(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this Act that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this Act.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Interstate Commerce Commission or Federal Power Commission or any appropriate State agency or the United States District Court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of

pumping facilities looping, or otherwise increasing the pipeline or terminal's throughout capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) In order to minimize adverse environmental impacts and to prevent the proliferation of separate rights-of-way across Federal lands, the Secretary shall, in consultation with other Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and submit a report of his findings and recommendations to the Congress and the President by July 1, 1975.

(t) The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1970 (P.L. 91-190; 42 U.S.C. 4321).

(u) Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920, except such crude oil which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1969 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1969: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation and maintenance.

(w)(1) The Secretary and other appropriate agency heads shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and natural Resources of the United States Senate annually on the administration of this section and on

the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such pipeline shall be granted until a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Interstate Commerce Commission any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.

(x)(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this Act shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules

of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws. (30 U.S.C.185)

Reservation of Easements or Rights-of-way

Sec. 29. Any permit, lease, occupation or use permitted under this chapter shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this chapter, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. The Secretary of the Interior, in his discretion, in making any lease under this chapter, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein. If such reservation is made it shall be so determined before the offering of such lease. The said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved. (30 U.S.C. 186)

Assignment or Subletting of Leases

Sec. 30. No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated. (30 U.S.C. 187)

Oil or Gas Leases; Partial Assignments

Sec. 30a. Notwithstanding anything to the contrary in section 187 of this title, any oil or gas lease issued under the authority of this chapter may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this chapter, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this chapter of the assignee or sublessee to take or hold such lease or interest therein. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided however*, That the Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

(1) A separate zone or deposit under any lease.

(2) A part of a legal subdivision.

(3) Less than 640 acres outside Alaska or of less than 2,560 acres within Alaska.

Requests for approval of assignment or sublease shall be processed promptly by the Secretary. Except where the assignment or sublease is not in accordance with applicable law, the approval shall be given within 60 days of the date of receipt by the Secretary of a request for such approval. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligation thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this chapter. Upon the segregation by an assignment of a lease issued after September 2, 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities. (30 U.S.C. 187a)

Oil or Gas Leases; Written Relinquishment of Rights; Release of Obligations

Sec. 30b. Notwithstanding any provision to the contrary in section 187 of this title, a lessee may at any time make and file in the appropriate land office a written

relinquishment of all rights under any oil or gas lease issued under the authority of this chapter or of any legal subdivision of the area included within any such lease. Such relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulation; thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment. (30 U.S.C. 187b)

Failure to Comply with Provisions of Lease

Sec. 31. (a) Except as otherwise herein provided, any lease issued under the provisions of this chapter may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this chapter, of the lease, or of the general regulations promulgated under this chapter and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

(b) Any lease issued after August 21, 1935, under the provisions of section 226 of this title shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the leasehold contains a well capable of production of oil or gas in paying quantities, or the lease is committed to an approved cooperative or unit plan or communitization agreement under section 226(m) of this title which contains a well capable of production of unitized substances in paying quantities. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land. Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: *Provided, however*, That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made: *Provided*, That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision

which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

(c) Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was wither justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if—

(1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and

(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition. The Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him. In any case where a reinstatement of a terminated lease is granted under this subsection and the Secretary finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable: *Provided*, That (A) such extension shall not exceed a period equivalent to the time beginning when the lessee knew or should have known of the termination and ending on the date the Secretary grants such petition; (B) such extension shall not exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination; and (C) when the reinstatement occurs after the expiration of the term or extension thereof the lease may be extended from the date the Secretary grants the petition.

(d)(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for

such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

(A) with respect to any lease that terminated under subsection (b) of this section prior to January 12, 1983:

(i) the lessee tendered rental prior to January 12, 1983, and the final determination that the lease terminated was made by the Secretary or a court less than three years before January 12, 1983, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after January 12, 1983, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actural notice, or

(ii) fifteen months after termination of the lease.

(e) Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however,* That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future royalties at a rate of not less than 16 2/3 percent computed on a sliding scale based upon the average production per well per day, at a rate which shall not be less than 4 percentage points greater than the competitive royalty schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

(B) payment of black royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement for future royalties at a rate not less than 16 2/3 percent: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement. A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

(f) Where unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 1744 of Title 43, and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 226(e) of this title, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

(A) with respect to any claim deemed conclusively abandoned on or before January 12, 1983, on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any claim deemed conclusively abandoned after January 12, 1983, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

(4) a recruitment in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned of not less than 12 1/2 percent; and

(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) of this section but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

(g)(1) Excepted as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 226(b) or (c) of this title.

(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 226(c) of this title.

(3) Notwithstanding any other provision of law, any lease issued pursuant to section 223 of this title shall be eligible for reinstatement under the terms and conditions set forth in subsections (c), (d), and (e) of this section, applicable to leases issued under section 226(c) of this title except, that, upon reinstatement, such lease shall continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

(4) Notwithstanding any other provision of law, any lease issued pursuant to section 223 of this title shall, upon renewal on or after November 1990, continue for twenty years and so long thereafter as oil or gas is produced in paying quantities.

(h) The minimum royalty provisions of section 226(m) of this title and the provisions of section 209 of this title shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

(i)(1) In acting of a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgement it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes, if, in his judgement, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease, after the rent had become due and had not been paid; or if in the judgement of the Secretary it is equitable to do so for any reason.

(j) Where, in the judgement of the Secretary of the Interior, drilling operations were being diligently conducted on the last day of the primary term of the lease, and except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 226-1(d) of this title, the Secretary of the Interior may reinstate such lease notwithstanding the failure of the lessee to have made payment of the next year's rental, provided the conditions of subparagraphs (1) and (2) of subsection (c) of this section are satisfied. (30 U.S.C. 188)

Rules and Regulations; Boundary Lines; State Rights Unaffected; Taxation

Sec. 32. The Secretary of the Interior is authorized to prescribe

necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output mines, or other rights, property, or assets of any lessee of the United States. (30 U.S.C. 189)

Oath; Requirement; Form; Blanks

Sec. 33. All statements, representations, or reports required by the Secretary of the Interior under this chapter shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require. (30 U.S.C. 190)

Lands Disposed of With Reservation of Deposits of Coal, etc.

Sec. 34. The provisions of this chapter shall also apply to all deposits of coal, phosphate, sodium, oil, shale, gilsonite (including all vein-type solid hydrocarbons), or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits. (30 U.S.C. 182)

Disposition of Moneys Received

Sec. 35. All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.), shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of Title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United

States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such a dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved. In determining the amount of payments to States under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States. (30 U.S.C. 191)

Payment of Royalties in Oil or Gas; Sale of Such Oil or Gas

Sec. 36. All royalty accruing to the United States under any oil or gas lease or permit under this chapter on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this chapter, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgement it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or a public auction, all royalty oil and gas accruing or reserved to the united States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgement the interest of the United States demands; and in cases where so satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided*, That inasmuch as the public interest will be served by the sale of royalty oil to refineries not having their own source of supply for crude oil, the Secretary of the Interior, when he determines that sufficient supplies of crude oil are not available in the open market to such refineries, is authorized and directed to grant preference to such refineries, in the sale of oil under the provisions of this section, for processing or use in such refineries and not for resale in kind, and in doing so may sell to such refineries at private sale at not less than the market price any royalty oil accruing or reserved to the United States under leases issued pursuant to this chapter: *Provided further*, That in selling such royalty oil the Secretary of the Interior may at his discretion prorate such oil among such refineries in the area in which the oil is produced: *Provided however*, That pending the making of a permanent contract for the sale of any royalty; oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price: *And provided further*, That any royalty, oil, or gas may be sold at not less than the market price at private sale

to any department or agency of the United States. (30 U.S.C. 192)

Disposition of Deposits of Coal, and so Forth

Sec. 37. The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive shall be subject to disposition only in the form and manner provided in this chapter, except as provided in sections 1716 and 1719 of Title 43, and except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery. (30 U.S.C. 193)

Sec. 38. Repealed. Pub.L. 89-554, Sec. 8(a), Sept. 6, 1966, 80 Stat. 644 (30 U.S.C. 194)

Suspension, Waiver, or Reduction of Rents or Royalties

Sec. 39. The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recover of coal, oil, gas, oil shale gilsonite (including all vein type solid hydrocarbons), phosphate, sodium, potassium and sulfur, and in the interest of conservation of natural resources is authorized to waive, suspend, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion thereof segregated for royalty purposes, whenever in his judgement it is necessary to do so in order to promote development, or whenever in his judgement the leases cannot be successfully operated under the terms provided therein. *Provided, however,* That in order to promote development and the maximum production of tar sand, at the request of the lessee, the Secretary shall review, prior to commencement of commercial operations, the royalty rates established in each combined hydrocarbon lease issued in special tar and sand areas. For purposes of this section, the term "tar sand" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either: (1) contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature, greater than 10,0000 centipoise, or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying. In the event the Secretary of the Interior, in the interest of conservation, shall direct or shall assent to the suspension of operations and production under lease granted under the terms of this chapter, any payment of acreage rental or of minimum royalty prescribed by such lease likewise shall be suspended during such period of suspension of operations and production; and the term of such period of suspension of operations and production; and the term of such lease shall be extended by adding any such suspension period thereto. The provisions of this section shall apply to all oil and gas leases issued under this chapter, including those within an approved or prescribed plan for unit or cooperative development and operation. Nothing in this section shall be construed as granting to the Secretary the authority to waive, suspend, or reduce advance royalties. (30 U.S.C. 209)

Water Struck While Drilling for Oil and Gas

Sec. 40. (a) All prospecting permits and leases for oil or gas made or issued under the provisions of

this chapter shall be subject to the condition that in case the permittee or lessee strikes water while drilling instead of oil or gas, the Secretary of the Interior may, when such water is of such quality and quantity as to be valuable and usable at a reasonable cost for agricultural, domestic, or other purposed, purchase the casing in the well at the reasonable value thereof to be fixed under rules and regulations to be prescribed by the Secretary.

(b) In cases where water wells producing such water have heretofore been or may hereafter be drilled upon lands embraced in any prospecting permit or lease heretofore issued under this chapter, the Secretary may in like manner purchase the casing in such wells.

(c) The Secretary may make such purchase and may lease or operate such wells for the purpose of producing water and of using the same on the public lands or of disposing of such water for beneficial use on other lands, and where such wells have heretofore been plugged or abandoned or where such wells have been drilled prior to the issuance of any permit or lease by persons not in privity with the permittee or lessee, the Secretary may develop the same for the purposes of this section: *Provided*, That owners of occupants of lands adjacent to those upon which such water wells may be developed shall have a preference right to make beneficial use of such water.

(d) The Secretary may use so much of any funds available for the plugging of wells as he may find necessary to start the program provided for by this section, and thereafter he may use the proceeds from the sale or other disposition of such water as a revolving fund for the continuation of such program, and such proceeds are hereby appropriated for such purpose.

(e) Nothing in this section shall be construed to restrict operations under any oil or gas lease or permit under any other provision of this chapter. (30 U.S.C. 229a)

Enforcement

Sec. 41. (a) It shall be unlawful for any person:

(1) to organize or participate in any scheme, arrangement, plan, or agreement to circumvent or defeat the provisions of this Act or its implementing regulations, or

(2) to seek to obtain or to obtain any money or property by means of false statements of material facts or by failing to state material facts concerning:

(A) the value of any lease or portion thereof issued or to be issued under this Act;

(B) the availability of any land for leasing under this Act;

(C) the ability of any person to obtain leases under this Act; or

(D) the provisions of this Act and its implementing regulations.

(b) Any person who knowingly violates the provisions of subsection (a) of this section shall be punished by a fine of not more than $500,000, imprisonment for not more that five years, or both.

(c) Whenever it shall appear that any person is engaged, or is about to engage, in any act which constitutes or will constitute a violation of subsection (a) of this section, the Attorney General may institute a civil action in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but

not limited to, a prohibition from participation in exploration, leasing, or development of any Federal mineral, or any combination of the foregoing.

(d)(1) Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee, or agent of such corporation or entity who knowingly authorized, ordered, or carried out the prescribed activity shall be subject to the same action.

(2) Whenever any officer, employee, or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action, unless it is shown that the officer, employee, or agent was acting without the knowledge or consent of the corporation or other entity.

(e) The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

(f)(1) A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by the State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

(2) A State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within 30 days of filing of the action. The Attorney General of the United States shall notify a State of any civil action arising from activity conducted within that State filed by the Attorney General under this subsection within 30 days of filing of the action.

(3) Any civil penalties recovered by a State under this subsection shall be retained by the State and may be expended in such a manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action on the manner determined by the court rendering judgement in such action.

(4) If a State has commenced a civil action against a person conducting activity within the State in violation of this section, the Attorney General may join in such action but may not institute a separate action arising from the same activity under this section. If the Attorney General has commenced a civil action against a person conducting activity within a State in violation of this section, that State may join in such action but may not institute a separate action arising from the same activity under this section.

(5) Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section. (30 U.S.C. 195)

Limitations for Filing Oil and Gas Contests

Sec. 42. No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within ninety days after the final decision of the Secretary relating to such matter. No such action contesting such a decision of the Secretary rendered prior to September 2, 1960 shall be maintained unless the same be commenced or taken within ninety days after September 2, 1960. (30 U.S.C. 226-2)

Lands Not Subject to Oil and Gas Leasing

Sec. 43. (a) The Secretary shall not issue any oil and gas lease under this Act or under the Geothermal Steam Act of 1970 on any of the following Federal lands:

(1) Lands recommended for wilderness allocation by the surface managing agency.

(2) Lands within the Bureau of Land Management wilderness study areas.

(3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.

(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

(b) In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for National Forest Lands reserved from the public domain, the Secretary of Agriculture) to issue permits for exploration for oil and gas, coal, oil shale, phosphate, potassium, sulphur, gilsonite or geothermal resources by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment. (30 U.S.C. 226-3)

Short Title

Sec. 44. This Act may be cited as the "Mineral Leasing Act". (30 U.S.C. 181(note))

Federal Power Act

- **Act of June 5, 1920 (P.L. 66-280, 41 Stat. 1063, as amended; 16 U.S.C. 791(a), 797, 803, 806-808, 814, 818, 821, 823a-b, 824i-k)**

An Act To create a Federal Power Commission; to provide for the improvement of navigation; the development of water power; the use of the public lands in relation thereto, and to repeal section 18 of the River and Harbor Appropriation Act, approved August 8, 1917, and for other purposes.

Subchapter I — Regulation of Development of Water Power and Resources

* * * *

General Powers of Commission

Sec. 4. The Commission is hereby authorized and empowered—

* * * *

(c) To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the Commission to furnish such records, papers, and information in their possession as may be requested by the Commission, and temporarily to detail to the Commission such officers or experts as may be necessary in such investigations.

* * * *

(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided,* That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation: *Provided further,* That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of

Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further,* That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further,* That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection. In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

(f) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however,* That upon the filing of any application for a preliminary permit by any person, association, or corporation the Commission, before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated. (16 U.S.C. 797)

* * * *

Conditions of License Generally

Sec. 10. All licenses issued under this Part shall be on the following conditions:

(a)(1) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e) of this Act if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

(2) In order to ensure that the project adopted will be best adapted

to the comprehensive plan described in paragraph (1), the Commission shall consider each of the following:

(A) The extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—

(i) an agency established pursuant to Federal law that has the authority to prepare such a plan; or

(ii) the State in which the facility is or will be located.

(B) The recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(C) In case of a State or municipal applicant, or an applicant which is primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities), the electricity consumption efficiency improvement program of the applicant, including its plans, performance and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of relevant State regulatory authorities applicable to such applicant.

(3) Upon receipt of an application for a license, the Commission shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission's consideration for inclusion in the license.

(b) That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an installed capacity in excess of one hundred horsepower without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

(c) That the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

* * * *

(e)(1) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part, including any reasonable and necessary costs incurred by Federal and State fish

and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out by such agencies for purposes of administering their responsibilities under this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided*, That, subject to annual appropriations Acts, the portion of such annual charges imposed by the Commission under this subsection to cover the reasonable and necessary costs of such agencies shall be available to such agencies (in addition to other funds appropriated for such purposes) solely for carrying out such studies and reviews and shall remain available until expended: *Provided*, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984), fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further*, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and the licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than two thousand horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the Commission: *Provided however*, That no charge shall be assessed for the use of any Government dam or structure by any licensee if, before January 1, 1985, the Secretary of the Interior has entered into a contract with such licensee that meets each of the following requirements:

(A) The contact covers one or more projects for which a license was issued by the Commission before January 1, 1985.

(B) The contract contains provisions specifically providing each of the following:

(i) A powerplant may be

built by the licensee utilizing irrigation facilities constructed by the United States.

(ii) The powerplant shall remain in the exclusive control, possession, and ownership of the licensee concerned.

(iii) All revenue from the powerplant and from the use, sale, or disposal of electric energy from the powerplant shall be, and remain, the property of such licensee.

(C) The contract is amendatory, supplemental and replacement contract between the United States and;

(i) the Quincy-Columbia Basin Irrigation District (Contract No. 14-06-100-6418);

(ii) the East Columbia Basin Irrigation District (Contract No. 14-06-100-6419; or,

(iii) the South Columbia Basin Irrigation District (Contract No. 14-06-100-6420).

This paragraph shall apply to any project covered by a contract referred to in this paragraph only during the term of such contract unless otherwise provided by subsequent Act of Congress. In the event an overpayment of any charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

(2) In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed (or readjusted) by the Commission under paragraph (1) for the use of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1 1/2 mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in subsection (f) of this section, such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.

(3) The provisions of paragraph (2) shall apply with respect to—

(A) all licenses issued after Oct. 16, 1986; and

(B) all licenses issued before Oct. 16, 1986 which—

(i) did not fix a specific charge for the use of the Government dam or structure involved; and

(ii) did not specify that no charge would be fixed for the use of such dam or structure.

(4) Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in this subsection and report to Congress concerning its recommendations thereon.

* * * *

(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than one hundred horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided*, That the provisions hereof shall not apply to annual charges for use of lands within Indian reservations.

(j)(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license

issued under this subchapter shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this subchapter or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Act or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Subsection (i) of this section shall not apply to the conditions required under this subsection. (16 U.S.C. 803)

* * * *

Time Limit for Construction of Project Works; Extension of Time; Termination or Revocation of Licenses for Delay

Sec. 13. That the licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall within the time fixed in the license complete and put into operation such part of the ultimate development as the commission shall deem necessary to supply the reasonable needs of the then available market, and shall from time to time thereafter construct such portion of the balance of such development as the commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed. The periods for the commencement of construction may be extended once but not longer than two additional years and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the commission when not incompatible with the public interests. In case the licensee shall not commence actual construction of the project works, or of any specified part thereof, within the time prescribed in the license or as extended by the commission, then, after due notice given, the license shall, as to such project works or part thereof, be terminated upon written order of the commission. In case the construction of the project works, or of any specified part thereof, have been begun but not completed within the time prescribe in the license, or as extended by the commission, then the Attorney General, upon the request of the commission, shall institute proceedings in equity in the district court of the United States for the district in which any part of the project is situated for the

revocation of said license, the sale of the works constructed, and such other equitable relief as the case may demand, as provided for in section 26 hereof. (16 U.S.C. 806)

Right of Government to Take Over Project Works

Sec. 14. (a) Upon not less than two years' notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any locks or locks or other aids to navigation constructed as the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contract entered into by the licensee with the approval of the Commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by the Commission after notice and opportunity for hearing. Such net investment shall not include or be affected by the value of any lands, rights-of-way, or other property of the United States licensed by the Commission under this Act, by the license or by good will, going value, or prospective revenues; nor shall the values allowed for water rights, rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided*, That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved.

(b) In any relicensing proceeding before the Commission any Federal department or agency may timely recommend, pursuant to such rules as the Commission shall prescribe, that the United States exercise its right to take over any project or projects. Thereafter, the Commission, if it does not itself recommend such action pursuant to the provisions of section 7(c) of this title, shall upon motion of such department or agency stay the effective date of any order issuing a license, except an order issuing an annual license in accordance with the proviso of section 15(a) of this Act, for two years after the date of issuance of such order, after which period the stay shall terminate, unless terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission shall notify the Congress of any stay granted pursuant to this subsection. (16 U.S.C. 807)

New Licenses and Renewals: Licenses for Nonpower Use; Recordkeeping

Sec. 15. (a)(1) If the United States does not, at the expiration of the existing license, exercise its right to take over, maintain, and

operate any project or projects of the licensee, as provided in section 14 hereof, the commission is authorized to issue a new license to the existing licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the existing license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof: *Provided*, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the existing licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the existing license until the property is taken over or a new license is issued as aforesaid.

(2) Any new license issued under this section shall be issued to the applicant having the final proposal which the Commission determines is best adapted to serve the public interest, except that in making this determination the Commission shall ensure that insignificant differences with regard to subparagraphs (A) through (G) of this paragraph between competing applications are not determinative and shall not result in the transfer of a project. In making a determination under this section (whether or not more than one application is submitted for the project), the Commission shall, in addition to the requirements of section 10 of this Act, consider (and explain such consideration in writing) each of the following:

(A) The plans and abilities of the applicant to comply with—

(i) the articles, terms, and conditions of any license issued to it; and

(ii) other applicable provisions of this subchapter.

(B) The plans of the applicant to manage, operate and maintain the project safely.

(C) The plans and abilities of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service.

(D) The need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers, including, among other relevant considerations, the reasonable costs and reasonable availability of alternative sources of power, taking into consideration conservation and other relevant factors and taking into consideration the effect on the provider (including its customers) of the alternative source of power, the effect on the applicant's operating and load characteristics, the effect on communities served or to be served by the project, and the case of an applicant using power for the applicant's own industrial facility and related operations, the effect on the operation and efficiency of such facility or related operations, its workers, and the related community. In the case of an applicant that is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation may be included.

(E) The existing and planned transmission services of the applicant, taking into consideration system reliability, costs, and other

applicable economic and technical factors.

(F) Whether the plans of the applicant will be achieved, to the greatest extent possible, in a cost effective manner.

(G) Such other factors as the Commission may deem relevant, except that the terms and conditions in the license for the protection, mitigation, or enhancement of fish and wildlife resources affected by the development, operation, and management of the project shall be determined in accordance with section 10 of this Act, and the plans of an applicant concerning fish and wildlife shall not be subject to a comparative evaluation under this subsection.

(3) In the case of an application by the existing licensee, the Commission shall also take into consideration each of the following:

(A) The existing licensee's record of compliance with the terms and conditions of the existing license.

(B) The actions taken by the existing licensee related to the project which affect the public.

(b)(1) Each existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.

(2) At the time notice is provided under paragraph (1), the existing licensee shall make each of the following reasonably available to the public for inspection at the offices of such licensee: current maps, drawings, data, and such other information as the Commission shall, by rule, require regarding the construction and operation of the licensed project. Such information shall include, to the greatest extent practicable pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Copies of the information shall be made available at reasonable costs of reproduction. Within 180 days after Oct. 16, 1986, the Commission shall promulgate regulations regarding the information to be provided under this paragraph.

(3) Promptly following receipt of notice under paragraph (1), the Commission shall provide public notice of whether an existing licensee intends to file or not to file an application for a new license. The Commission shall also promptly notify the National Marine Fisheries Service and the United States Fish and Wildlife Service, and the appropriate State fish and wildlife agencies.

(4) The Commission shall require the applicant to identify any Federal or Indian lands included in the project boundary, together with a statement of the annual fees paid as required by this subchapter for such lands, and to provide such additional information as the Commission deems appropriate to carry out the Commission's responsibilities under this section.

(c)(1) Each application for a new license pursuant to this section shall be filed with the Commission at least 24 months before the expiration of the term of the existing license. Each applicant shall consult with the fish and wildlife agencies referred to in subsection (b) of this section and, as appropriate, conduct studies with such agencies. Within 60 days after the statutory deadline for the submission of applications, the Commission shall issue a notice establishing expeditious procedures for relicensing and a deadline for submission of final amendments, if any, to the application.

(2) The time periods specified in this subsection and in subsection (b) of this section shall be adjusted, in a manner that achieves the

objectives of this section, by the Commission by rule or order with respect to existing licensees who, by reason of the expiration dates of their licenses, are unable to comply with a specified time period.

(d)(1) In evaluating applications for new licenses pursuant to this section, the Commission shall not consider whether an applicant has adequate transmission facilities with regard to the project.

(2) When the Commission issues a new license (pursuant to this section) to an applicant which is not the existing licensee of the project and finds that it is not feasible for the new licensee to utilize the energy from such project without provision by the existing licensee of reasonable services, including transmission services, the Commission shall give notice to the existing licensee and the new licensee to immediately enter into negotiations for such services and the costs demonstrated by the existing licensee as being related to the provision of such services. It is the intent of Congress that such negotiations be carried out in good faith and that a timely agreement be reached between the parties in order to facilitate the transfer of the license by the date established when the Commission issued a new license. If such parties do not notify the Commission that within the time established by the Commission in such notice (and if appropriate, in the judgment of the Commission, one 45-day extension thereof), a mutually satisfactory arrangement for such services that is consistent with the provisions of this chapter has been executed, the Commission shall order the existing licensee to file (pursuant to section 205 of this Act) with the Commission a tariff, subject to refund, ensuring such services beginning on the date of transfer of the project and including just and reasonable rates and reasonable terms and conditions. After notice and opportunity for a hearing, the Commission shall issue a final order adopting or modifying such tariff for such services at just and reasonable rates in accordance with section 205 of this Act and in accordance with reasonable terms and conditions. The Commission, in issuing such order, shall ensure the services necessary for the full and efficient utilization and benefits for the license term of the electric energy from the project by the new licensee in accordance with the license and this subchapter, except that in issuing such order the Commission—

(A) shall not compel the existing licensee to enlarge generating facilities, transmit electric energy other than to the distribution system (providing service to customers) of the new licensee identified as of the date one day preceding the date of license award, or require the acquisition of new facilities, including the upgrading of existing facilities other than any reasonable enhancement or improvement of existing facilities controlled by the existing licensee (including any acquisition related to such enhancement or improvement) necessary to carry out the purposes of this paragraph;

(B) shall not adversely affect the continuity and reliability of service to the customers of the existing licensee;

(C) shall not adversely affect the operational integrity of the transmission and electric systems of the existing licensee;

(D) shall not cause any reasonably quantifiable increase in the jurisdictional rates of the existing licensee; and

(E) shall not order any entity other than the existing licens-

ee to provide transmission or other services.

Such order shall be for such period as the Commission deems appropriate, not to exceed the term of the license. At any time, the Commission, upon its own motion or upon a petition by the existing or new licensee and after notice and opportunity for a hearing, may modify, extend, or terminate such order.

(e) Except for an annual license, any license issued by the commission under this section shall be for a term which the Commission determines to be in the public interest but not less than 30 years, nor more than 50 years, from the date on which the license is issued.

(f) In issuing any licenses under this section except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder, pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 14 of this Act. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license. Consistent with the provisions of subchapter IV of this chapter, every licensee for nonpower use shall keep such accounts and file such annual and other periodic or special reports concerning the removal, alteration, nonpower use, or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribed as necessary or appropriate. (16 U.S.C. 808)

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Exercise by Licensee of Power of Eminent Domain

Sec. 21. That when any licensee can not acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That

United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000; *Provided further*, that no license may use the right of eminent domain under this section to acquire any lands or other property that, prior to October 24, 1992, were owned by a State or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under State or local law. In the case of lands or other property that are owned by a State or political subdivision and are part of or included within a public park, recreation area or wildlife refuge established under State or local law on or after October 24, 1992, no licensee may use the right of eminent domain under this section to acquire such lands or property unless there has been a public hearing held in the affected community and a finding by the Commission, after due consideration of expressed public views and the recommendations of the State or political subdivision that owns the lands or property, that the license will not interfere or be inconsistent with the purposes for which such lands or property are owned. (16 U.S.C. 814)

* * * *

Public Lands Included in Project; Reservation of Lands from Entry

Sec. 24. Any lands of the United States included in any proposed project under the provisions of this Part shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites, or in connection

with water-power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained. *Provided further*, That before any lands applied for, or heretofore or hereafter reserved, or classified as power sites, are declared open to location, entry, or selection by the Secretary of the Interior, notice of intention to make such declaration shall be given to the Governor of the State within which such lands are located, and such State shall have ninety days from the date of such notice within which to file, under any statute or regulation applicable thereto, an application for the reservation to the State, or any political subdivision thereof, of any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways, and a copy of such application shall be filed with the Federal Power Commission; and any location, entry, or selection of such lands, or subsequent patent thereof, shall be subject to any rights granted the State pursuant to such application. (16 U.S.C. 818)

* * * *

State Laws and Water Rights Unaffected

Sec. 27. That nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired therein. (16 U.S.C. 821)

* * * *

Conduit Hydroelectric Facilities

Note—Original Section 30 was repealed by P.L. 74-333. P.L. 95-617, Title II, section 213, Act of November 9, 1978, added this new section 30.

Sec. 30. (a) Except as provided in subsection (b) or (c) of this section, the Commission may grant an exemption in whole or in part from the requirements of this subchapter, including any license requirements contained in this subchapter, to any facility (not including any dam or other impoundment) constructed, operated, or maintained for the generation of electric power which the Commission determines, by rule or order—

(1) is located on non-Federal lands, and

(2) utilizes for such generation only the hydroelectric potential of a manmade conduit, which is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.

(b) The Commission may not grant any exemption under subsection (a) of this section to any facility the installed capacity of which exceeds 15 megawatts (40 megawatts in the case of a facility constructed, operated, and maintained by an agency or instrumentality of a State or local government solely for water supply for municipal purposes).

(c) In making the determination under subsection (a) of this section the Commission shall consult with the United States Fish and Wildlife Service, National Marine Fisheries Service and the State agency exercising administration over the fish and wildlife resources of the State

in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and shall include in any such exemption—

(1) such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

(2) such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

(d) Any violation of a term or condition of any exemption granted under subsection (a) of this section shall be treated as a violation of a rule or order of the Commission under this Act.

(e) The Commission in addition to the requirements of section 10(e) of this Act, shall establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under Section (c) of this section. Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) of this section for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended. (16 U.S.C. 823a)

* * * *

Enforcement

Sec. 31. (a) The Commission shall monitor and investigate compliance with each license and permit issued under this subchapter and with each exemption granted from any requirement of this subchapter. The Commission shall conduct such investigations as may be necessary and proper in accordance with this chapter. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this subchapter and with the terms and conditions of exemptions granted from any requirement of this subchapter.

(b) After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this subchapter or any exemption granted from any requirement of this subchapter where any licensee or exemptee is found by the Commission:

(1) to have knowingly violated a final order issued under subsection (a) of this section after completion of judicial review (or the opportunity for judicial review); and

(2) to have been given reasonable time to comply fully with such order prior to commencing any revocation proceeding.

In any such proceeding, the order issued under subsection (a) of this section shall be subject to de novo review by the Commission. No order shall be issued under this subsection until after the Commission has taken into consideration the nature and subsection until after the Commission has taken into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation.

(c) Any licensee, permittee, or exemptee who violates or fails or

refuses to comply with any rule or regulation under this subchapter, any term, or condition of a license, permit, or exemption under this subchapter, or any order issued under subsection (a) of this section shall be subject to a civil penalty in an amount not to exceed $10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered. . . . . (16 U.S.C. 823b)

* * * *

Interconnection Authority

Sec. 210. (a)(1) Upon application of any electric utility, Federal power marketing agency, geothermal power producer (including a producer which is not an electric utility), qualifying cogenerator, or qualifying small power producer, the Commission may issue an order requiring—

(A) the physical connection of any cogeneration facility, any small power production facility, or the transmission facilities of any electric utility, with the facilities of such applicant,

(B) such action as may be necessary to make effective any physical connection described in subparagraph (A), which physical connection is ineffective for any reason, such as inadequate size, poor maintenance, or physical unreliability,

(C) such sale or exchange of electric energy or other coordination, as may by necessary to carry out the purposes of any order under subparagraph (A) or (B), or

(D) such increase in transmission capacity as may be necessary to carry out the purposes of any order under subparagraph (A) or (B).

(2) Any State regulatory authority may apply to the Commission for an order for any action referred to in subparagraph (A), (B), (C), or (D) of paragraph (1). No such order may be issued by the commission with respect to a Federal power marketing agency upon application of a State regulatory authority.

(b) Upon receipt of an application under subsection (a) of this section, the Commission shall—

(1) issue notice to each affected State regulatory authority, each affected electric utility, each affected Federal power marketing agency, each affected owner or operator of a cogeneration facility or of a small power production facility, and to the public.

(2) afford an opportunity for an evidentiary hearing, and

(3) make a determination with respect to the matters referred to in subsection (c) of this section.

(c) No order may be issued by the Commission under subsection (a) of this section unless the Commission determines that such order—

(1) is in the public interest,

(2) would—

(A) encourage overall conservation of energy or capital,

(B) optimize the efficiency of use of facilities and resources, or

(C) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

(3) meets the requirements of section 212 of this Act.

(d) The Commission may, on its own motion, after compliance with the requirements of paragraphs (1) and (2) of subsection (b) of this section, issue an order requiring any action described in subsection (a)(1) of this section if the Commission determines that such order meets the requirements of subsection (c) of this section. No such order may be issued upon the Commission's own motion with respect to a Federal power marketing agency.

(e)(1) As used in this section, the term "facilities" means only facilities used for the generation or transmission of electric energy.

(2) With respect to an order issued pursuant to an application of a qualifying cogenerator or qualifying small power producer under subsection (a)(1) of this section, the term "facilities of such applicant" means the qualifying cogeneration facilities or qualifying small power production facilities of the applicant, as specified in the application. With respect to an order issued pursuant to an application under subsection (a)(2) of this section, the term "facilities of such applicant" means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the application. With respect to an order issued by the Commission on its own motion under subsection (d) of this section, such term means the qualifying cogeneration facilities, qualifying small power production facilities, or the transmission facilities of an electric utility, as specified in the proposed order. (16 U.S.C. 824i)

Wheeling Authority

Sec. 211. (a) Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale or resale, may apply to the Commission for an order under this subsection requiring and transmitting utility to provide transmission services to the applicant (including any enlargement of transmission capacity necessary to provide such services). Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue such order if it finds that such order meets the requirements of section 212 of this Act, and would otherwise be in the public interest. No order may be issued under this subsection unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order. . . . (16 U.S.C. 824j)

Orders Requiring Interconnection or Wheeling

Sec. 212. (a) No order may be issued by the Commission under section 210 of this Act or subsection (a) or (b) of section 211 unless the Commission determines that such order—

(1) is not likely to result in a reasonable ascertainable uncompensated economic loss for any electric utility, qualifying cogenerator, or qualifying small power producer, as the case may be, affected by the order;

(2) will not place an undue burden on an electric utility, qualifying cogenerator, or qualifying small power producer, as the case may be, affected by the order;

(3) will not unreasonably impair the reliability of any electric utility affected by the order; and

(4) will not impair the ability of any electric utility affected by the order to render adequate service to its customers.

The determination under paragraph (1) shall be based upon a showing of the parties. The Commission shall have no authority under section 210 or 211 of this Act to compel the enlargement of generating facilities.

(b) No order may be issued under section 210 of this Act or subsection (a) or (b) of section 211 of this Act unless the applicant for such order demonstrates that he is ready, willing, and able to reimburse the party subject to such order for–

(1) in the case of an order under section 210 of this Act, such party's share of the reasonably anticipated costs incurred under such order, and

(2) in the case of an order under subsection (a) or (b) of section 211 of this Act—

(A) the reasonable costs of transmission services, including the costs of any enlargement of transmission facilities, and

(B) a reasonable rate of return on such costs, as appropriate, as determined by the Commission.

(c)(1) Before issuing an order under section 210 of this Act or subsection (a) or (b) of section 211 of this Act, the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. Such proposed order shall not be reviewable or enforceable in any court. The time set for such parties to agree to such terms and conditions may be shortened if the Commission determines that delay would jeopardize the attainment of the purposes of any proposed order. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission.

(2)(A) If the parties agree as provided in paragraph (1) within the time set by the Commission and the Commission approves such agreement, the terms and conditions shall be included in the final order. In the case of an order under section 210 of this Act, if the parties fail to agree within the time set by the Commission or if the Commission does not approve any such agreement, the Commission shall prescribe such terms and conditions and include such terms and conditions in the final order.

(B) In the case of any order applied for under section 211 of this Act, if the parties fail to agree within the time set by the Commission, the Commission shall prescribe such terms and conditions in the final order.

(d) If the Commission does not issue any order applied for under section 210 or 211 of this Act, the Commission shall, by order, deny such application and state the reasons for such denial.

(e) No provision of section 210 or 211 of this Act shall be treated—

(1) as requiring any person to utilize the authority of such section 210 or 211 of this Act in lieu of any other authority of law, or

(2) as limiting, impairing, or otherwise affecting any authority of the Commission under any other provision of law. (16 U.S.C. 824k)

* * * *

Short Title

Sec. 321. This Act may be cited as the "Federal Power Act". (16 U.S.C. 791a)

General Exchange Act

- **Act of March 20, 1922 (P.L. 67-173, Ch. 105, 42 Stat. 465; 16 U.S.C. 485, 486)**

Note—Implementing regulations are found at 36 CFR 254, Subpart A.

Sec. 1. When the public interests will be benefitted thereby, the Secretary of Agriculture be, and hereby is, authorized in his discretion to accept on behalf of the United States title to any lands within exterior boundaries of the National Forests which, in the opinion of the Secretary of Agriculture, are chiefly valuable for National Forest Purposes, and in exchange therefor the Secretary of the Interior may patent not to exceed an equal value of such National Forest land, in the same State, surveyed and nonmineral in character, or the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the National Forests of the same State; the values in each case to be determined by the Secretary of Agriculture: *Provided*, That before any such exchange is effected notice of the contemplated exchange reciting the lands involved shall be published once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in some like newspaper published in any county in which may be situated any lands or timber to be given in such exchange. Timber given in such exchanges shall be cut and removed under the laws and regulations relating to the National Forests, and under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture. Lands conveyed to the United States under this Act shall, upon acceptance of title, become parts of the National Forest within whose exterior boundaries they are located. (16 U.S.C. 485)

Sec. 2. Either party to an exchange may make reservations of timber, minerals, or easements, the values of which shall be duly considered in determining the values of the exchanged lands. Where reservations are made in lands conveyed to the United States the right to enjoy them shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the Secretary of Agriculture; where mineral reservations are made in lands conveyed by the United States it shall be so stipulated in the patents, and that any person who acquires the right to mine and remove the reserved deposits may enter and occupy so much of the surface as may be required for all purposes incident to the mining and removal of the minerals therefrom, and may mine and remove such minerals upon payment to the owner of the surface for damages caused to the land and improvements thereon: *Provided*, That all property, rights, easements, and benefits authorized by this section to be retained by or reserved to owners of lands conveyed to the United States shall be subject to the tax laws of the States where such lands are located. (16 U.S.C. 486)

Note—In addition to transferring certain functions from the Secretary of the Interior to the Secretary of Agriculture, the Act of June 11, 1960 (74 Stat. 205) also provided in Section 2 thereof "In no case covered by . . . [the March 20, 1922 Act] shall the exchange provide for the patenting of land by the United States without a reservation of minerals (1) unless the secretary of Agriculture has obtained the advice of the Secretary of the Interior that the land is nonmineral in character, or (2) unless the Secretary of the Interior approves the valuation and disposition of the minerals in the land to be patented".

Note—The foregoing Act applies to National Forest land established from the public domain. The exchange authority applicable to Weeks Law lands is set forth in section 7 of the Weeks Law.

Clarke-McNary Act

- **Act of June 7, 1924 (P.L. 68-270, Ch. 348, 43 Stat. 653, as amended; 16 U.S.C. 505, 568, 568a, 569, 570)**

Note—Sec. 1, 2, 3, and 4 repealed by the Cooperative Forestry Assistance Act of 1978 (92 Stat. 365).

* * * *

Sec. 5. The Secretary of Agriculture is hereby authorized and directed, in cooperation with the land grant colleges and universities of the various States or, in his discretion, with other suitable State agencies, to aid farmers through advice, education, demonstrations, and other similar means in establishing, renewing, protecting, and managing wood lots, shelter belts, windbreaks, and other valuable forest growth, and in harvesting, utilizing and marketing the products thereof. Except for preliminary investigations, the amount expended by the Federal Government under this section in cooperation with any State or other cooperating agency during any fiscal year shall not exceed the amount expended by the State or other cooperating agency for the same purpose during the same fiscal year, and the Secretary of Agriculture is authorized to make expenditures on the certificate of the appropriate State official that the State expenditures, as provided for in this section, have been made. There is hereby authorized to be appropriated annually out of any money in the Treasury not otherwise appropriated, not more than $500,000 to enable the Secretary of Agriculture to carry out the provisions of this section. (16 U.S.C. 568)

Note—The provisions of sections 3, 4, and 5 of this Act were extended to the Territories and Possessions of the United States by Joint Resolution of April 13, 1926, 44 Stat. 250. (16 U.S.C. 568a)

Sec. 6. [Section 6 of the Weeks Law as amended by this section was further amended by the National Forest Management Act so that this section is no longer applicable.]

Land Acquisition by Donation

Sec. 7. To enable owners of land chiefly valuable for the growing of timber crops to donate or devise such lands to the United States in order to assure future timber supplies for the agricultural and other industries of the State or for other National Forest purposes, the Secretary of Agriculture is hereby authorized, in his discretion, to accept on behalf of the United States title to any such land so donated or devised, subject to such reservations by the donor of the present stand of merchantable timber or of mineral or other rights for a period not exceeding twenty years as the Secretary may find to be reasonable and not detrimental to the purposes of this section, and to pay out of any moneys appropriated for the general expenses of the Forest Service the cost of recording deeds or other expenses incident to the examination and acceptance of title. Any lands to which title is so accepted shall be in units of such size or so located as to be capable of economical

administration as National Forest either separately or jointly with other lands acquired under this section, or jointly with an existing National Forest. All lands to which title is accepted under this section shall, upon acceptance of title, become National Forest lands, subject to all laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), and amendments thereto. In the sale of timber from National Forest lands acquired under this section preference shall be given to applicants who will furnish the products desired therefrom to meet the necessities of citizens of the United States engaged in agriculture in the States in which such National Forest is situated: *Provided*, That all property, rights, easements, and benefits authorized by this section to be retained by or reserved to owners of lands donated or devised to the United States shall be subject to the tax laws of the States where such lands are located. (16 U.S.C. 569)

Note—The provisions of sections 6 and 7 of this Act were extended to Puerto Rico by Joint Resolution of March 3, 1931, 46 Stat. 1516, subject to the restriction that not to exceed 50,000 acres of land may be acquired in Puerto Rico under section 6.

National Forest Reservation Commission

Sec. 8. The Secretary of Agriculture is hereby authorized to ascertain and determine the location of public lands chiefly valuable for stream-flow protection or for timber production, which can be economically administered as parts of National Forests, and to report his findings to the National Forest Reservation Commission established under the Act of March 1, 1911 (36 Stat. 961), and if the commission shall determine that the administration of said lands by the Federal Government will protect the flow of streams used for navigation or for irrigation, or will promote a future timber supply, the President shall lay the findings of the commission before the Congress of the United States. (16 U.S.C. 570)

Note—The National Forest Reservation Commission was abolished and all its functions transferred to the Secretary by section 17(a) of the National Forest Management Act of 1976.

Lands Reserved For Military

Sec. 9. Where such National Forest is established on land previously reserved for the Army or Navy for purposes of national defense the land shall remain subject to the unhampered use of the Department of the Army or Navy Department for said purposes, and nothing in this section shall be construed to relinquish the authority over such lands for purposes of national defense now vested in the department for which the lands were formerly reserved. Any moneys available for the maintenance, improvement, protection, construction of highways and general administration of the National Forests shall be available for expenditure on the National Forests created under this section. (16 U.S.C. 505)

Note—Authority in section 9 for the President to establish National Forests (16 U.S.C. 471(b)) repealed.

Affidavits, Affirmations, and Oaths

- **Act of January 31, 1925 (P.L. 68-356, Ch. 124, 43 Stat. 803; 7 U.S.C. 2217)**

Such officers, agents, or employees of the Department of Agriculture of the United States as are designated by the Secretary of Agriculture for the purpose are authorized and empowered to administer to or take from any person an oath, affirmation, or affidavit whenever such oath, affirmation, or affidavit is for use in any prosecution or proceeding under or in the enforcement of any law committed to or which may be committed to the Secretary of Agriculture or the Department of Agriculture or any bureau or subdivision thereof for administration. Any such oath, affirmation, or affidavit administered or taken by or before such officer, agent, or employee when certified under his hand and authenticated by the seal of the Department of Agriculture may be offered or used in any court of the United States and shall have like force and effect as if administered or taken before a clerk of such court without further proof of identity or authority of such officer, agent, or employee. (7 U.S.C. 2217)

Facilitate and Simplify Work of Forest Service and to Promote Reforestation

- **Act of March 3, 1925 (P.L. 68-575, Ch. 117, 43 Stat. 1132, as amended; 16 U.S.C. 555, 557, 572)**

Land Acquisition by Purchase

Sec. 5. Where not suitable Government land is available for National Forest headquarters, ranger stations, dwellings, or other sites required for the effective conduct of the authorized activities of the Forest Service, the Secretary of Agriculture is hereby authorized to purchase lands out of the appropriation applicable to the purpose for which the land is to be used, and to accept donations of land for any National Forest or experimental purpose: *Provided,* That such lands may be acquired subject to such reservations and outstanding interests as the Secretary determines will not interfere with the purpose for which acquired; *Provided further,* That not to exceed $50,000 may be expended in any one fiscal year pursuant to this authority. (16 U.S.C. 555)

Employee Subsistence, Equipment and Medical Attention

Sec. 6. The Secretary of Agriculture is authorized to furnish subsistence to employees of the Forest Service, to purchase personal equipment and supplies for them, and to make deductions therefor from moneys appropriated for salary payments or otherwise due such employees. He is also authorized, in his discretion, to provide out of moneys appropriated for the general expenses of the Forest Service, medical attention for employees of the Forest Service located at isolated situations, including the moving of such employees to hospitals or other places where medical assistance is available, and in case of death to remove the bodies of deceased employees to the nearest place where they can be prepared for shipment or for burial: *Provided,* That when a transient without permanent residence, or any other person while away from his place of residence, is temporarily employed by the Forest Service and while so employed becomes disabled because of injury or illness not attributable to official work, he may be provided hospitalization and other necessary medical care, subsistence, and lodging for a period of not to exceed fifteen days during such disability, the cost thereof to be payable from any funds available to the Forest Service applicable to the work for which such person is employed. (16 U.S.C. 557)

Work Performed on Nonfederal Lands

(a) The Secretary of Agriculture is authorized, where the public interest justifies, to cooperate with or assist public and private agencies, organizations, institutions, and persons in performing work on land in State, county, municipal, or private ownership, situated within or near a National Forest, for which the administering agency, owner, or other interested party deposits in one or more payments a sufficient sum to cover the total estimated cost of the work to be done for the benefit of

the depositor, for administration, protection, improvement, reforestation, and such other kinds of work as the Forest Service is authorized to do on lands of the United States; *Provided*, That the United States shall not be liable to the depositor or landowner for any damage incident to the performance of such work.

(b) Cooperation and assistance on the same basis as that authorized in subsection (a) is authorized also in the performance of any such kinds of work in connection with the occupancy or use of the National Forests or other lands administered by the Forest Service.

(c) Moneys deposited under this section shall be covered into the Treasury and shall constitute a special fund, which is made available until expended for payment of the cost of work performed by the Forest Service and for refunds to depositors of amounts deposited by them in excess of their share of said cost: *Provided*, That when deposits are received for a number of similar types of work on adjacent or overlapping areas, or on areas which in the aggregate are determined to cover a single work unit, they may be expended on such combined areas for the purposes for which deposited, in which event refunds to the depositors of the total amount of the excess deposits involved will be made on a proportionate basis: *Provided further*, That when so provided by written agreement payment for work undertaken pursuant to this section may be made from any Forest Service appropriation available for similar types of work, and reimbursement received from said agencies, organizations, institutions, or persons covering their proportionate share of the cost and the funds received as reimbursement shall be deposited to the credit of the Forest Service appropriation from which initially paid or to appropriations for similar purposes currently available at the time of deposit: *Provided further*, That when by the terms of a written agreement either party thereto furnishes materials, supplies, equipment, or services for fire emergencies in excess of its proportionate share, adjustment may be made by reimbursement or by replacement in kind of supplies, materials, and equipment consumed or destroyed in excess of the furnishing party's proportionate share. (16 U.S.C. 572)

Timber Exportation

- **Act of April 12, 1926 (P.L. 69–100, Ch. 117, 44 Stat. 242, as amended; 16 U.S.C. 616, 617)**

Sec. 1 Timber lawfully cut on any National Forest, or on the public lands in Alaska, may be exported from the State or Territory where grown if, in the judgment of the Secretary of the department administering the National Forests, or the public lands in Alaska, the supply of timber for local use will not be endangered thereby, and the respective Secretaries concerned are hereby authorized to issue rules and regulations to carry out the purpose of this Act. (16 U.S.C. 616)

Sec. 2. (a) For each of the calendar years 1969 through 1973, inclusive, not more than 350 million board feet, in the aggregate, of unprocessed timber may be sold for export from the United States from Federal lands located west of the 100th meridian.

(b) After public hearing and a finding by the appropriate Secretary of the department administering Federal lands referred to in subsection (a) of this section that specific quantities and species of unprocessed timber may are surplus to the needs of domestic users and processors, such quantities and species may be designated by the said Secretary as available for export from the United States in addition to that quantity stated in subsection (a) of this section.

(c) The Secretaries of the departments administering lands referred to in subsection (a) of this section may issue rules and regulations to carry out the purposes of this section, including the prevention of substitution of timber restricted from export by this section for exported non–Federal timber.

(d) In issuing rules and regulations pursuant to subsection (c) of this section, the appropriate Secretaries may include therein provisions authorizing the said Secretaries, in their discretion, to exclude from the limitations imposed by this section sales having an appraised value of less than $2,000. (16 U.S.C. 617)

Limitation of National Forest Designation

- **Act of June 15, 1926 (P.L. 69-392, Ch. 587, 44 Stat. 745; 16 U.S.C. 471a)**

Hereafter no National Forest shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Arizona, or New Mexico, except by Act of Congress. (16 U.S.C. 471a)

Color of Title

- **Act of December 22, 1928 (P.L. 70-645, Ch. 47, 45 Stat. 1069, as amended; 43 U.S.C. 1068, 1068a, 1068b)**

Lands Held in Adverse Possession; Issuance of Patent; Reservation of Minerals; Conflicting Claims

Sec. 1. The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local Governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon payment of not less than $1.25 per acre: *Provided*, That where the area so held is in excess of one hundred and sixty acres the Secretary may determine what particular subdivisions, not exceeding one hundred and sixty acres, may be patented hereunder: *Provided further*, That coal and all other minerals contained therein are hereby reserved to the United States; that said coal and other minerals shall be subject to sale or disposal by the United States under applicable leasing and mineral land laws, and permittees, lessees, or grantees of the United States shall have the right to enter upon said lands for the purpose of prospecting for and mining such deposits: *And provided further*, That no patent shall issue under the provisions of this chapter for any tract to which there is a conflicting claim adverse to that of the applicant, unless and until such claim shall have been finally adjudicated in favor of such applicant. (43 U.S.C. 1068)

Appraisal

Sec. 2. Upon filing of an application to purchase any lands subject to the operation of this Act, together with the required proof, the Secretary of the Interior shall cause the lands described in said application to be appraised, said appraisal to be on the basis of the value of such lands at the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands by the applicant or his predecessors in interest, and in such appraisal, the Secretary shall consider and give full effect to the equities of any applicant. (43 U.S.C. 1068a)

Mineral Reservation

Sec. 3. If the claimant requests that the patent to be issued under this Act not contain a mineral reservation and if he can establish to the satisfaction of the Secretary that the requirements of this Act have been

complied with by such claimant and his predecessors for the period commencing not later than January 1, 1901, to the date of application, no mineral reservation shall be made unless the lands are, at the time of issuance of the patent, within a mineral withdrawal or subject to an outstanding mineral lease. (43 U.S.C. 1068b)

Migratory Bird Conservation Act

- **Act of February 18, 1929 (P.L. 70-770, Ch. 257, 45 Stat. 1222, 16 U.S.C. 715(note), 715a–k, 715–K1, 715–K3–K5, 715n–p, 715r–s)**

Short Title

Sec. 1. That this Act shall be known by the short title of "Migratory Bird Conservation Act." (16 U.S.C. 715(note))

Migratory Bird Conservation Commission

Sec. 2. That a commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of Interior, as chairman, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is hereby created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of Interior for purchase or rental under this Act, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. Any Member of the House of Representatives who is a member of the commission, if reelected to the succeeding Congress, may serve on the commission notwithstanding the expiration of a Congress. Any vacancy on the commission shall be filled in the same manner as the original appointment. The ranking officer of the branch or department of a State to which is committed the administration of its game laws, or his authorized representative, and in a State having no such branch or department, the governor thereof, or his authorized representative, shall be a member ex officio of said commission for the purpose of considering and voting on all questions relating to the acquisition, under this Act, of areas in his State. For purposes of this Act, the purchase or rental of any area of land, water, or land and water includes the purchase or rental of any interest in any such area of land, water, or land and water. (16 U.S.C. 715a)

Annual Report

Sec. 3. That the commission hereby created shall, through its chairman, annually report in detail to Congress, not later than the first Monday in December, the operations of the commission during the preceding fiscal year. (16 U.S.C. 715b)

Areas Recommended for Approval; Character

Sec. 4. The Secretary of the Interior may not recommend any area for purchase or rental under the terms of this subchapter unless the Secretary of the Interior—

(1) has determined that such area is necessary for the conservation of migratory birds; and

(2) has consulted with the county or other unit of local government in which such area is located and with the Governor of the State concerned or the appropriate State agency. (16 U.S.C. 715c)

Purchase or Rental of Approved Areas of Interests Therein; Gifts and Devises; United States Lands

Sec. 5. The Secretary of the Interior may—

(1) purchase or rent such areas or interests therein as have been approved for purchase or rental by the Commission at the price or prices fixed by the Commission; and

(2) acquire, by gift or devise, any area or interests therein; which he determines to be suitable for use as an inviolate sanctuary, or for any other management purpose, for migratory birds. The Secretary may pay, when deemed necessary by him and from moneys authorized to be appropriated for the purposes of this subchapter (A) the purchase or rental price of any such area or interest therein, and (B) the expenses incident to the location, examination, survey, and acquisition of title including options of any such area or interest therein. No lands acquired, held, or used by the United States for military purposes shall be subject to any provisions of this subchapter. (16 U.S.C. 715d)

Examination of Title

Sec. 6. That the Secretary of Interior may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under this Act, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General or his designee, but the acquisition of such areas by the United States shall in no case be defeated because of rights–of–way, easements, and reservations which from their nature will in the opinion of the Secretary of Interior in no manner interfere with the use of the areas so encumbered for the purposes of this Act; but such rights–of–way, easements, and reservations retained by the grantor or lessor, from whom the United States receives title under this Act or any other Act for the acquisition by the Secretary of the Interior of areas for wildlife refuges, shall be subject to rules and regulations prescribed from time to time by the Secretary of Interior for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights–of–way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of the Interior, to such rules and regulations as may be prescribed by him from time to time. (16 U.S.C. 715e)

Consent of State to Conveyance

Sec. 7. That no deed or instrument of conveyance shall be accepted by the Secretary of Interior under this Act unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State. (16 U.S.C. 715f)

Jurisdiction of State Over Areas Acquired

Sec. 8. That the jurisdiction of the State, both civil and criminal, over persons upon areas acquired under this Act shall not be affected or changed by reason of their acquisition and administration by the United States as migratory bird reservations, except so far as the punishment of offenses against the United States is concerned. (16 U.S.C. 715g)

Operation of State Game Laws

Sec. 9. That nothing in this Act is intended to interfere with the operation of the game laws of the several States applying to migratory game birds in so far as they do not permit what is forbidden by Federal law. (16 U.S.C. 715h)

Administration

Sec. 10. (a) Treaty obligations; rules and regulations.—Areas of lands, waters, or interests therein acquired or reserved pursuant to this subchapter shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico, Canada, Japan, and the Union of Soviet Socialist Republics, and other species of wildlife found thereon, including species that are listed pursuant to section 1533 of this title as endangered species or threatened species, and to restore or develop adequate wildlife habitat.

(b) Management and public and private agency agreements authorization.—In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies. (16 U.S.C. 715i)

"Migratory Birds" Defined

Sec. 11. For the purposes of this subchapter and the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), migratory birds are those defined as such by the treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311), the Convention between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and their Environment concluded March 4, 1972, and the Convention between the United States ad the Union of Soviet Socialist Republics for the Conservation of Migratory Birds and their Environment concluded November 19, 1976. (16 U.S.C. 715j)

Authorization of Appropriations

Sec. 12. (a) For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and development of such areas and other preserves, reservations, or breeding grounds frequented by migratory game birds and under the administration of the Secretary of Interior, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wildlife conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of provisions of this Act, there are authorized to be appropriated, in addition to all other amounts authorized by

law to be appropriated $200,000 for the fiscal year ending June 30, 1940, and for each fiscal year thereafter. No part of any appropriation authorized by this section shall be used for payment of the salary, compensation, or expenses of any United States game protector, except reservation protectors for the administration, maintenance, and protection of such reservations and the birds thereon: *Provided*, That reservation protectors appointed under the provisions of this Act shall be selected, when practicable, from qualified citizens of the State in which they are employed. The Secretary of Interior is authorized and directed to make such expenditures and to employ such means, including personal services in the District of Columbia and elsewhere, as may be necessary to carry out the foregoing objects. (16 U.S.C. 716k)

(b) Expenditures for personal services.—In the execution of this Act, the Secretary of the Interior is authorized to make such expenditures for personal services in the District of Columbia and elsewhere as he shall deem necessary. (16 U.S.C. 715k-1)

(c) Authorization of appropriations for preservation of wetlands and other waterfowl habitat.—In order to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of important wetlands and other waterfowl habitant essential to the preservation of such waterfowl, there is authorized to be appropriated for the period beginning on July 1, 1961, and ending when all amounts authorized to be appropriated have been expended not to exceed $200,000,000. (16 U.S.C. 715k-3)

(d) Accounting and use of appropriations.—Funds appropriated each fiscal year pursuant to sections 715k-3 to 715k-5 of this title shall be accounted for, added to, and used for purposes of the migratory bird conservation fund established pursuant to section 718d of this title. (16 U.S.C. 715k-4)

Sec. 13. No land shall be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the Governor to the State or appropriate State agency. (16 U.S.C. 715k-5)

Sec. 14. Repealed

"Take" Defined

Sec. 15. That for the purposes of this Act the word "take" shall be construed to mean pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires. (16 U.S.C. 715n)

National Forests and Power Sites

Sec. 16. Nothing in this Act shall be construed as authorizing or empowering the Migratory Bird Conservation Commission herein created, the Secretary of Interior, or any other board, commission, or officer, to declare, withdraw, or determine, except heretofore designated, any part of any national forest or power site, a migratory bird reservation under any of the provisions of this Act, except by and with consent of the legislature of the State wherein such forest or power site is located. (16 U.S.C. 715o)

Cooperation of State in Enforcement of Provisions

Sec. 17. That when any State shall, by suitable legislation, make provision adequately to enforce the provisions of this Act and all regulations promulgated thereunder, the Secretary of Interior may so certify, and then and thereafter said

State may cooperate with the Secretary of Interior in the enforcement of this Act and the regulations thereunder. (16 U.S.C. 715p)

* * * *

Participation of Local Government in Revenue

Sec. 21. (a) Separate fund in United States Treasury; availability of funds until expended; definition of "National Wildlife Refuge System."—Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soils, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System, National Fish Hatcheries, or other areas, that are solely or primarily administered by him, through the United States Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and waters administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

(b) Deduction of expenses.—The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing and revenue-sharing measures.

(c) Payments to counties.—

(1) The Secretary shall pay out the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any fee area whichever of the following amounts is greater—

(A) An amount equal to the product of 75 cents multiplied by the total acreage of the portion of the fee area which is located within such county.

(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county.

(C) an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount each such county is entitled to shall be the amount which bears to such 25 per centum the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(2) At the end of each fiscal year the Secretary shall pay out the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per

centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: *Provided,* That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(3) For purposes of this section, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands shall each be treated as a county.

(4)(A) For purposes of determining the fair market value of fee areas under paragraph (1)(B), the Secretary shall—

(i) appraise before September 30, 1979, all fee areas for which payments under this section were not authorized for fiscal years occurring before October 1, 1977; and

(ii) appraise all other fee areas, within five years after October 17, 1978, in the order in which such areas were first established by the Service.

After initial appraisal under clause (i) or (ii), each fee area shall thereafter be reappraised by the Secretary at least once during each five-year period occurring after the date of the initial appraisal. Until any fee area referred to in clause (ii) is initially appraised under this subparagraph, the fair market value of such area shall be deemed to be that adjusted cost of the area which was used to determine payments under this subsection for fiscal year 1977; and in no case may the amount of nay payment to any local government under paragraph (1)(B) with respect to any fee area be less than the amount paid under paragraph (2)(A) of this subsection (as in effect of September 30, 1977) with respect to such area.

(B) The Secretary shall make the determinations required under this subsection in such manner as the Secretary considers to be equitable and in the public interest. All such determinations shall be final and conclusive.

(5)(A) Each country which receives payments under paragraphs (1) and (2) with respect to any fee area or reserve area shall distribute, under guidelines established by the Secretary, such payments on a proportional basis to those units of local government (including, but not limited to, school district and the county itself in appropriate cases) which have incurred the loss or reduction of real property tax revenues by reason of the existence of such area. In any case in which a unit of local government other than the county acts as the collecting and distributing agency for real property taxed, the payment under paragraphs (1) and (2) shall be made to such other unit which shall distribute the payments in accordance with the guidelines.

(B) The Secretary may prescribe regulations under which payments under this paragraph may be made to units of local government in cases in which subparagraph (A) will not effect the purposes of this paragraph.

(C) Payments received by units of local government under this subsection may be used by such units for any governmental purpose.

(d) Authorization of appropriations equal to difference between amount of net receipts and aggregate amount of required payment.—If the net receipts in the fund which are attributable to revenue collections for any fiscal year do not equal the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, there are authorized to be appropriated to the fund an amount equal to the

difference between the total amount of net receipts and such aggregate amount of payments.

(e) Transfer and use of excess of net receipts over aggregate amount of required payments.—If the net receipts in the fund which are attributable to revenue collections for any fiscal year exceed the aggregate amount of payments required to be made for such fiscal year under subsection (c) of this section to counties, the amount of such excess shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges under the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715r)

(f) Terms, conditions, and regulations for execution of revenue producing activities; disposal of animals.—The Secretary shall carry out any revenue producing activity referred to in subsection (a)(1), (2), and (3) of this section within any fee area or reserve area subject to such terms, conditions, or regulations, including sales in the open markets, as the Secretary determines to be in the best interest of the United States. The Secretary may, in accordance with such regulations as the Secretary may prescribe, dispose of animals which are surplus to any such area by exchange of the same or other kinds, gift or loan to public institutions for exhibition or propagation purposes, and for the advancement of knowledge and the dissemination of information relating to the conservation of wildlife.

(g) Definitions.—As used in this section—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough. (16 U.S.C. 715s)

ACTS OF THE 1930'S

Title Adjustment

- **Act of April 28, 1930 (P.L. 71-174, Ch. 219, 46 Stat. 256; 43 U.S.C. 872)**

Where a conveyance of land has been made or may hereafter be made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands, or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Secretary of the Interior or such officer as he may designate is authorized and directed, if the deed of conveyance has been recorded to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto. (43 U.S.C. 872)

Note—The Act of June 11, 1960 (74 Stat. 205; 7 U.S.C. 2201 (Note)) transferred to the Secretary of Agriculture the authority of this section insofar as it related to lands conveyed in exchange transactions involving lands under jurisdiction of the Secretary of Agriculture.

Damage to Private Property (Search and Rescue)

- **Act of May 27, 1930 (P.L. 71-268, Ch. 337; 46 Stat. 387, as amended; 16 U.S.C. 574, 575)**

The Secretary of Agriculture is authorized to reimburse owners of private property for damage or destruction thereof caused by employees of the United States in connection with the protection, administration, or improvement of the National Forests, payment to be made from any funds appropriated for the protection, administration, and improvement of the National Forests: *Provided,* That no payment in excess of $2,500 shall be made on any such claim. (16 U.S.C. 574)

The Secretary of Agriculture is authorized in cases of emergency to incur such expenses as may be necessary in searching for persons lost in the National Forests and in transporting persons seriously ill, injured, or who die within the National Forests to the nearest place where the sick or injured person, or the body, may be transferred to interested parties or local authorities. (16 U.S.C. 575)

Knutson-Vandenberg Act

- **Act of June 9, 1930 (P.L. 71–319, Ch. 416, 46 Stat. 527, as amended; 16 U.S.C. 576, 576a-576b)**

Sec. 1. The Secretary of Agriculture is hereby authorized to establish forest tree nurseries and do all other things needful in preparation for planting on National Forests on the scale possible under the appropriations authorized by this Act: *Provided,* That nothing in this Act shall be deemed to restrict the authority of the said Secretary under other authority of law. (16 U.S.C. 576)

Sec. 2. There is authorized to be appropriated for each fiscal year after year ending June 30, 1934, not to exceed $400,000, to enable the Secretary of Agriculture to establish and operate nurseries, to collect or to purchase tree seed or young trees, to plant trees, and to do all other things necessary for reforestation by planting or seeding National Forests and for the additional protection, care, and improvement of the resulting plantations or young growth. (16 U.S.C. 576a)

Sec. 3. The Secretary of Agriculture may, when in his judgment such action will be in the public interest, require any purchaser of National Forest timber to make deposits of money in addition to the payments for the timber, to cover the cost to the United States of (1) planting (including the production or purchase of young trees, (2) sowing with tree seeds (including the collection or purchase of such seeds), (3) cutting, destroying, or otherwise removing undesirable trees or other growth, on the National Forest land cut over by the purchaser, in order to improve the future stand of timber, or (4) protecting and improving the future productivity of the renewable resources of the forest land on such sale area, including sale area improvement operation, maintenance and construction, reforestation and wildlife habitat management. Such deposits shall be covered into the Treasury and shall constitute a special fund, which is hereby appropriated and made available until expended, to cover the cost to the United States of such tree planting, seed sowing, and forest-improvement work, as the Secretary of Agriculture may direct: *Provided,* That any portion of any deposit found to be in excess of the cost of doing said work shall, upon the determination that it is so in excess, be transferred to miscellaneous receipts, Forest Service Fund, as a National Forest receipt of the fiscal year in which such transfer is made: *Provided further,* That the Secretary of Agriculture is authorized, upon application of the Secretary of the Interior, to furnish seedlings, and/or young trees for replanting of burned-over areas in any National Park. (16 U.S.C. 576b)

Land Acquisition—Declaration of Taking

- **Act of February 26, 1931 (P.L. 71-736, Ch. 307, 46 Stat. 1421; 40 U.S.C. 258a)**

In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing of said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court.

No sum so paid into the court shall be charged with commission or poundage. Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges,

if any, as shall be just and equitable. (40 U.S.C. 258a)

Note—The purpose of the declaration of taking is to vest title immediately in the United States. It is a supplement to and can be used only in conjunction with condemnation proceedings. It may be filed at the time condemnation is requested or at any time prior to judgment in the proceedings.

Davis-Bacon Act

- **Act of March 3, 1931 (P.L. 71–798, Chap. 411; 46 Stat. 1494; 40 U.S.C. 276a, 276a–1 thru 276a-5)**

Note—Section numbers refer to U.S. Code sections

Sec. 276a. Rate of wages for laborers and mechanics.

(a) The advertised specifications for every contract in excess of $2,000 to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) As used in sections 276a to 276a-5 of this title the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) the basic hourly rate of pay; and

(2) the amount of—

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a

financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits: *Provided,* That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determinations of the Secretary of Labor, insofar as sections 276a to 276a-5 of this title and other Acts incorporating sections 276a to 276a-5 of this title by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in paragraph (2).

In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him under sections 276a to 276a-5 of this title, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater.

Sec. 276a-1. Termination of work on failure to pay agreed wages; completion of work by Government.—Every contract within the scope of sections 276a to 276a-5 of this title shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

Sec. 276a-2. Payment of wages by Comptroller General from withheld payments; listing contractors violating contracts.

(a) The Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms

of the contract any wages found to be due laborers and mechanics pursuant to sections 276a to 276a-5 of this title; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

(b) If the accrued payments withheld under the terms of the contract, as aforesaid are insufficient to reimburse all the laborers and mechanics, with respect to whom there has been a failure to pay the wages required pursuant to sections 276a to 276a-5 of this title, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

Sec. 276a-3. Effect on other Federal laws.—Sections 276a to 276a-5 of this title shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

Sec. 276a-4. Effective date of sections 276a to 276a-5.—Sections 276a to 276a-5 of this title shall take effect thirty days after August 30, 1935, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding on August 30, 1935.

Sec. 276a-5. Suspension of sections 276a to 276a-5 during emergency.—In the event of a national emergency the President is authorized to suspend the provisions of sections 276a to 276a-5 of this title.

Contracts Prior to Appropriations

- **Act of June 30, 1932 (P.L. 72-229, Ch. 331, 47 Stat. 473; 16 U.S.C. 557a)**

The Secretary of Agriculture is authorized in connection with the administration of the National Forests to enter into contracts for the procurement of services, materials and supplies for the ensuing fiscal year, prior to the passage of an appropriation therefore: *Provided,* That such contract shall aliquot the cost for such service by fiscal years and shall not be binding on the United States as to that part for the ensuing year unless and until an appropriation applicable to the payment thereof is made: *And provided further,* That all such contracts shall by their terms provide that the obligation of the United States is contingent upon the passage of an applicable appropriation and that no payment thereunder will be made until such appropriation becomes available for expenditure. (16 U.S.C. 557a)

Buy American Act

- **Act of March 3, 1933 (P.L. 72–428, Chap. 212, Title III; 47 Stat. 1520, 41 U.S.C. 10a–b, 10b–1, 10c)**

Note—Section numbers refer to U.S. Code sections.

Sec. 10a. American materials required for public use.—Notwithstanding any other provision of law, and unless the head of the Federal agency concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Sec. 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be in the United States except as provided in section 10a of this title: *Provided, however,* That if the head of the Federal agency making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a Federal agency which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public buildings or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such

contractor is associated or affiliated, within a period of three years after such finding is made public.

Sec. 10b-1. Prohibition on procurement contracts; exceptions

(a) Federal contracts for goods or services of foreign origin.—A Federal agency shall not award any contract—

(1) for the procurement of an article, material, or supply mined, produced, or manufactured—

(A) in a signatory country that is considered to be a signatory not in good standing of the Agreement pursuant to section 2515(f)(3)(A) of Title 19; or

(B) in a foreign country whose government maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 2515(g)(1)(A) of Title 19; or

(2) for the procurement of a service of any contractor or subcontractor that is a citizen or national of a foreign country identified by the President pursuant to section 2515(f)(3)(A) or 2515(g)(1)(A) of Title 19, or is owned or controlled directly or indirectly by citizens or nationals of such a foreign country.

(b) Exceptions to prohibition.—The prohibition on procurement in subsection (a) of this section is subject to sections 2515(h) and 2515(j) of Title 19 and shall not apply—

(1) with respect to services, articles, materials, or supplies procured and used outside the United States and its territories;

(2) notwithstanding section 2515(g) of Title 19, to an eligible product of a country which is a signatory country unless that country is considered to be a signatory not in good standing pursuant to section 2515(f)(3)(A) of Title 19; or

(3) notwithstanding section 2515(g) of Title 19, to a country that is a least developed country (as that term is defined in section 2518(6) of Title 19).

(c) Authority of President or Federal agency heads to authorize contracts.—Notwithstanding subsection (a) of this section, the President or the head of a Federal agency may authorize the award of a contract or class of contracts if the President or the head of the Federal agency—

(1) determines that such action is necessary—

(A) in the public interest;

(B) to avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or

(C) because there would be or are an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices; and

(2) notifies the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, and the appropriate committees of the House of Representatives, of such determination—

(A) not less than 30 days prior to the date of the award of the contract or the date of authorization of the award of a class of contracts; or

(B) if the agency's need for the service, article, material, or supply is of such urgency that the United States would be seriously injured by delaying the award or authorization, not more than 90 days after the date of such award or authorization.

(d) Limitation on authority of Federal agency heads to authorize

contracts.—The authority of the head of a Federal agency under subsection (c) of this section shall not apply to contracts subject to memorandums of understanding entered into by the Department of Defense (or any military department) and a representative of a foreign country (or agency or instrumentality thereof). In the case of any such contracts, any determinations and notice required by subsection (c) of this section shall be made by—

(1) the President, or

(2) if delegated, by the Secretary of Defense or the Secretary of the Army, Navy, or Air Force, subject to review and policy guidance by the organization established under section 1872(a) of Title 19.

(e) Non-delegability of agency heads' authority.—The authority of the head of a Federal agency under subsection (c) or (d) of this section may not be delegated.

(f) Other authorities to bar procurement from non-designated countries not affected.—Nothing in this section shall restrict the application of the prohibition under section 2512(a)(1) of Title 19.

(g) Ownership or control of contractors or subcontractors by citizens or nationals of foreign countries

(1) For purposes of this section with respect to construction services, a contractor or subcontractor is owned or controlled directly or indirectly by citizens or nationals of a foreign country if—

(A) 50 percent or more of the voting stock of the contractor or subcontractor is owned by one or more citizens or nationals of the foreign country;

(B) the title to 50 percent or more of the stock of the contractor or subcontractor is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of the foreign country;

(C) 50 percent or more of the voting stock of the contractor or subcontractor is vested in or exercisable on behalf of one or more citizens or nationals of the foreign country;

(D) the case of a corporation—

(i) the number of its directors necessary to constitute a quorum are citizens or nationals of the foreign country; or

(ii) the corporation is organized under the laws of the foreign country or any subdivision, territory, or possession thereof; or

(E) in the case of a contractor or subcontractor who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

(2)(A) For purposes of this section, except as provided in paragraph (1), a determination of whether a contractor or subcontractor is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country shall be made in accordance with policy guidance prescribed by the Administrator for Federal Procurement Policy after conducting one or more public hearings at which interested parties may present comments. Sections 556 and 557 of Title 5, shall not apply to the conduct of any such hearing.

(B) The Administrator shall include in the policy guidance prescribed under subparagraph (A) definitions, procedures, standards, and rules that, to the extent the Administrator considers appropriate and consistent with the applicability of such policy guidance to all services (other than construction services), is the same as or similar to the definitions, procedures, standards, and rules that the Administrator has developed and

issued for the administration of section 109 of the Treasury, Postal Services, and General Government Appropriations Act, 1988 (101 Stat. 1329-434).

(C) The policy guidance required by subparagraph (A) shall be prescribed not later than 180 days after August 23, 1988.

(3)(A) The Administrator for Federal Procurement Policy shall conduct an assessment of the current rules under sections 10a to 10c of this title for making determinations of country of origin and alternatives to such rules. Such assessment shall identify and evaluate (i) reasonable alternatives to such rules of origin, including one or more alternative rules that require a determination on the basis of total cost, and (ii) the specific cost factors that should be included in determining total cost.

(B) In conducting the analysis, the Administrator shall consult and seek comment from representatives of United States labor and business, other interested United States persons, and other Federal agencies. The Administrator shall hold public hearings for the purpose of obtaining such comment, and a transcript of such hearings shall be appended to the report required by subparagraph (C).

(C) A report on the results of the analysis shall be submitted to the appropriate committees of the House of Representatives and to the Committee on Governmental Affairs and other appropriate committees of the Senate not later than 18 months after August 23, 1988. Such report shall include proposed policy guidance or any recommended legislative changes on the factors to be used in making determinations of country of origin.

(h) Definitions.—As used in this section—

(1) the term "Agreement" means the Agreement on Government Procurement as defined in Section 2518(1) of Title 19;

(2) the term "signatory" means a party to the Agreement; and

(3) the term "eligible product" has the meaning given such term by section 2518(4) of Title 19.

* * * *

Sec. 10c. Definition of terms used in sections 10a to 10c.—When used in sections 10a to 10c of this title—

(a) The term "United States", when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms "public use", "public building", and "public work" shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands;

(c) The term "Federal agency" has the meaning given such term by section 472 of Title 40, which includes the Departments of the Army, Navy, and Air Force.

Fish and Wildlife Coordination Act

- **Act of March 10, 1934 (P.L. 73-121, Ch. 55, 48 Stat. 401, as amended; 16 U.S.C. 661, 662(a), 662(h), 663(c), 663(f))**

Water Resource Development Programs

Sec. 1. For the purpose of recognizing the vital contribution of our wildlife resources to the Nation, the increasing public interest and significance thereof due to expansion of our national economy and other factors, and to provide that wildlife conservation shall receive equal consideration and be coordinated with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation for the purposes of this Act in the United States, its Territories and possessions, the Secretary of the Interior is authorized (1) to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes, in minimizing damages from overabundant species, in providing public shooting and fishing areas, including easements across public lands for access thereto, and in carrying out other measures necessary to effectuate the purposes of this Act; (2) to make surveys and investigations of the wildlife of the public domain, including lands and waters or interests therein acquired or controlled by any agency of the United States; and (3) to accept donations of land and contributions of funds in furtherance of the purposes of this Act. (16 U.S.C. 661)

Consultation

Sec. 2. (a) Except as hereafter stated in subsection (h) of this section, whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the impoundment, diversion, or other control facility is to be constructed, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development. (16 U.S.C. 662(a))

* * * *

(h) The provisions of this Act shall not be applicable to those projects for the impoundment of water where the maximum surface area of such impoundments is less than ten acres, nor to activities for

or in connection with programs primarily for land management and use carried out by Federal agencies with respect to Federal lands under their jurisdiction. (16 U.S.C. 662 (h))

Land and Water Acquisition

* * * *

Sec. 3. (c) When consistent with the purposes of this Act and the reports and findings of the Secretary of the Interior prepared in accordance with section 2 of this Act, land, waters, and interests therein may be acquired by Federal construction agencies for the wildlife conservation and development purposes of this Act in connection with a project as reasonably needed to preserve and assure for the public benefit the wildlife potentials of the particular project area: *Provided,* That before properties are acquired for this purpose, the probable extent of such acquisition shall be set forth, along with other data necessary for project authorization, in a report submitted to the Congress, or in the case of a project previously authorized, no such properties shall be acquired unless specifically authorized by Congress, if specific authority for such acquisition is recommended by the construction agency. (16 U.S.C. 663(c))

* * * *

(f) Any lands acquired pursuant to this section by any Federal agency within the exterior boundaries of the National Forest shall, upon acquisition, be added to and become National Forest lands, and shall be administered as a part of the forest within which they are situated, subject to all laws applicable to lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961), unless such lands are acquired to carry out the National Migratory Bird Management Program. (16 U.S.C. 663(f))

Funding Employment and Equipment

- **Act of June 4, 1936 (P.L. 74-637, Ch. 489, 49 Stat. 1421; 7 U.S.C. 2237)**

Funds available for field work in the Department of Agriculture shall be available for employment by contract or otherwise of men with equipment, boats, work animals, animal-drawn, and motor-propelled vehicles. (7 U.S.C. 2237)

Walsh-Healey Act

- **Act of June 30, 1936 (P.L. 74–846, Chap. 881, 49 Stat. 2036; 29 U.S.C. 557, 41 U.S.C. 35-43, 43a, 44–45)**

Note—Section numbers refer to U.S. Code sections

Sec. 35. Contracts for materials, etc., exceeding $10,000; representations and stipulations.—In any contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of forty hours in any one week: *Provided,* That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs (1) or (2) of subsection (b) of section 207 of Title 29;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract, except that this section, or any other law or Executive order containing similar prohibitions against purchase of goods by the Federal Government, shall not apply to convict labor which satisfies the condition of section 1761(c) of Title 18; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract.

Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

Sec. 36. Liability for contract breach; cancellation; completion by Government agency; employee's wages.—Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 35 of this title shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of $10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 35 of this title may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided,* That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

Sec. 37. Distribution of list of persons breaching contract; future contracts prohibited.—The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by sections 35 to 45 of this title. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

Sec. 38. Administration of Walsh-Healey provisions; officers and employees; appointment; investigations; rules and regulations.—The Secretary of Labor is authorized and directed to administer the provisions of sections 35 to 45 of this title and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of said section and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, subject

to chapter 51 and subchapter III of chapter 53 of Title 5, an administrative officer, and such attorneys and experts, and other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of sections 35 to 45 of this title. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as provided in sections 35 to 45 of this title, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of sections 35 to 45 of this title.

Sec. 39. Hearings on Walsh-Healey provisions by Secretary of Labor; witness fees; failure to obey order; punishment.—Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of sections 35 to 45 of the title, and on complaint of a breach or violation of any representation or stipulation as provided in said sections, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of sections 35 to 45 of this title.

Sec. 40. Exceptions from Walsh-Healey provisions; modification of contracts; variations; overtime; suspension of representations and stipulations.—Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 35 of this title will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the

terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of section 35 to 45 of this title respecting minimum rates of pay and maximum hours of labor or the extent of the application of said sections to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected: *Provided,* That whenever in his judgment such course is in the public interest, the President is authorized to suspend any or all of the representations and stipulations contained in section 35 of this title.

Sec. 41. "Person" defined in Walsh-Healey provisions.—Whenever used in sections 35 to 45 of this title, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under Title 11, or receivers.

Sec. 42. Effect of Walsh-Healey provisions on other laws.—The provisions of sections 35 to 45 of this title shall not be construed to modify or amend Title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of sections 35 to 45 of this title be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time (40 U.S.C. 276a et seq.), nor the labor provisions of Title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of section 35 to 45 of this title be construed to modify or amend chapter 307 and section 4162 of Title 18.

Sec. 43. Walsh-Healey provisions not applicable to certain contracts.—Sections 35 to 45 of this title shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall they apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in said sections shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

Sec. 43a. Administrative procedure provisions.—

(a) Applicability.—Notwithstanding any provision of section 553 of Title 5, subchapter II of chapter 5, and chapter 7, of Title 5 shall be applicable in the administration of sections 35 to 39 and 41 to 43 of this title.

(b) Wage determination; administrative review.—All wage determinations under section 35(b) of this title shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made in the manner provided in chapter 7 of Title 5 by any person adversely affected or aggrieved thereby, who shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

(c) Judicial review.—Notwithstanding the inclusion of any stipulations required by any provision of sections 35 to 45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms "locality", "regular dealer", "manufacturer", and "open market".

Sec. 44. Separability of Walsh-Healey provisions.—If any provision of sections 35 to 45 of this title, or the application thereof to any persons or circumstances, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 45. Effective date of Walsh-Healey provisions; exception as to representations with respect to minimum wages.—Sections 35 to 45 of this title shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from June 30, 1936; *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Bankhead-Jones Farm Tenant Act

- **Act of July 22, 1937 (P.L. 75-210, Ch. 517, 50 Stat. 522, as amended; 7 U.S.C. 1010-1012)**

TITLE III—RETIREMENT OF SUBMARGINAL LAND

Lead Conservation and Utilization

Sec. 31. The Secretary is authorized and directed to develop a program of land conservation and land utilization, in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises. (7 U.S.C. 1010)

Powers of the Secretary of Agriculture

Sec. 32. To effectuate the program provided for in section 31 of this Act, the Secretary is authorized—

(a) [Repealed. PL 87-703, Title I, Sec. 102(b), September 27, 1962, 76 Stat. 607.]

(b) To protect, improve, develop, and administer any property so acquired and to construct such structures thereon as may be necessary to adapt it to its most beneficial use.

(c) To sell, exchange, lease or otherwise dispose of, with or without a consideration, any property so acquired, under such terms and conditions as he deems will best accomplish the purposes of this title, but any sale, exchange, or grant shall be made only to public authorities and agencies and only on condition that the property is used for public purposes: *Provided, however*, That an exchange may be made with private owners and with subdivisions or agencies of State governments in any case where the Secretary of Agriculture finds that such exchange would not conflict with the purposes of this Act, and that the value of the property received in exchange is substantially equal to that conveyed. The Secretary may recommend to the President other Federal, State, or Territorial agencies to administer such property, together with the conditions of use and administration which will best serve the purpose of a land-conservation and land-utilization program, and the President is authorized to transfer such property to such agencies.

(d) With respect to any land, or any interest therein, acquired by, or transferred to, the Secretary for the purposes of this title, to make dedications or grants, in his discretion, for any public purpose, and to grant licenses and easements upon such terms as he deems reasonable.

Note—Authority in above subsection to grant easements for rights-of-way repealed by Section 706(a) of the Federal Land Policy and Management Act of 1976.

(e) To cooperate with Federal, State, territorial, and other public agencies and local nonprofit organizations in developing plans for a program of land conservation and land utilization or plans for the conservation, development, and utilization of water for aquacultural purposes, to assist in carrying out such plans by means of loans to State and local public agencies and local nonprofit organizations designated by the State legislature or the Governor, to conduct surveys and investigations relating to conditions and factors affecting, and the methods of accomplishing most effectively the purposes of this title, and to disseminate information concerning these activities. As used in this subsection, the term "aquaculture" means the culture or husbandry of aquatic animals or plants. Loans to State and local public agencies and to local nonprofit organizations shall be made only if such plans have been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over such plans, or by the Governor if there is no such State agency. No appropriation shall be made for any single loan under this subsection in excess of $500,000 unless such loan has been approved by resolutions adopted by the Committee on Agriculture, Nutrition and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

Loans under this subsection shall be made under contracts which will provide, under such terms and conditions as the Secretary deems appropriate, for the repayment thereof in not more than 30 years, with interest at the average rate, as determined by the Secretary of the Treasury, payable by the Treasury on its marketable public obligations outstanding at the beginning of the fiscal year in which the loan is made, which are neither due nor callable for redemption for 15 years from date of issue. Repayment of principal and interest on such loans shall begin within 5 years. In providing assistance for carrying out plans developed under this title, the Secretary shall be authorized to bear such proportionate share of the costs of installing any works of improvement applicable to public water-based fish and wildlife or recreational development as is determined by him to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs: *Provided,* That all engineering and other technical assistance costs relating to such development may be borne by the Secretary: *Provided further*, That when a State or other public agency or local nonprofit organization participating in a plan developed under this title agrees to operate and maintain any reservoir or other area included in a plan for public water-based fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the State or public agency or local nonprofit organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: *Provided further*, That in no event shall the Secretary share any portion of the cost of installing more than one such work of improvement for each seventy-five thousand acres in any project; and that any such public water-based fish and wildlife or recreational development shall be consistent with any existing comprehensive statewide outdoor recreation plan found adequate for purposes of the Land and Water Conservation

Fund Act of 1965; and that such cost-sharing assistance for any such development shall be authorized only if the Secretary determines that it cannot be provided under other existing authority.

The Secretary shall also be authorized in providing assistance for carrying out plans developed under this title:

(1) To provide technical and other assistance, and to pay for any storage of water for present or anticipated future demands or needs for rural community water supply included in any reservoir structure constructed or modified pursuant to such plans: *Provided*, That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the public agency or local nonprofit organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment of the cost of such water supply storage within the life of the reservoir structure: *Provided further*, That the public agency or local nonprofit organization prior to initiation or construction or modification of any reservoir structure including water supply storage, make provision satisfactory to the Secretary to pay for not less than 50 per centum of the cost of storage for present water supply demands, and all of the cost of storage for anticipated future demands: And *provided further*, That the cost to be borne by the public agency or local nonprofit organization for anticipated future demands may be repaid within the life of the reservoir structure is first used for the storage of water for anticipated future water supply demands except that (1) no payment on account of such cost need be made until such supply is first used, and (2) no interest shall be charged on such cost until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be the average rate, as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the advancement for such water supply is first made, which are neither due nor callable for redemption for fifteen years from date of issue;

(2) To provide, for the benefit of rural communities, technical and other assistance and such proportionate share of the costs of installing measures and facilities for water quality management, for the control and abatement of agriculture-related pollution, for the disposal of solid wastes, and for the storage of water in reservoirs, farm ponds, or other impoundments, together with necessary water withdrawal appurtenances, for rural fire protection, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs.

(f) To make such rules and regulations as he deems necessary to prevent trespasses and otherwise regulate the use and occupancy of property acquired by, or transferred to, the Secretary for the purposes of this title, in order to conserve and utilize it or advance the purposes of said sections. Any violation of such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States magistrate specially designated for that purpose by the court by

which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401(b)-(e) of Title 18 of the United States Code. Sec. 3401, subsec. (b), (c), (d) and (e), as amended. (7 U.S.C. 1011)

Note—Authority to issue permits for rights-of-way repealed by section 706(1) of Federal Land Policy and Management Act of 1976.

Sec. 33. As soon as practicable after the end of each calendar year, the Secretary shall pay to the county in which any land is held by the Secretary under this title, 25 per centum of the net revenues received by the Secretary from the use of the land during such year. In case the land is situated in more than one county, the amount to be paid shall be divided equitably among the respective counties. Payment to counties under this section shall be made on the condition that they are used for school or road purposes, or both. This section shall not be construed to apply to amounts received from the sale of land. (7 U.S.C. 1012)

Sale of Photographic Reproductions and Maps

- **Act of February 16, 1938 (P.L. 75-430, Ch. 30, 52 Stat. 31; 7 U.S.C. 1387)**

The Secretary may furnish reproductions of such aerial or other photographs, mosaics, and maps as have been obtained in connection with the authorized work of the Department to farmers and governmental agencies at the estimated cost of furnishing such reproductions, and to persons other than farmers at such prices (not less than estimating cost of furnishing such reproductions) as the Secretary may determine, the money received from such sales to be deposited in the Treasury to the credit of the appropriation charged with the cost of making such reproductions. This section shall not affect the power of the Secretary to make other disposition of such or similar materials under any other provision of existing law. (7 U.S.C. 1387)

Federal Crop Insurance

- **Act of February 16, 1938 (P.L. 75–430, Ch. 30, 52 Stat. 31; 7 U.S.C. 1502, 1503, 1508, 1518)**

Sec. 502. It is the purpose of this chapter to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance and providing the means for the research and experience helpful in devising and establishing such insurance. (7 U.S.C. 1502)

Federal Crop Insurance Corporation

Sec. 503. To carry out the purposes of this chapter, there is hereby created as an agency of and within the Department of Agriculture a body corporate with the name "Federal Crop Insurance Corporation" (herein called the Corporation). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices elsewhere in the United States under rules and regulations prescribed by the Board of Directors. (7 U.S.C. 1503)

* * * *

Crop Insurance

Sec. 508. (a) Authority to offer insurance.—If sufficient actuarial data are available, as determined by the Board, the Corporation may insure producers of agricultural commodities grown in the United States under any plan or plans of insurance determined by the Board to be adapted to the agricultural commodity involved. Such insurance shall be against loss of the insured commodity due to unavoidable causes, including drought, flood, hail, wind, frost, winterkill, lightning, fires, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board. Except in the case of tobacco, insurance shall not extend beyond the period the insured commodity is in the field. For the purpose of the foregoing sentence, in the case of aquacultural species, the term "field" means the environment in which the commodity is produced. Any insurance offered against loss in yield shall make available to producers protection against loss in yield that covers 75 per centum of the recorded or appraised average yield of the commodity on the insured farm for a representative period (subject to such adjustment as the Board may prescribe to the end that the average yields fixed for farms in the same area, which are subject to the same conditions, may be fair and just). In addition, the Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 per centum of the recorded or appraised average yield, as adjusted. For any commodity for which the Agricultural Stabilization and Conservation Service has established for the farming unit involved an adjusted yield for the purposes of programs administered by such Service (or a yield for crop insurance purposes under the provisions of this chapter), and such yield is greater than the recorded or the appraised yield, as established by the Corporation, of a commodity on such farming unit, insurance

coverage may be provided to cover against the loss in yield of the commodity on the basis of the adjusted yield for the commodity established by the Agricultural Stabilization and Conservation Service rather than the recorded or appraised yield as established by the Corporation. Such additional insurance shall be provided for an additional premium (for which no premium subsidy or administrative subsidy may be provided) set at such rate as the Board determines appropriate to reflect accurately the increased risk involved and that the Board determines actuarially sufficient to cover claims for losses on such insurance and to establish a reasonable reserve against unforeseen losses. Except as provided in the preceding two sentences, the Corporation shall not make available to producers any level of coverage in excess of 75 per centum of the recorded or appraised average yield, as adjusted. One of the price elections offered shall approximate (but be not less than 90 per centum of) the projected market price for the commodity involved, as determined by the Board. Insurance provided under this subsection shall not cover losses due to the neglect or malfeasance of the producer, or to the failure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed, or to the failure of the producer to follow established good farming practices. The Board may limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk involved. Insurance shall not be provided on any agricultural commodity in any county in which the Board determines that the income from such commodity constitutes an unimportant part of the total agricultural income of the county, except that insurance may be provided for producers on farms situated in a local producing area bordering on a county with a crop–insurance program. The Corporation shall report annually to the congress the results of its operations as to each commodity insured. Beginning with the 1992 crop year, the Corporation shall establish a price level for each commodity on which insurance is offered that shall not be less than the projected market price for the commodity as determined by the Board. Insurance coverage shall be made available to the producer on the basis of any price election which equals or is less than that established by the Board and the coverage shall be quoted in terms of dollars per acre.

* * * *

(i) The Corporation may provide insurance or reinsurance for production of agricultural commodities in the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory for the Pacific Islands in the same manner as provided in this section for production of agricultural commodities in the United States.

(j) The Corporation offer specific risk protection programs including, but not limited to, prevented planting, wildlife depredation, tree damage and disease, and insect infestation programs under such terms and conditions as the Board may determine: *Provided*, That no program may be undertaken if insurance for the specific risk involved is generally available from private companies.

Sec. 518. Agricultural commodity.—"Agricultural commodity", as used in this title, means wheat, cotton, flax, corn, dry beans, oats,

barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, aquacultural species (including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment), or any other agricultural commodity, excluding livestock and stored grain, determined by the Board under subsection (a) or (i) of section 508 of this title, or any one or more of such commodities, as the context may indicate. (7 U.S.C. 1518)

ACTS OF THE 1940'S

Domestic Water Supply

- **Act of May 28, 1940 (P.L. 76-532, Ch. 220, 54 Stat. 224, as amended; 16 U.S.C. 552a-d)**

Sec. 1. The President, upon recommendation of the Secretaries of the Interior and Agriculture, may, be Executive order, when in his judgment the public interest would best be served thereby and after reasonable notice has been given through the Department of the Interior, restore any reserved national forest lands covered by a cooperative agreement with the Secretary of Agriculture for the protection of a watershed within a national forest from which water is secured, to appropriation under any applicable public–land law. (16 U.S.C. 552a)

Administration of Withdrawn Lands; Rules and Regulations

Sec. 2. Lands withdrawn under the provisions of sections 552a to 552d of this title shall be administered by the Secretary of Agriculture under such agreements for the protection of the watershed as he may make with the municipality concerned, and the Secretary of Agriculture is authorized, in addition to the rules and regulations adopted for the administration of the national forests, to adopt and prescribe such further rules and regulations as he considers necessary to effect the adequate protection of the watershed, including a rule or regulation forbidding persons other than forest officers and representatives of the municipality from going on the lands so reserved or making any use whatever thereof. (16 U.S.C. 552b)

Reimbursement of United States for Loss of Revenue

Sec. 3. Whenever national–forest lands are withdrawn under sections 552a to 552d of this title, and the municipality concerned objects to the utilization of the timber or other resources of lands withdrawn, and the Secretary of Agriculture agrees to withhold such resources from utilization, said municipality shall pay to the Forest Service annually an amount which the Secretary of Agriculture shall determine is necessary to reimburse the United States for the loss of net annual revenues which would be derived from the resources so withheld from disposition. (16 U.S.C. 552c)

Punishment of Violations of Regulations

Sec. 4. Any violation of the regulations issued under sections 552a to 552d of this title shall be punished as is provided in section 1853 of Title 18. (16 U.S.C. 552d)

Bald and Golden Eagle Protection Act

- **Act of June 8, 1940 (P.L. 76-567, Ch. 278, 54 Stat. 250, as amended; 16 U.S.C. 668(note), 668, 668a-d)**

An Act

For the Protection of the Bald Eagle

Whereas the Continental Congress in 1782 adopted the bald eagle as the national symbol; and

Whereas the bald eagle thus became the symbolic representation of a new nation under a new government in a new world; and

Whereas by that Act of Congress and by tradition and custom during the life of this Nation, the bald eagle is no longer a mere bird of biological interest but a symbol of the American ideals of freedom; and

Whereas the bald eagle is now threatened with extinction: Therefore— (16 U.S.C. 668(note))

Sec. 1. (a) Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted so to do as provided in this subchapter, shall knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, shall be fined not more than $5,000 or imprisoned not more than one year or both: *Provided*, That in the case of a second or subsequent conviction for a violation of this section committed after October 23, 1972, such person shall be fined not more than $10,000 or imprisoned not more than two years, or both: *Provided further*, That the commission of each taking or other act prohibited by this section with respect to a bald or golden eagle shall constitute a separate violation of this section: *Provided further*, That one–half of any such fine, but not to exceed $2,500, shall be paid to the person or persons giving information which leads to conviction: *Provided further*, That nothing herein shall be construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest, or egg thereof, lawfully taken prior to the addition to this subchapter of the provisions relating to preservation of the golden eagle.

(b) Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in this subchapter, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle, commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest, or egg thereof of the foregoing eagles, or whoever violates any permit or regulation issued pursuant to this subchapter, may be assessed a civil penalty by the Secretary of not more than $5,000 for each such violation. Each violation shall be a separate offense. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to

such violation. In determining the amount of the penalty, the gravity of the violation, and the demonstrated good faith of the person charged shall be considered by the Secretary. For good cause shown, the Secretary may remit or mitigate any such penalty. Upon any failure to pay the penalty assessed under this section, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found or resides or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In hearing any such action, the court must sustain the Secretary's action if supported by substantial evidence.

(c) The head of any Federal agency who has issued a lease, license, permit or other agreement authorizing the grazing of domestic livestock on Federal lands to any person who is convicted of a violation of this subchapter or of any permit or regulation issued hereunder may immediately cancel each such lease, license, permit, or other agreement. The United States shall not be liable for the payment of any compensation, reimbursement, or damages in connection with the cancellation of any lease, license, permit, or other agreement pursuant to this section. (16 U.S.C. 668)

Taking and Using of the Bald and Golden Eagle for Scientific, Exhibition, and Religious Purposes

Sec. 2. Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle to permit the taking, possession, and transportation of specimens thereof for the scientific or exhibition purposes of public museums, scientific societies, or zoological parks, or for the religious purposes of Indian tribes, or that it is necessary to permit the taking of such eagles for the protection of wildlife or of agricultural or other interests in particular locality, he may authorize the taking of such eagles pursuant to regulations which he is hereby authorized to prescribe: *Provided*, That on request of the Governor of any State, the Secretary of the Interior shall authorize the taking of golden eagles for the purpose of seasonally protecting domesticated flocks and herds in such State, in accordance with regulations established under the provisions of this section, in such part or parts of such State and for such periods as the Secretary determines to be necessary to protect such interests: *Provided further,* That bald eagles may not be taken for any purpose unless, prior to such taking, a permit to do so is procured from the Secretary of the Interior: *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking, possession, and transportation of golden eagles for the purposes of falconry, except that only golden eagles which would be taken because of depredations on livestock or wildlife may be taken for purposes of falconry: *Provided further*, That the Secretary of the Interior, pursuant to such regulations as he may prescribe, may permit the taking of golden eagle nests which interfere with resource development or recovery operations. (16 U.S.C. 668a)

Enforcement Provisions

Sec. 3. (a) Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this subchapter may, without warrant, arrest any person committing in his presence or view a violation of this

subchapter or of any permit or regulation issued hereunder and take such person immediately for examination or trial before an officer or court of competent jurisdiction; may execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this subchapter; and may, with or without a warrant, as authorized by law, search any place. The Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies or other appropriate State authorities to facilitate enforcement of this subchapter, and by said agreements to delegate such enforcement authority to State law enforcement personnel as he deems appropriate for effective enforcement of this subchapter. Any judge of any court established under the laws of the United States magistrate may, within the respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

(b) All bald or golden eagles, or parts, nests, or eggs thereof, taken, possessed, sold, purchased, bartered, offered for sale, purchase, or barter, transported, exported, or imported contrary to the provisions of this subchapter, or of any permit or regulation issued hereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid in the taking, possessing, selling, purchasing, bartering, offering for sale, purchase, or barter, transporting, exporting, or importing of any bird, or part, nest, or egg thereof, in violation of this subchapter or of any permit or regulation issued hereunder shall be subject to forfeiture to the United States.

(c) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subchapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this subchapter: *Provided*, That all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this subchapter, be exercised or performed by the Secretary of the Interior or by such persons as he may designate. (16 U.S.C. 668b)

Definitions

Sec. 4. As used in this subchapter "whoever" includes also associations, partnerships, and corporations; "take" includes also pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb; "transport" includes also ship, convey, carry or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage, or transportation. (16 U.S.C. 668c)

Availability of Appropriations for Migratory Bird Treaty Act

Sec. 5. Moneys now or hereafter available to the Secretary of the Interior for the administration and enforcement of the Migratory Bird Treaty Act of July 3, 1918, (16 U.S.C. 703 et seq.), shall be equally available for the administration and enforcement of this subchapter. (16 U.S.C. 668d)

Deposit of Sale Instruments in Treasury

- **Act of June 15, 1940 (P.L. 76-631, Ch. 367, 54 Stat. 398; 41 U.S.C. 20a)**

Permits, contracts, agreements, or other instruments requiring payments into the Treasury of the United States on account of sale of National Forest products, use of National Forest land, or other sources of National Forest revenue, including contributions by cooperators in connection with authorized activities of the Forest Service, shall be exempt from the provisions of Section 20, Title 41, United States Code, when the permit or other instrument does not require payment to the Government in excess of $300 in any one fiscal year. (41 U.S.C. 20a)

Land Acquisition—Title Adjustment

- **Act of July 8, 1943 (P.L. 78-120, Ch. 197, 57 Stat. 388; 7 U.S.C. 2253)**

If the Secretary of Agriculture shall find after the acquisition by the United States of any land or interest therein which is subject to his administration, custody, or control, other than land acquired by exchange of public domain land or resources, that the title thereto is legally insufficient for purposes for which such land or interest was acquired and no consideration therefor has been paid by the United States, or that title or color of title to such land or interest was acquired through mistake, misunderstanding, error, or inadvertence, he is hereby authorized to execute and deliver on behalf of and in the name of the United States to the person from whom the title was acquired or to the person whom he finds entitled thereto a quitclaim deed to such land or interest: *Provided, however,* That if the person to whom such deed is made is the same person from whom the United States acquired title, or his successor in interest, any consideration given by the United States for such land or interest shall be restored or, in lieu thereof, the value equivalent of such consideration as determined by the Secretary of Agriculture shall be paid to the United States; and any consideration or value equivalent so restored or paid shall, so far as is practicable, be restored to the jurisdiction, or deposited to the credit, of the department, agency, appropriation, or fund from which the consideration was transferred or paid at the time of the acquisition of title by the United States. (7 U.S.C. 2253)

Sustained Yield Forest Management

- **Act of March 29, 1944 (P.L. 78-273, Ch. 146, 58 Stat. 132; 16 U.S.C. 583, 583a-583i)**

Purpose

Sec. 1. In order to promote the stability of forest industries, of employment, of communities, and of taxable forest wealth, through continuous supplies of timber; in order to provide for a continuous and ample supply of forest products; and in order to secure the benefits of forests in maintenance of water supply, regulation of stream flow, prevention of soil erosion, amelioration of climate, and preservation of wildlife, the Secretary of Agriculture and the Secretary of Interior are severally authorized to establish by formal declaration, when in their respective judgments such action would be in the public interest, cooperative sustained-yield units which shall consist of federally owned or administered forest land under the jurisdiction of the Secretary establishing the unit and, in addition thereto, land which reasonably may be expected to be made the subject of one or more of the cooperative agreements with private landowners authorized by section 2 of this Act. (16 U.S.C. 583)

Cooperative Agreements

Sec. 2. The Secretary of Agriculture, with respect to forest land under his jurisdiction, and the Secretary of the Interior, with respect to forest land under his jurisdiction, are severally authorized for the purposes specified in section 1 of this Act, to enter into cooperative agreements with private owners of forest land within a cooperative sustained-yield unit, established pursuant to section 1 of the Act, providing for the coordinated management of such private forest land and of federally owned or administered forest lands with the sustained-yield unit involved.

Each cooperative agreement may give the cooperating private land-owner the privilege of purchasing without competitive bidding at prices not less than their appraised value, subject to periodic re-adjustments of stumpage rates and to such other conditions and requirements as the Secretary may prescribe, timber and other forest products from federally owned or administered forest land within the unit, in accordance with the provisions of sustained-yield management plans formulated or approved by the Secretary for the unit; shall limit the time, rate, and method of cutting or otherwise harvesting timber and other forest products from the land of the cooperating private landowner, due consideration being given to the character and condition of the timber, to the relation of the proposed cutting to the sustained-yield plan for the unit, and to the productive capacity of the land; shall prescribe the terms and conditions, but not the price, upon which the cooperating private landowner may sell to any person timber and other forest products from his land, compliance by the purchaser with such conditions to be required by the contract of sale; shall contain such provisions as the Secretary deems necessary to protect the reasonable interest of other owners of forest land within the unit; and shall contain such other

provisions as the Secretary believes necessary to carry out the purposes of this Act.

Each cooperative agreement shall be placed on record in the county or counties in which the land of the cooperating private landowner covered thereby are located, and the costs incident to such recordation may be paid out of any funds available for the protection or management of federally owned or administered forest land within the unit. When thus recorded, the agreement shall be binding upon the heirs, successors, and assigns of the owner of such land, and upon purchasers of timber or other forest products from such land, throughout the life of such cooperative agreement. (16 U.S.C. 583a)

Establish a Sustained-Yield Unit

Sec. 3. The Secretary of Agriculture and the Secretary of the Interior are further severally authorized, whenever in their respective judgments the maintenance of a stable community or communities is primarily dependent upon the sale of timber or other forest products from federally owned or administered forest land and such maintenance cannot effectively be secured by following the usual procedure in selling such timber or other forest products, to establish by formal declaration for the purpose of maintaining the stability of such community or communities a sustained-yield unit consisting of forest land under the jurisdiction of the Secretary establishing such unit, to determine and define the boundaries of the community or communities for whose benefit such unit is created, and to sell, subject to such conditions and requirements as the Secretary believes necessary, federally owned or administered timber and other forest products from such unit without competitive bidding at prices not less than their appraised values, to responsible purchasers within such community or communities. (16 U.S.C. 583b)

Cooperative Agreements

Sec. 4. Each of the said Secretaries is further authorized in his discretion to enter into cooperative agreements with the other Secretary, or with any Federal agency having jurisdiction over federally owned or administered forest land, or with any State or local agency having jurisdiction over publicly owned or administered forest land, providing for the inclusion of such land in any coordinated plan of management otherwise authorized by the provisions of this Act when by such a cooperative agreement he may be aided in accomplishing the purposes of this Act; but no federally or publicly owned or administered forest land not under the jurisdiction of the Secretary establishing the sustained-yield unit concerned shall be included in any such plan except in pursuance of a cooperative agreement made under this section. (16 U.S.C. 583c)

Notices

Sec. 5. Before any sustained-yield unit authorized by section 1 or section 3 of this Act shall be established, and before any cooperative agreement authorized by section 2 or section 4 of this Act shall be entered into, advance notice thereof shall be given by registered mail or by certified mail to each landowner whose land is proposed to be included and by publication in one or more newspapers of general circulation in the vicinity of the place where the timber is located, and the costs incident to such publication may be paid out of any funds

available for the protection or management of the federally owned or administered forest land involved. This notice shall state; (1) the location of the proposed unit; (2) the name of each proposed cooperator; (3) the duration of the proposed cooperative agreement or agreements; (4) the location and estimated quantity of timber on the land of each proposed cooperator and on the Federal land involved; (5) the expected rate of cutting of such timber; and (6) the time and place of a public hearing to be held not less than thirty days after the first publication of said notice for the presentation of the advantages and disadvantages of the proposed action to the community or communities affected.

Before any sale agreement made without competition and involving more than $500 in stumpage value of federally owned or administered timber shall be entered into under this Act, advance notice thereof shall be given by publication once weekly for four consecutive weeks in one or more newspapers of general circulation in the vicinity of the place where the timber is located, and the costs incident to such publication may be paid out of any funds available for the protection or management of federally owned or administered forest land within the unit concerned. This notice shall state: (1) the quantity and appraised value of the timber; (2) the time and place of a public hearing to be held not less than thirty days after the first publication of said notice if requested by the State or county where the timber is located or by any other person deemed to have a reasonable interest in the proposed sale or in its terms; and (3) the place where any request for a public hearing shall be made. Such requests need be considered only if received at the place designated in the notice not later than fifteen days after the first publication of such notice. If a request for a hearing is received within the time designated, notice of the holding of the hearing shall be given not less than ten days before time set for such hearing, in the same manner as provided for the original notice.

The determination made by the Secretary having jurisdiction upon the proposals considered at any hearing, which determination may include the modification of the terms of such proposals, together with the minutes or other record of the hearing, shall be available for public inspection during the life of any coordinated plan of management or agreement entered into in consequence of such determination. (16 U.S.C. 583d)

Authorities

Sec. 6. In addition to any other remedy available under existing law, upon failure of any private owner of forest land which is subject to a cooperative agreement entered into pursuant to this Act to comply with the terms of such agreement, or upon failure of any purchaser of timber or other forest products from such land to comply with the terms and conditions required by such agreement to be included in the contract of sale, the Attorney General, at the request of the Secretary concerned, is authorized to institute against such owner or such purchaser a proceeding in equity in the proper district court of the United States, to require compliance with the terms and conditions of said cooperative agreement; and jurisdiction is hereby conferred upon said district courts to hear and determine such proceedings, to order compliance with the terms and conditions of cooperative agreements entered into pursuant to this Act, and to

make such temporary and final orders as shall be deemed just in the premises. As used in this section the term "owner" shall include the heirs, successors, and assigns of the landowner entering into the cooperative agreements. (16 U.S.C. 583e)

Lands Authorized for Unit Designation

Sec. 7. Whenever used in this Act, the term "federally owned or administered forest land" shall be construed to mean forest land in which, or in the natural resources of which, the United States has a legal or equitable interest of any character sufficient to entitle the United States to control the management or disposition of the timber or other forest products thereon, except land heretofore or hereafter reserved or withdrawn for purposes which are inconsistent with the exercise of the authority conferred by this Act; and shall include trust or restricted Indian land, whether tribal or allotted, except that such land shall not be included without the consent of the Indians concerned. (16 U.S.C. 583f)

Regulations

Sec. 8. The Secretary of Agriculture and the Secretary of the Interior may severally prescribe such rules and regulations as may be appropriate to carry out the purposes of this Act. Each Secretary may delegate any of his powers and duties under this Act to other officers or employees of his Department. (16 U.S.C. 583g)

Other Authorities

Sec. 9. Nothing contained in this Act shall be construed to abrogate or curtail any authority conferred upon the Secretary of Agriculture or the Secretary of the Interior by any Act relating to management of federally owned or administered forest lands, and nothing contained in any such Acts shall be construed to limit or restrict any authority conferred upon the Secretary of Agriculture or the Secretary of the Interior by this Act. (16 U.S.C. 583h)

Authorizing Appropriations

Sec. 10. Funds available for the protection or management of federally owned or administered forest land within the unit concerned may also be expended in carrying out the purposes of this Act, and there are hereby authorized to be appropriated such additional sums for the purposes of this Act as the Congress may from time to time deem necessary, but such additional sums shall not exceed $150,000 for the Department of Agriculture and $50,000 for the Department of the Interior, for any fiscal year. (16 U.S.C. 583i)

Department of Agriculture Organic Act of 1944

- **Act of September 21, 1944 (P.L. 78-425, Ch. 412, 58 Stat. 736, as amended; 16 U.S.C. 526, 527, 554b, 554c, 559a, 567(note), 572a, 579a, 580, 580a; 7 U.S.C. 2225, 2231, 2232, 2244, 2249, 2250, 2256-2258)**

TITLE II—AUTHORIZING REWARDS

Sec. 201. The Secretary of Agriculture may pay rewards from appropriations available for the protection and management of the National Forests, under such regulations as he may prescribe, for information leading to the arrest and conviction for violation of the laws and regulations relating to fires in or near National Forests, or for the unlawful taking of, or injury to, Government property. (16 U.S.C. 559a)

Medical Attention for Employees

Sec. 202. Appropriations for the Forest Service shall be available for medical supplies and services and other assistance necessary for the immediate relief of artisans, laborers, and other employees engaged in any hazardous work under the Forest Service, and for expenses of notifying employees of the death or serious illness of close relatives and in such cases where no public transportation is available, for transporting the employees to a point where public transportation is available. (16 U.S.C. 554b)

Sale of Fire Control Equipment

Sec. 203. The Forest Service may sell and distribute supplies, equipment, and materials to other Government activities and to State and private agencies who cooperate with the Forest Service in fire control under terms of written cooperative agreements, the cost of such supplies, equipment, and materials, including the cost of supervision, transportation, warehousing, and handling, to be reimbursed to appropriations current at the time additional supplies, equipment and materials are procured for warehouse stocks. (16 U.S.C. 580a)

Equipment Rental to Cooperators

Sec. 204. Appropriations for the work of the Forest Service available for the operation, repair, maintenance, and replacement of motor and other equipment may be reimbursed for use of such equipment on projects of the Forest Service chargeable to other appropriations, or on work of other Federal agencies, when requested by such agencies, reimbursement to be made from appropriations applicable to the work on which used at rental rates fixed by the Chief Forester based on the actual or estimated cost of operation, repair, maintenance, depreciation, and equipment management control, and credited to appropriations currently available at the time adjustment is effected. The Forest Service may also rent equipment for fire-control purposes to State, county, private, or other non-Federal agencies cooperating with the Forest Service in fire control under the terms of written cooperative agreements, the amount collected for such rental to be credited to appropriations currently available at the time payment is received. (16 U.S.C. 580)

Aerial Facilities and Services

Sec. 205. The Forest Service by contract or otherwise may provide for procurement and operation of aerial facilities and services for the protection and management of the National Forests and other lands administered by it, including the furnishing, at the airbase, of facilities, equipment, materials and the preparation, mixing and loading into aircraft, with authority to renew any contract for such purpose annually, not more than twice, without additional advertising. (16 U.S.C. 579a)

Note—Sec. 205 is amended by Sec. 4 of The Granger-Thye Act.

Graves of Employees

Sec. 206. Appropriations for the Forest Service shall be available within such limitations as may be prescribed therein for the expenses of properly caring for the graves of persons who have lost their lives as a result of fighting fires while employed by the Forest Service. (16 U.S.C. 554c)

Matching Funds

Sec. 208. Repealed. (16 U.S.C. 567 (note))

Sec. 209. Repealed. (16 U.S.C. 567(note))

Deposits For Scaling Services

Sec. 210. The Forest Service may accept money from timber purchasers for deposit into the Treasury in the trust account, "Forest Service cooperative fund", which moneys are hereby made available for scaling services requested by purchasers in addition to those required by the Forest Service, and for refunds of amounts deposited in excess of the cost of such work. (16 U.S.C. 572a)

Lands Under Purchase Contract

Sec. 211. The Forest Service may expend funds available for National Forest protection and management for the administration of lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted under the Act of March 1, 1911 (16 U.S.C. 521), and the Act of June 7, 1924 (16 U.S.C. 471, 499, 505, 564-570), and lands transferred to the Forest Service for administration. (16 U.S.C. 527)

* * * *

Water Rights

Sec. 213. There are hereby authorized to be appropriated for expenditure by the Forest Service such sums as may be necessary for the investigation and establishment of water rights, including the purchase thereof or of lands or interest in lands or rights-of-way for use and protection of water rights necessary or beneficial in connection with the administration and public use of the National Forests. (16 U.S.C. 526)

* * * *

Department of Agriculture Organic Act of 1944

- **Act of September 21, 1944 (P.L. 78-425, Ch. 412, 58 Stat. 741, as amended; 7 U.S.C. 2225, 2231, 2232, 2244, 2249, 2250, 2256-2258)**

TITLE VII—USES OF APPROPRIATED FUNDS

Sec. 702. (a) The head of any department or independent establishment of the Government requiring inspections, analyses, and tests of food and other products, within the scope of the functions of the Department of Agriculture and which the Department is unable to perform within the limits of its appropriations, may, with the approval of the Secretary, transfer to the Department for direct expenditure such sums as may be necessary for the performance of such work. (7 U.S.C. 2256)

(b) Not to exceed 7 per centum of the amounts appropriated for any fiscal year for the miscellaneous expenses of the work of any bureau, division, or office of the Department of Agriculture shall be available interchangeably for expenditures on the objects included within the general expenses of such bureau, division, or office, but no more than 7 per centum shall be added to any one item of appropriation except in cases of extraordinary emergency. (7 U.S.C. 2257)

Building Repairs

Sec. 703. The Department of Agriculture is authorized to erect, alter, and repair such buildings and other public improvements as may be necessary to carry out its authorized work: *Provided*, That no building or improvement shall be erected or altered under this authority unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein. (7 U.S.C. 2250)

Newspaper Subscriptions

Sec. 704. The Department of Agriculture is authorized to subscribe for such newspapers as may be necessary to carry out its authorized work: *Provided*, That purchases under this authority shall not be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein. (7 U.S.C. 2258)

Stenographic Services

Sec. 705. (b) The Department of Agriculture is authorized to contract for stenographic reporting services. (7 U.S.C. 2232)

(c) Employees of the Department of Agriculture stationed abroad may, with the approval of the Secretary of Agriculture, enter into leases for official quarters, for periods not exceeding one year, and may pay rent, telephone, subscriptions to publications, and other charges incident to the conduct of their offices and the discharge of their duties, in advance, in any foreign country where custom or practice requires payment in advance. (7 U.S.C. 2231)

Temporary Employment

Sec. 706. (a) . . . The Department of Agriculture may employ

persons or organizations, on a temporary basis, by contract or otherwise, without regard to the Classification Act of 1949: *Provided*, That no expenditures for such temporary employment shall be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein. (7 U.S.C. 2225)

Reproducing Library Materials

Sec. 708. The Secretary of Agriculture is authorized to make copies of bibliographies prepared by the Department library, microfilm and other photographic reproductions of books and other library materials in the Department and sell such bibliographies and reproductions at such prices (not less than estimated total cost of furnishing same) as he may determine, the money received from such sales to be deposited in the Treasury to the credit of the applicable appropriation current at the time the materials are furnished or payment therefor is received. (7 U.S.C. 2244)

Determination of Cooperation

Sec. 711. Unless otherwise provided herein or by other statute, the measure and character of cooperation authorized herein on the part of the Federal Government and on the part of the cooperator shall be such as may be prescribed by the Secretary, unless otherwise provided for in the applicable appropriation. (7 U.S.C. 2249)

Federal-State Cooperation for Soil Conservation

- **Act of December 22, 1944 (P.L. 78-534, Ch. 665, 58 Stat. 887, as amended; 16 U.S.C. 1003(note))**

Sec. 13. The following works of improvement for run-off and water-flow retardation, and soil-erosion prevention, are hereby adopted and authorized . . . the projects herein shall be initiated as expeditiously and prosecuted as vigorously as may be consistent with budgetary requirements. Nothing in this section shall be construed as approving or authorizing the acquisition of any land by the Federal Government until the legislature of the State in which the land lies shall have consented to the acquisition of lands by the United States for the purpose within the scope of this section. There shall be paid annually to the county in which any lands acquired under this section may lie, a sum equal to 1 per centum of the purchase price paid for the lands acquired in that county or, if not acquired by purchase, 1 per centum of their valuation at the time of their acquisition. Works of improvement were authorized on the following watersheds: Los Angeles River Basin, Santa Ynez River Watershed, Trinity River Basin (Texas), Little Tallahatchie River Watershed (above Rome, Georgia), Little Sioux River Watershed, Potomac River Watershed, Buffalo Creek Watershed, Potomac River Watershed, Buffalo Creek Watershed (New York), Colorado River Watershed (Texas), Washita River Watershed. (Not classified to the code, 16 U.S.C. 1003(note))

Note—Section 7 of the Act of August 4, 1954 (68 Stat. 668, P.L. 83–566) was amended by Section 106 of the Act of September 27, 1962 (76 Stat. 610), to provide that in connection with these eleven watershed improvement programs authorized by sec. 13, above, "the Secretary of Agriculture is authorized to prosecute additional works of improvement for the conservation, development, utilization, and disposal of water in accordance with the provisions of section 4 of this Act or any amendments hereafter made thereto." (See also 33 U.S.C. 701b; 16 U.S.C. 1004)

Federal Insecticide, Fungicide, and Rodenticide Act

- **Act of June 25, 1947 (P.L. 80-104, 61 Stat. 63, as amended; 7 U.S.C. 136(note), 136, 136b, 136i-m, 136p)**

Sec. 1. (a) Short Title.—This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act". (7 U.S.C. 136(note))

Definitions

Sec. 2. For purposes of this Act—

* * * *

(e) Certified Applicator, etc.—

(1) Certified Applicator.—The term "certified applicator" means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use. Any applicator who holds or applies registered pesticides, or uses dilutions of registered pesticides consistent with section 2 (ee) of this Act, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides under this Act.

(2) Private Applicator.—The term "private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(3) Commercial Applicator.—The term "commercial applicator" means an applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

(4) Under the Direct Supervision of a Certified Applicator.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

* * * *

(t) Pest.—The term "pest" means—

(1) any insect, rodent, nematode, fungus, weed, or

(2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals which the Administrator declares to be a pest under section 25 (c)(1).

(u) Pesticide.—The term "pesticide" means—

(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and

(2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant: *Provided,* That the term "pesticide" shall not include any article (1)(a) that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education, and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1) of this proviso. (7 U.S.C. 136)

* * * *

Use of Restricted Use Pesticides; Certified Applicators

Sec. 4. (a) Certification Procedure.—

(1) Federal Certification.—In any State for which a State plan for applicator certification has not been approved by the Administrator, the Administrator, in consultation with the Governor of such State, shall conduct a program for the certification of applicators of pesticides: *Provided,* That such program shall conform to the requirements imposed upon the States under the provisions of subsection (a) (2) of this section and shall not require private applicators to take any examination to establish competency in the use of pesticides. Prior to the implementation of the program, the Administrator shall publish in the Federal Register for review and comment a summary of the Federal plan for applicator certification and shall make generally available within the State copies of the plan. The Administrator shall hold public hearings at one or more locations within the State if so requested by the Governor of such State during the thirty days following publication of the Federal Register notice inviting comment on the Federal plan. The hearings shall be held within thirty days following receipt of the request from the Governor. In any State in which the Administrator conducts a certification program, the Administrator may require any person engaging in the commercial application, sale, offering for sale, holding for sale, or distribution of any pesticide one or more uses of which have been classified for restricted use to maintain such records and submit such reports concerning the commercial application, sale, or distribution of such pesticide as the Administrator may by regulation prescribe. Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticide covered by such individual's certification: *Provided, however,* That the certification standard for a private applicator shall under a State plan submitted for approval be deemed fulfilled by his completing a certification form. The Administrator shall further assure that such form contains adequate information and affirmations to carry out the intent of this Act, and may include in the form an affirmation that the private applicator has completed a training

gram approved by the Administrator so long as the program does not require the private applicator to take, pursuant to a requirement prescribed by the Administrator, any examination to establish competency in the use of the pesticide. The Administrator may require any pesticide dealer participating in a certification program to be licensed under a State licensing program approved by him.

* * * *

(c) Instruction in Integrated Pest Management Techniques. Standards prescribed by the Administrator for the certification of applicators of pesticides under subsection (a), and State plans submitted to the Administrator under subsections (a) and (b), shall include provisions for making instructional materials concerning integrated pest management techniques available to individuals at their request in accordance with the provisions of section 23(c) of this Act, but such plans may not require that any individual receive instruction concerning such techniques or be shown to be competent with respect to the use of such techniques. The Administrator and States implementing such plans shall provide that all interested individuals are notified of the availability of such instrumental materials. (7 U.S.C. 136b)

* * * *

Standards Applicable to Pesticide Applicators

Sec. 11. (a) In General.—No regulation prescribed by the Administrator for carrying out the provisions of this Act shall require any private applicator to maintain any records or file any reports or other documents.

(b) Separate Standards.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators. (7 U.S.C. 136i)

Unlawful Acts

Sec. 12. (a) In General.—

(2) It shall be unlawful for any person—

* * * *

(F) to make available for use, or to use, any registered pesticide classified for restricted use of some or all purposes other than in accordance with section 3(d) and any regulations thereunder: *Provided,* That it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator;

(G) to use any registered pesticide in a manner inconsistent with its labeling;

(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

(I) to violate any order issued under section 13;

(b) Exemptions.—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

* * * *

(3) any public official while engaged in the performance of his official duties: (7 U.S.C. 136j)

* * * *

Stop Sale, Use, Removal, and Seizure

Sec. 13. (a) Stop Sale, Etc., Orders.—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Administrator may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order. (7 U.S.C. 136k)

Penalties

Sec. 14. (a) Civil Penalties.—

(1) In General.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

(2) Private Applicator.—Any private applicator or other person not included in paragraph (1) who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense: *Provided,* That any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $500 for the first offense nor more than $1,000 for each subsequent offense.

(b)(1) In General.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

(2) Private Applicator.—Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

(3) Disclosure of Information.—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products required under the authority of section 3, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

(4) Acts of Officers, Agents, Etc.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed. (7 U.S.C. 136*l*)

Indemnities

Sec. 15. (a) Requirement.—If—

(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration, the Administrator shall make an indemnity payment to such person, unless the Administrator finds that such person (i) had knowledge of facts which, in themselves, would have shown that such pesticide did not meet the requirements of section 3(c)(5) for registration, and (ii) continued thereafter to produce such pesticide without giving timely notice of such facts to the Administrator.

(b)(1) In General.—The amount of the indemnity payment under subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a) (1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

(2) Special Rule.—Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner. (7 U.S.C. 136m)

* * * *

Exemption of Federal Agencies

Sec. 18. The Administrator may, at his discretion, exempt any Federal or State agency from any provision of this Act if he determines that emergency conditions exist which require such exemption.

The Administrator, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination. (7 U.S.C. 136p)

Mineral Materials Act of 1947

- **Act of July 31, 1947 (P.L. 80-291, Ch. 406, 61 Stat. 681, as amended; 30 U.S.C. 601-604)**

Rules and Regulations Governing Disposal of Materials

Sec. 1. The Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States, including for the purposes of this Act, land described in the Acts of August 28, 1937 (50 Stat. 874), and June 24, 1954 (69 Stat. 270), if the disposal of such mineral or vegetative materials (1) is not otherwise expressly authorized by law, including but not limited to, the Act of June 28, 1934 (48 Stat. 1269), as amended, and the United States mining laws, and (2) is not expressly prohibited by laws of the United States, and (3) would not be detrimental to the public interest. Such materials may be disposed of only in accordance with the provisions of this Act and upon the payment of adequate compensation therefor, to be determined by the Secretary: *Provided*, however, That, to the extent not otherwise authorized by law, the Secretary is authorized in his discretion to permit any Federal, State, or Territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources subject to this Act, for use other than for commercial or industrial purposes or resale. Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the department headed by the Secretary or of a State, Territory, county, municipality, water district or other local governmental subdivision or agency, the Secretary may make disposals under this Act only with the consent of such other Federal department or agency or of such State, Territory, or local governmental unit. Nothing in this Act shall be construed to apply to lands in any National Park or National Monument or any Indian lands, or lands set aside or held for the benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians. As used in this Act, the word "Secretary" means the Secretary of the Interior except that it means the Secretary of Agriculture where the lands involved are administered by him for National Forest purposes or for the purposes of Title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for the purpose of any other function of the Department of Agriculture. (30 U.S.C. 601)

Bidding; Advertising and Other Notice

Sec. 2. (a) The Secretary shall dispose of materials under this Act to the highest responsible qualified bidder after formal advertising and such other public notice as he

deems appropriate: *Provided, however*, That the Secretary may authorize negotiation of a contract for the disposal of materials if—

(1) The contract is for the sale of less than two hundred fifty thousand board-feet of timber; or, if

(2) the contract is for the disposal of materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local governmental agency and the public exigency will not permit the delay incident to advertising; or, if

(3) the contract is for the disposal of property for which it is impracticable to obtain competition. (30 U.S.C. 602)

Note—Section 2(b), repealed by the Congressional Reports Elimination Act of 1980 (P.L. 96–470, 94 Stat. 2237).

Disposition of Moneys from Disposal of Materials

Sec. 3. All moneys received from the disposal of materials under this subchapter shall be disposed of in the same manner as moneys received from the sale of public lands, except that moneys received from the disposal of materials by the Secretary of Agriculture shall be disposed of in the same manner as other moneys received by the Department of Agriculture from the administration of the lands from which the disposal of materials is made, and except that revenues from the lands described in subchapter V of chapter 28 of Title 43, shall be disposed of in accordance with said sections and except that moneys received from the disposal of materials from school section lands in Alaska, reserved under section 1 of the Act of March 4, 1915 (38 Stat. 1214), shall be set apart as separate and permanent funds in the Territorial Treasury, as provided for income derived from said school section lands pursuant to said Act. (30 U.S.C. 603)

Disposal of Sand, Peat, Moss, etc., in Alaska; Contracts

Sec. 4. Subject to the provisions of this subchapter, the Secretary may dispose of sand, stone, gravel, vegetative materials located below highwater mark of navigable waters of the Territory of Alaska. Any contract, unexecuted in whole or in part, for the disposal under this subchapter of materials from land, title to which transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State. (30 U.S.C. 604)

Mineral Leasing Act for Acquired Lands

- **Act of August 7, 1947 (P.L. 80-382, Ch. 513, 61 Stat. 913, as amended; 30 U.S.C. 351(note), 351-360)**

Short Title

Sec. 1. This Act may be cited as the "Mineral Leasing Act for Acquired Lands." (30 U.S.C. 351 (note))

Definitions

Sec. 2. As used in this Act "United States" includes Alaska. "Acquired lands" or "lands acquired by the United States" include all lands heretofore or hereafter acquired by the United States to which the "mineral leasing laws" have not been extended, including such lands acquired under the provisions of the Act of March 1, 1911 (36 Stat. 961). "Secretary" means the Secretary of the Interior. "Mineral leasing laws" shall mean the Act of October 20, 1914 (38 Stat. 741); the Act of February 25, 1920 (41 Stat. 437); the Act of April 17, 1926 (44 Stat. 301); the Act of February 7, 1927 (44 Stat. 1057), and all Acts heretofore or hereafter enacted which are amendatory or supplementary to any of the foregoing Acts. "Lease" includes "prospecting permit" unless the context otherwise requires. The term "oil" shall embrace all nongaseous hydrocarbon substances other than those leasable as coal, oil shale, or gilsonite (including all vein–type solid hydrocarbons). (30 U.S.C. 351)

Deposits Subject to Lease

Sec. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of 1944, all deposits of coal, phosphate, oil, oil shale, gilsonite (including all vein–type solid hydrocarbons), gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns, and villages, National Parks or Monuments, or (b) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws subject to the provisions hereof. Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located. The provisions of the Act of April 17, 1926 (44 Stat. 301) shall apply to deposits of sulfur covered by this Act wherever situated. No mineral deposits covered by this Section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposits, or holding a

mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this Act is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending on application for rehearing in the Supreme Court of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America. (30 U.S.C. 352)

Sale of Lands Unaffected

Sec. 4. Nothing herein contained shall be deemed or construed to (a) amend, modify, or change any existing law authorizing or requiring the sale of acquired lands, or (b) empower any commission, bureau, or agency of the Government to make a reservation of the minerals in the sale of any acquired land: *Provided*, That any such sale or conveyance of lands shall be made by the agency having jurisdiction thereof, subject to any lease theretofore made, covering the mineral deposits underlying such lands: *Provided further*, That nothing in this chapter is intended, or shall be construed to affect in any manner any provision of the Act of June 30, 1938 amending the Act of June 4, 1920. (30 U.S.C. 353)

Lease of Partial or Future Interests in Deposits

Sec. 5. Where the United States does not own all of the mineral deposits under any lands sought to be leased and which are affected by this Act, the Secretary is authorized to lease the interest of the United States in any such mineral deposits when, in the judgment of the Secretary, the public interest will be best served thereby; subject, however, to the provisions of section 3 hereof. Where the United States does not own any interest or owns less than a full interest in the minerals that may be produced from any lands sought to be leased, and which are or will be affected by this Act and where, under the provisions of its acquisition, the United States is to acquire all or any part of such mineral deposits in the future, the Secretary may lease any interest of the United States then owned or to be acquired in the future in the same manner as provided in the preceding sentence. (30 U.S.C. 354)

Disposition of Receipts

Sec. 6. (a) All receipts derived from leases issued under the authority of this Act shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this Act shall not affect the distribution of receipts pursuant to legislation applicable to such lands: *Provided, however*, That receipts from leases or permits for minerals in lands set apart for Indian use, including lands the jurisdiction of which has been transferred to the Department of the Interior by the Executive order for Indian use, shall be deposited in a

special fund in the Treasury until final disposition thereof by the Congress. Notwithstanding the preceding provisions of this section, all receipts derived from leases on lands acquired for military or naval purposes, except the naval petroleum reserves and national oil shale reserves, shall be paid into the Treasury of the United States and disposed of in the same manner as provided under section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U.S.C. 191), in the case of receipts from sales, bonuses, royalties, and rentals of the public lands under that Act (30 U.S.C. 181 et seq.).

(b) Notwithstanding any other provisions of law, any payment to a State under this section shall be made by the Secretary of the Interior and shall be made not later than the last business day of the month following the month in which such moneys or associated reports are received by the Secretary of the Interior, whichever is later. The Secretary shall pay interest to a State on any amount not paid to the State within that time at the rate prescribed under section 111 of the Federal Oil and Gas Royalty Management Act of 1982 from the date payment was required to be made under this subsection until the date payment is made. (30 U.S.C. 355)

Records and Documents

Sec. 7. Upon request by the Secretary, the heads of all executive departments, independent establishments, or instrumentalities having jurisdiction over any of the lands referred to in section 2 of this Act shall furnish to the Secretary the legal description of all such lands, and all pertinent abstracts, title papers, and other documents in the possession of such agencies concerning the status of the title of the United States to the mineral deposits that may be found in such lands.

Abstracts, title papers, and other documents furnished to the Secretary under this section shall be recorded promptly in the Bureau of Land Management in such form as the Secretary shall deem adequate for their preservation and use in the administration of this Act, whereupon the originals shall be returned promptly to the agency from which they were received. Duly authenticated copies of any such abstracts, title papers, or other documents may, however, be furnished to the Secretary in lieu of the originals, in the discretion of the agency concerned. (30 U.S.C. 356)

State or Local Government Rights

Sec. 8. Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States. (30 U.S.C. 357)

Rights Under Prior Lease; Pending Applications; Exchange of Leases

Sec. 9. Nothing in this Act shall affect any rights acquired by any lessee of lands subject to this Act under the law as it existed prior to August 7, 1947, and such rights shall be governed by the law in effect at the time of their acquisition; but any person qualified to hold a lease who, on August 7, 1947, had pending an application for an oil and gas lease for any lands subject to this Act which on

the date the application was filed was not situated within the known geologic structure of a producing oil or gas field, shall have a preference right over others to a lease of such lands without competitive bidding. Any person holding a lease on lands subject hereto, which lease was issued prior to August 7, 1947, shall be entitled to exchange such lease for a new lease issued under the provisions of this Act, at any time prior to the expiration of such existing lease. (30 U.S.C. 358)

Rules and Regulations

Sec. 10. The Secretary of the Interior is authorized to prescribe such rules and regulations as are necessary and appropriate to carry out the purposes of this Act, which rules and regulations shall be the same as those prescribed under the mineral leasing laws to the extent that they are applicable. (30 U.S.C. 359)

Authority to Manage Certain Mineral Leases

Sec. 11. Each department, agency and instrumentality of the United States which administers lands acquired by the United States with one or more existing mineral lease shall transfer to the Secretary of the Interior the authority to administer such lease and to collect all receipt due and payable to the United States under the lease. In the case of lands acquired on or before October 24, 1992, the authority to administer the leases and collect receipts shall be transferred to the Secretary of the Interior as expeditiously as practicable after October 24, 1992. In the case of lands acquired after October 24, 1992, such authority shall be vested with the Secretary at the time of acquisition. The provisions of section 355 of this title shall apply to all receipts derived from such leases where such receipts are due and payable to the United States under the lease in the same manner as such provisions apply to receipts derived from leases issued under the authority of this chapter. For purposes of this section, the term "existing mineral lease" means any lease in existence at the time land is acquired by the United States. Nothing in this section shall be construed to affect the existing surface management authority of any Federal agency. (30 U.S.C. 360)

U.S. Criminal Code ("Title 18, United States Code, Chapter 91—Public Lands")

- **Act of June 25, 1948 (P.L. 80-772, Ch. 645, 62 Stat. 787, as amended; 18 U.S.C. 1851-1861, 1863, 1864)**

Coal Depredations

Sec. 1851. Whoever mines or removes coal of any character, whether anthracite, bituminous, or lignite, from beds or deposits in lands of, or reserved to the United States, with intent wrongfully to appropriate, sell, or dispose of the same, shall be fined not more than $1,000 or imprisoned not more than one year, or both. This section shall not interfere with any right or privilege conferred by existing laws of the United States. (18 U.S.C. 1851)

Timber Removed or Transported

Sec. 1852. Whoever cuts, or wantonly destroys any timber growing on the public lands of the United States; or Whoever removes any timber from said public lands, with intent to export or to dispose of the same; or Whoever being the owner, master, pilot, operator, or consignee of any vessel, motor vehicle, or aircraft or the owner, director, or agent of any railroad, knowingly transports any timber so cut or removed from said lands, or lumber manufactured therefrom—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both.

This section shall not prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; nor shall it interfere with or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands. (18 U.S.C. 1852)

Trees Cut or Injured

Sec. 1853. Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both. (18 U.S.C. 1853)

Trees Boxed for Pitch or Turpentine

Sec. 1854. Whoever cuts, chips, chops, or boxes any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location, made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance; or

Whoever buys, trades for, or in any manner acquires any pitch,

turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, with knowledge that the same has been so unlawfully obtained—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both. (18 U.S.C. 1854)

Timber Set Afire

Sec. 1855. Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive jurisdiction of the United States, or under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, or upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title of the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the Unites States, shall be fined under this title or imprisoned not more than five years, or both.

This section shall not apply in the case of a fire set by an allottee in the reasonable exercise of his proprietary rights in the allotment. (18 U.S.C. 1855)

Fires Left Unattended and Unextinguished

Sec. 1856. Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, and including any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under the authority of the United States, or any Indian allotment while the title to the same is held in trust by the United States, or while the same shall remain inalienable by the allottee without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined not more than $500 or imprisoned not more than six months, or both. (18 U.S.C. 1856)

Fences Destroyed; Livestock Entering

Sec. 1857. Whoever knowingly and unlawfully breaks, opens, or destroys any gate, fence, hedge, or wall inclosing any lands of the United States reserved or purchased for any public use; or

Whoever drives any cattle, horses, hogs, or other livestock upon any such lands for the purposes of destroying the grass or trees on said lands, or where they may destroy the said grass or trees; or

Whoever knowingly permits his cattle, horses, hogs, or other livestock to enter through any such inclosure upon any such lands of the United States, where such cattle, horses, hogs or other livestock may or can destroy the grass or trees or other property of the United States on the said lands—

Shall be fined not more than $500 or imprisoned not more than one year, or both.

This section shall not apply to unreserved public lands. (18 U.S.C. 1857)

Survey Marks Destroyed or Removed

Sec. 1858. Whoever willfully destroys, defaces, changes, or removes to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or willfully cuts down any witness tree or any tree blazed to mark the line of a Government survey, or willfully defaces, changes, or removes any monument or bench mark of any Government survey, shall be fined not more than $250 or imprisoned not more than six months, or both. (18 U.S.C. 1858)

Survey Interrupted

Sec. 1859. Whoever, by threats or force, interrupts, hinders or prevents the surveying of the public lands, or of any private land claim which has been or may be confirmed by the United States, by the persons authorized to survey the same in conformity with the instructions of the Director of the Bureau of Land Management, shall be fined not more than $3,000 or imprisoned not more than three years, or both. (18 U.S.C. 1859)

Bids at Land Sales

Sec. 1860. Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale; or

Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both. (18 U.S.C. 1860)

Deception of Prospective Purchasers

Sec. 1861. Whoever, for a reward paid or promised to him in that behalf, undertakes to locate for an intending purchaser, settler, or entryman any public lands of the United States subject to disposition under the public-land laws, and who willfully and falsely represents to such intending purchaser, settler, or entryman that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, with intent to deceive the person to whom such representation is made, or who, in reckless disregard of the truth, falsely represents to any such person that any tract of land shown to him is public land of the United States subject to sale, settlement, or entry, or that it is of a particular surveyed description, thereby deceiving the person to whom such representation is made, shall be fined not more than $300 or imprisoned not more than one year, or both. (18 U.S.C. 1861)

Trespass on National Forest Lands

Sec. 1863. Whoever, without lawful authority or permission, goes upon any National Forest land while it is closed to the public pursuant to lawful regulation of the Secretary of Agriculture, shall be fined not more than $500 or imprisoned not more than six months, or both. (18 U.S.C. 1863)

Hazardous or Injurious Devices on Federal Lands

Sec. 1864. (a) Whoever—

(1) with the intent to violate the Controlled Substances Act,

(2) with the intent to obstruct or harass the harvesting of timber, or

(3) with reckless disregard to the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk,

uses a hazardous or injurious device on Federal land, on an Indian reservation, or on an Indian allotment while the title to such allotment is held in trust by the United States or while such allotment remains inalienable by the allottee without the consent of the United States shall be punished under subsection (b).

(b) An individual who violates subsection (a) shall—

(1) if death of an individual results, be fined under this title or imprisoned for any term of years or for life, or both;

(2) if serious bodily injury to any individual results, be fined under this title or imprisoned for not more than twenty years, or both;

(3) if bodily injury to any individual results, be fined under this title or imprisoned for not more than ten years, or both;

(4) if damage exceeding $10,000 to the property of any individual results, be fined under this title or imprisoned for not more than ten years, or both; and

(5) in any other case, be fined under this title or imprisoned for not more than one year.

(c) Any individual who is punished under subsection (b)(3), (4), or (5) after one or more prior convictions under any such subsection shall be fined under this title or imprisoned for not more than ten years, or both.

(d) As used in this section—

(1) the term "serious bodily injury" means bodily injury which involves—

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; and

(D) protracted loss or impairment of the function of bodily member, organ, or mental faculty;

(2) the term "bodily injury" means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary; and

(3) the term "hazardous or injurious device" means a device, which when assembled or placed, is capable of causing bodily injury, or damage to property, by the action of any person making contact with such device subsequent to the assembly or placement. Such term includes guns attached to trip wires or other triggering mechanisms, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, lines or wires, lines or wires with hooks attached, nails placed so that the sharpened ends are positioned in an upright manner, or tree spiking devices including spikes, nails, or other objects hammered, driven, fastened, or otherwise placed into or on any timber, whether or not severed from the stump. (18 U.S.C. 1864)

Tort Claims Procedure
("Title 28, U.S.C.")

- **Act of June 25, 1948 (P.L. 80-773, Ch. 646, 62 Stat. 983, as amended; 28 U.S.C. 2672-2677)**

Administrative Adjustment of Claims of $2,500 or Less

Sec. 2672. The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: *Provided*, That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to the agency. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of Title 28 of the United States Code shall be paid in a manner similar to judgements and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any

claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter. (28 U.S.C. 2672)

Reports to Congress

Sec. 2673. Reports to Congress. The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim. (28 U.S.C. 2673)

Note—Section 1(1) of P.L. 89-348, Act of Nov. 8, 1965, 79 Stat 1310, repealed the requirement that an annual report to Congress be made of the administrative adjustment of tort claims of $2,500 or less.

Liability of United States

Sec. 2674. The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the united States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as any other defenses to which the Tennessee Valley Authority is entitled under this chapter. (28 U.S.C. 2674)

Disposition by Federal Agency

Sec. 2675. (a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the

Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the Federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a Federal agency shall not be competent evidence of liability or amount of damages. (28 U.S.C. 2675)

Judgement as Bar

Sec. 2676. The judgment in an action under section 1346 (b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim. (28 U.S.C. 2676)

Compromise

Sec. 2677. The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of title 28 of the United States Code, after the commencement of an action thereon. (28 U.S.C. 2677)

Clean Water Act
(Federal Water Pollution Control Act)

- **Act of June 30, 1948 (P.L. 80-845; 62 Stat. 1155, as amended; 33 U.S.C. 1251, 1254, 1323, 1324, 1329, 1342, 1344)**

Note—The water pollution control laws were revised, codified, and reenacted by the Federal Water Pollution Control Act Amendments of 1972 (Act of October 18, 1972, P.L. 92-500) and further amended by the Water Quality Act of 1987 (Act of February 4, 1987, P.L. 100-4) and other laws.

TITLE I—RESEARCH AND RELATED PROGRAMS

Congressional Declaration of Goals and Policy

Sec. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

* * * *

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibility and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

* * * *

(d) Except as otherwise expressly provided in this Act, the Administrator of the Environmental Protection Agency shall administer this Act.

* * * *

(g) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. . . . Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources. (33 U.S.C. 1251)

* * * *

Research, Investigations, Training and Information

Sec. 104. The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution; (33 U.S.C. 1254)

* * * *

Federal Facilities Pollution Control

Sec. 313. (a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of his official duties, from removing to the appropriate Federal District court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with 28 U.S.C. 1441 et seq. No officer, agent, or employee of the United States shall be personally liable for any civil penalty arising from the performance of his official duties, for which he is not otherwise liable, and the United States shall be liable only for those civil penalties arising under Federal law or imposed by a State or local court to enforce an order or the process of such court. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 306 or 307 of this Act. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested

appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the president may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b)(1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizing those innovative treatment processes and techniques for which guidelines have been promulgated under section 304(d) (3). Such program shall include an inventory of property and facilities which could utilize such processes and techniques.

(2) Construction shall be initiated for facilities for treatment of wastewater at any Federal property or facility after September 30, 1979, if alternative methods for wastewater treatment at such property or facility utilizing innovative treatment processes and techniques, including but not limited to methods utilizing recycle and reuse techniques and land treatment are not utilized, unless the life cycle cost of the alternative treatment works exceeds the life cycle cost of the most cost effective alternative by more than 15 per centum. The Administrator may waive the application of this paragraph in any case where the Administrator determines it to be in the public interest, or that compliance with this paragraph would interfere with the orderly compliance with conditions of a permit issued pursuant to section 402 of this Act. (33 U.S.C. 1323)

Clean Lakes

Sec. 314. (a)(1) Each State on a biennial basis shall prepare and submit to the Administrator for his approval—

(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

(B) a description of procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes;

(C) a description of methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes;

(D) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

(E) a list and description of those publicly owned lakes in such State for which uses are known to be impaired, including those lakes

which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

(F) an assessment of the status and trends of water quality in lakes in such State, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution. (33 U.S.C. 1324)

* * * *

Nonpoint Source Management Programs

Sec. 319. (a)(1) Contents. The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which—

(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act;

(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and (D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i). (33 U.S.C. 1329)

* * * *

National Pollutant Discharge Elimination System

Sec. 402. (a)(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the

requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 13 of the Act of March 3, 1899, shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 13 of the Act of March 3, 1899, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 13 of the Act of March 3, 1899, after October 18, 1972. Each application for a permit under section 13 of the Act of March 3, 1899, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this chapter, to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 304(h) (2) of this Act, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance. (33 U.S.C. 1342)

* * * *

Permits for Dredged or Fill Material

Sec. 404. (a) The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification

(including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse affect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers. (33 U.S.C. 1344)

Mining Assessment Work

- **Act of June 21, 1949 (P.L. 81-115, 63 Stat. 214; 30 U.S.C. 28b-e, 54)**

Annual Assessment Work on Mining Claims; Temporary Deferment; Conditions

Sec. 1. The performance of not less than $100 worth of labor or the making of improvements aggregating such amount, which labor or improvements are required under the provisions of section 2324 of the Revised Statutes of the United States to be made during each year, may be deferred by the Secretary of the Interior as to any mining claim or group of claims in the United States upon the submission by the claimant of evidence satisfactory to the Secretary that such mining claim or group of claims is surrounded by lands over which a right-of-way for the performance of such assessment work has been denied or is in litigation or is in the process of acquisition under State law or that other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof. (30 U.S.C. 28b)

Length and Termination of Deferment

Sec. 2. The period for which said deferment may be granted shall end when the conditions justifying deferment have been removed: *Provided*, That the initial period shall not exceed one year but may be renewed for a further period of one year if justifiable conditions exist: *Provided further*, That the relief available under this Act is in addition to any relief available under any other Act of Congress with respect to mining claims. (30 U.S.C. 28c)

Performance of Deferred Work

Sec. 3. All deferred assessment work shall be performed not later than the end of the assessment year next subsequent to the removal or cessation of the causes for deferment or the expiration of any deferments granted under this Act and shall be in addition to the annual assessment work required by law in such year. (30 U.S.C. 28d)

Recordation of Deferment

Sec. 4. Claimant shall file or record or cause to be filed or recorded in the office where the notice or certificate of location of such claim or group of claims is filed or recorded, a notice to the public of claimant's petition to the Secretary of the Interior for deferment under this Act, and of the order or decision disposing of such petition. (30 U.S.C. 28e)

Liability for Damages

Sec. 5. Notwithstanding the provisions of any Act of Congress to the contrary, any person who hereafter prospects for, mines, or removes by strip or open pit mining methods, any minerals from any land included in a stock raising or other homestead entry or patent, and who had been liable under such an existing Act only for damages caused thereby to the crops or improvements of the entryman or

patentee, shall also be liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals. Nothing in this section shall be considered to impair any vested right in existence on the effective date of this section. (30 U.S.C. 54)

Federal Property and Administrative Services Act of 1949

- **Act of June 30, 1949 (P.L. 81-152, Ch. 288, 63 Stat. 377; 40 U.S.C. 471, 472, 483-484, 531–535)**

Declaration of Policy

Sec. 2. It is the intent of the Congress in enacting this legislation to provide for the Government an economical and efficient system for (a) the procurement and supply of personal property and nonpersonal services, including related functions such as contracting, inspection, storage, issue, specifications, property identification and classification, transportation and traffic management, establishment of pools or systems for transportation of Government personnel and property by motor vehicle within specific areas, management of public utility services, repairing and converting, establishment of inventory levels, establishment of forms and procedures, and representation before Federal and State regulatory bodies; (b) the utilization of available property; (c) the disposal of surplus property; and (d) records management. (40 U.S.C. 471)

Definitions

Sec. 3. As used in this Act—

* * * *

(c) The term "Administrator" means the Administrator of General Services provided for in Title I hereof.

(d) The term "property" means any interest in property except (1) the public domain; lands reserved or dedicated for National Forest or National Park purposes; minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws; and lands withdrawn or reserved from the public domain except lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator, determines are not suitable for return to the public domain for disposition under the general public-land laws because such lands are substantially changed in character by improvements or otherwise; (2) naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines; and (3) records of the Federal Government.

(e) The term "excess property" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

* * * *

(g) The term "surplus property" means any excess property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator. (40 U.S.C. 472)

* * * *

Property Utilization

Sec. 202. (a)(1) Subject to the provisions of paragraph (2) of this subsection, in order to minimize expenditures for property, the Administrator shall prescribe policies and methods to promote the maximum utilization of excess property

by executive agencies, and he shall provide for the transfer of excess property among Federal agencies and to the organizations specified in section 756(f) of this title. The Administrator, with the approval of the Director of the Bureau of the Budget, shall prescribe the extent of reimbursement for such transfers of excess property: *Provided*, That reimbursement shall be required of the fair value, as determined by the Administrator, of any excess property transferred whenever net proceeds are requested pursuant to section 485(c) of this title or whenever either the transferor or the transferee agency (or the organizational unit affected) is subject to the Government Corporation Control Act or is an organization specified in section 756(f) of this title; and that excess property determined by the Administrator to be suitable for distribution through the supply centers of the General Services Administration shall be retransferred as prices fixed by the Administrator with due regard to prices established in accordance with section 756(b) of this title.

(b) Each executive agency shall (1) maintain adequate inventory controls and accountability systems for the property under its control, (2) continuously survey property under its control to determine which is excess property, and promptly report such property to the Administrator, (3) perform the care and handling of such excess property, and (4) transfer or dispose of such excess property as promptly as possible in accordance with authority delegated and regulations prescribed by the Administrator.

(c) Each executive agency shall, as far as practicable, (1) make reassignments of property among activities within the agency when such property is determined to be no longer required for the purposes of the appropriation from which it was purchased, (2) transfer excess property under its control to other Federal agencies and to organizations specified in section 756(f) of this title, and (3) obtain excess property from other Federal agencies.

(d) Notwithstanding any other provision of law, Federal agencies are prohibited from obtaining excess personal property for purposes of furnishing such property to grantees of such agencies, except as follows:

(1) Under such regulations as the Administrator may prescribe, any Federal agency may obtain excess personal property for purposes of furnishing it to any institution or organization which is a public agency or is nonprofit and exempt from taxation under section 501 of Title 26, and which is conducting a federally sponsored project pursuant to a grant made for a specific purpose with a specific termination made: *Provided*, That—

(A) such property is to be furnished for use in connection with the grant; and

(B) the sponsoring Federal agency pays an amount equal to 25 per centum of the original acquisition cost (except for costs of care and handling) of the excess property furnished, such funds to be covered into the Treasury as miscellaneous receipts. Title to excess property obtained under this paragraph shall vest in the grantees and shall be accounted for and disposed of in accordance with procedures governing the accountability of personal property acquired under grant agreements.

(2) Under such regulations and restrictions as the Administrator may prescribe, the provisions of this subsection shall not apply to the following: (A) property furnished under section 608 of the Foreign Assistance Act of 1961, as amended, where and to the extent that the

Administrator of the General Services determines that the property to be furnished under such Act is not needed for donation pursuant to section 484(j) of this title;

(B) scientific equipment furnished under section 1870(e) of Title 42);

(C) property furnished under section 580a of Title 16, in connection with the Cooperative Forest Fire Control Program, where title is retained in the United States;

(D) property furnished in connection with grants to Indian tribes as defined in section 1452(c) of Title 25; or

(E) property furnished by the Secretary of Agriculture to any State or county extension service engaged in cooperative agricultural extension work pursuant to the Act of May 8, 1914; any State experiment station engaged in cooperative agricultural research work pursuant to the Act of March 2, 1887; and any institution engaged in cooperative agricultural research or extension work pursuant to sections 3195, 3196, 3221, 3222 of Title 7 or the Act of October 10, 1962, where title is retained in the United States. For the purpose of this provision, the term "State" means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, the Virgin Islands of the United States, and the District of Columbia.

This paragraph shall not preclude any Federal agency obtaining property and furnishing it to a grantee of that agency under paragraph (1) of this subsection.

(e) Each executive agency shall submit during the calendar quarter following the close of each fiscal year a report to the Administrator showing, with respect to personal property

(1) obtained as excess property or as personal property determined to be no longer required for the purposes of the appropriation from which it was purchased, and

(2) furnished in any manner whatsoever within the United States to any recipient other than a Federal agency, the acquisition cost, categories of equipment, recipient of all such property, and such other information as the Administrator may require. The Administrator shall submit a report to the Senate (or to the Secretary of the Senate if the Senate is not in session) and to the House of Representatives (or to the Clerk of the House if the House is not in session) summarizing and analyzing the reports of the executive agencies.

(g) Whenever the Administrator determines that the temporary assignment or reassignment of any space in excess real property to any federal agency for office, storage, or related facilities would be more advantageous than the permanent transfer of such property, he may make such assignment or reassignment for such period of time as he shall determine and obtain, in the absence of appropriation available to him therefor, appropriate reimbursement from the using agency for the expense of maintaining such space.

(h) The Administrator may authorize the abandonment, destruction, or donation to public bodies of property which has no commercial value or of which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale. (40 U.S.C. 483)

Disposal of Surplus Property

Sec. 203. (a) Except as otherwise provided in this section, the Administrator shall have supervision and direction over the disposition of surplus property. Such property

shall be disposed of to such extent, at such time, in such areas, by such agencies, at such terms and conditions, and in such manner, as may be prescribed in or pursuant to this Act. (40 U.S.C. 484)

(b) The care and handling of surplus property, pending its disposition, and the disposal of surplus property, may be performed by the General Services Administration or, when so determined by the Administrator, by the executive agency in possession thereof or by any other executive agency consenting thereto.

(c) Any executive agency designated or authorized by the Administrator to dispose of surplus property may do so by sale, exchange, lease, permit, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Administrator deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this subchapter.

(d) A deed, bill of sale, lease, or other instrument executed by or on behalf of any executive agency purporting to transfer title or any other interest in surplus property under this subchapter shall be conclusive evidence of compliance with the provisions of this subchapter insofar as concerns title or other interest of any bona fide grantee or transferee for value and without notice of lack of such compliance. (40 U.S.C. 484)

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Federal Property and Administrative Services Act of 1949

- **Act of June 30, 1949 (P.L. 81-152, Ch. 288, 63 Stat. 377; 531(note), 531–535)**

TITLE VIII—URBAN LAND UTILIZATION

Short Title

Sec. 801. This title may be cited as the "Federal Urban Land-Use Act." (40 U.S.C. 531 (note))

Declaration of Purpose and Policy

Sec. 802. It is the purpose of this title to promote more harmonious intergovernmental relations and to encourage sound planning, zoning, and land use practices by prescribing uniform policies and procedures whereby the Administrator shall acquire, use, and dispose of land in urban areas in order that urban land transactions entered into for the General Services Administration or on behalf of other Federal agencies shall, to the greatest extent practicable, be consistent with zoning and land-use practices and shall be made to the greatest extent practicable in accordance with planning and development objectives of the local governments and local planning agencies concerned. (40 U.S.C. 531)

Disposal of Urban Lands

Sec. 803. (a) Whenever the Administrator contemplates the disposal for or on behalf of any Federal agency of any real property situated within an urban area, he shall, prior to offering such land for sale, give reasonable notice to the head of the governing body of the unit of general local government having jurisdiction over zoning and land-use regulation in the geographical area within which the land or lands are located in order to afford the government the opportunity of zoning for the use of such land in accordance with local comprehensive planning.

(b) The Administrator, to the greatest practicable extent, shall furnish to all prospective purchasers of such real property, full and complete information concerning—

(1) current zoning regulations and prospective zoning requirements and objectives for such property when it is unzoned; and

(2) current availability to such property of streets, sidewalks, sewers, water, street lights, and other service facilities and prospective availability of such services if such property is included in comprehensive planning. (40 U.S.C. 532)

Acquisition or Change of Use of Real Property

Sec. 804. (a) To the extent practicable, prior to a commitment to acquire any real property situated in an urban area, the Administrator shall notify the unit of general local government exercising zoning and land-use jurisdiction over the land proposed to be purchased of his intent to acquire such land and the proposed use of the property. In the event that the Administrator determines that such advance notice would have an adverse impact on the proposed purchase, he shall, upon conclusion of the acquisition, immediately notify such local government of the acquisition and the proposed use of the property.

(b) In the acquisition or change of use of any real property situated in an urban area as a site for public

building, the Administrator shall, to the extent he determines practicable—

(1) consider all objections made to any such acquisition or change of use by such unit of government upon the ground that the proposed acquisition or change of use conflicts or would conflict with the zoning regulations or planning objectives of such unit; and

(2) comply with and conform to such regulations of the unit of general local government having jurisdiction with respect to the area within which such property is situated and the planning and development objectives of such local government. (40 U.S.C. 533)

Sec. 805. The procedures prescribed in sections 803 and 804 may be waived during any period of national emergency proclaimed by the President. (40 U.S.C. 534)

Definitions

Sec. 806. As used in this title—

(a) "Unit of general local government" means any city, county, town, parish, village, or other general-purpose political subdivision of a State.

(b) "Urban area" means—

(1) any geographical area within the jurisdiction of any incorporated city, town, borough, village, or other unit of general local government, except county or parish, having a population of ten thousand or more inhabitants;

(2) that portion of the geographical area within the jurisdiction of any county, town, township, or similar governmental entity which contains no incorporated unit of general local government but has a population density equal to or exceeding one thousand five hundred inhabitants per square mile; and

(3) that portion of any geographical area having a population density equal to or exceeding one thousand five hundred inhabitants per square mile and situated adjacent to the boundary of any incorporated unit of general local government which has a population of ten thousand or more inhabitants.

(c) "Comprehensive planning" includes the following, to the extent directly related to the needs of a unit of general local government:

(1) Preparation, as a guide for governmental policies and action, of general plans with respect to;

(A) the pattern and intensity of land use;

(B) the provision of public facilities (including transportation facilities) and other governmental services, and (C) the effective development and utilization of human and natural resources;

(2) Long-range physical and fiscal plans for such action;

(3) Programming of capital improvements and other major expenditures, based on a determination of relative urgency, together with definitive financing plans for such expenditures in the earlier years of the program;

(4) Coordination of all related plans and activities of the State and local governments and agencies concerned; and

(5) Preparation of regulatory and administrative measures in support of the foregoing. (40 U.S.C. 535)

Federal Property and Administrative Services Act of 1949

- **Act of June 30, 1949 (P.L. 81-152, Ch. 288, 63 Stat. 377; 40 U.S.C. 541–544)**

TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

Definitions

Sec. 901. As used in this subchapter—

(1) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

(2) The term "agency head" means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

(3) The term "architectural and engineering services" means—

(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services. (40 U.S.C. 541)

Congressional Declaration of Policy

Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. (40 U.S.C. 542)

Requests for Data on Architectural and Engineering Services

Sec. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall

select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required. (40 U.S.C. 543)

Negotiation of Contracts for Architectural and Engineering Services

Sec. 904. (a) Negotiation with highest qualified firm.—The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

(b) Negotiation with second and third, etc., most qualified firms.—Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

(c) Selection of additional firms in event of failure of negotiation with selected firms.—Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached. (40 U.S.C. 544)

Anderson-Mansfield Reforestation and Revegetation Joint Resolution

- **Act of October 11, 1949 (P.L. 81-348, Ch. 674, 63 Stat. 762; 16 U.S.C. 581j(note), 581j, 581k)**

Whereas the National Forests of the United States contain approximately eighty million acres of the Nation's commercial timber lands and approximately eighty-three million acres of the Nation's important grazing lands; and

Whereas these National Forest lands comprise the principal source of water supply for domestic, irrigation, and industrial purposes for thousands of communities, farms, and industries, and good forest and other vegetative cover is essential for watershed protection; and

Whereas these lands annually supply approximately four billion board-feet of forest products through twenty-seven thousand sales transactions and the demand for National Forest timber is steadily increasing; and

Whereas these lands are the sole or main source of summer range for ten million cattle and sheep grazed by thirty thousand livestock permittees whose livelihood is wholly or partially dependent upon livestock grazed on National Forest ranges; and

Whereas these lands contain over four million acres of denuded and unsatisfactorily stocked timberlands and an additional four million acres of seriously depleted rangelands; and

Whereas all of these lands are potentially capable of producing an important part of the timber and forage needs of local communities, and contributing to the protection of watersheds, thereby alleviating flood damage and insuring a continuing water supply, increasing opportunity for local employment, bringing greater stability to local communities, and increasing returns to counties in the National Forests from their share of National Forests receipts, together with other benefits; and

Whereas these lands will not restock or revegetate satisfactorily or within a reasonable time except through reforestation and revegetation or other measures to induce restocking or revegetation; and

Whereas it is practical to reforest these denuded and unsatisfactorily stocked timber lands and revegetate these seriously depleted rangelands in a period of fifteen years; and

Whereas it is necessary to provide reasonable continuity of reforestation and revegetation programs in order to insure effective, efficient, and economical operations: Therefore be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the declared policy of the Congress to accelerate and provide a continuing basis for the needed reforestation and revegetation of National Forest lands and other lands under administration or control of the Forest Service of the Department of Agriculture in order to obtain the benefits hereinbefore enumerated. (16 U.S.C. 581j(note), 581j)

Land Acquisition for Nurseries

Sec. 2. For the purpose of carrying out the provisions of this joint resolution on National Forest lands and other lands under the administration or control of the Forest Service of the Department of Agriculture, including the acquisition of land or interests therein for nurseries, there is hereby authorized to be appropriated to remain available until December 31 of the ensuing fiscal year, . . . $10,000,000 for the fiscal year ending June 30, 1955, a like amount for each subsequent year through the fiscal year ending June 30, 1955, and thereafter such amounts as may be needed for reforestation; and . . . $3,000,000 for the fiscal year ending June 30, 1955; a like amount for each subsequent year through the fiscal year ending June 30, 1965, and thereafter such amounts as may be needed for range revegetation. (16 U.S.C. 581k)

ACTS OF THE 1950'S

Granger-Thye Act

- **Act of April 24, 1950 (P.L. 81-478, Ch. 97, 64 Stat. 82; 16 U.S.C. 490, 504a, 555, 557, 571c, 572, 579a, 580c-*l*, 581i-l)**

Sec. 1. Notwithstanding the provisions of existing law and without regard to section 255 of title 40, but within the limitations of cost otherwise applicable, appropriations of the Forest Service may be expended for the erection of buildings, lookout towers, and other structures on land owned by States, counties, municipalities, or other political subdivisions, corporations, or individuals: *Provided,* That prior to such erection, there is obtained the right to use the land for the estimated life of or need for the structure, including the right to remove any such structure within a reasonable time after the termination of the right to use the land. (16 U.S.C. 571c)

Procurement of Nursery Stock

Sec. 2. Amends P.L. 63-122.

Purchase of Experimental Materials, Special Devices, Test Models, etc.

Sec. 3. The provisions of section 5 of Title 41 shall not apply to purchases by the Forest Service of (1) materials to be tested or upon which experiments are to be made or (2) special devices, test models, or parts thereof, to be used (a) for experimentation to determine their suitability for or adaptability to accomplishment of the work for which designed or (b) in the designing or developing of new equipment: *Provided,* That not to exceed $50,000 may be expended in any one fiscal year pursuant to this authority and not exceed $10,000 on any one item or purchase. (16 U.S.C. 580c)

Aerial Operation Procurement

Sec. 4. Amends P.L. 78-425. Section 205 of the Department of Agriculture Organic Act of 1944, approved September 21, 1944 (58 Stat. 736), as amended by the Act of April 24, 1950 (64 Stat. 82) is hereby further amended to read as follows:

"**Sec. 205.** The Forest Service by contract or otherwise may provide for procurement and operation of aerial facilities and services for the protection and management of the National Forests and other lands administered by it, including the furnishing, at the airbase, of facilities, equipment, materials and the preparation, mixing and loading into aircraft, with authority to renew any contract for such purpose annually, not more than twice, without additional advertising." (16 U.S.C. 579a)

Assisting to Perform Work on Other Jurisdictions

Sec. 5. Amends P.L. 68-575. Section 1 of the Act of March 3, 1925 (43 Stat. 1132; 16 U.S.C. 572), is hereby amended to read as follows:

"**Sec. 1.** (a) The Secretary of Agriculture is authorized, where the public interest justifies, to cooperate with or assist public and private agencies, organizations, institutions, and persons in performing work on

land in State, county, municipal, or private ownership, situated within or near a National Forest, for which the administering agency, owner, or other interested party deposits in one or more payments a sufficient sum to cover the total estimated cost of the work to be done for the benefit of the depositor, for administration, protection, improvement, reforestation, and such other kinds of work as the Forest Service is authorized to do on lands of the United States: *Provided*, That the United States shall not be liable to the depositor or land-owner for any damage incident to the performance of such work.

"(b) Cooperation and assistance on the same basis as that authorized in subsection (a) is authorized also in the performance of any such kinds of work in connection with the occupancy or use of the National Forests or other lands administered by the Forest Service.

"(c) Moneys deposited under this section shall be covered into the Treasury and shall constitute a special fund, which is hereby made available until expended for payment of the cost of work performed by the Forest Service and for refunds to depositors of amounts deposited by them in excess of their share of said cost: *Provided,* That when deposits are received for a number of similar types of work on adjacent or overlapping areas, or on areas which in the aggregate are determined to cover a single work unit, they may be expended on such combined areas for the purposes for which deposited, in which event refunds to the depositors of the total amount of the excess deposits involved will be made on a proportionate basis: *Provided further*, That when so provided by written agreement payment for work undertaken pursuant to this section may be made from any Forest Service appropriation available for similar types of work, and reimbursement received from said agencies, organizations, institutions, or persons covering their proportionate share of the cost and the funds received as reimbursement shall be deposited to the credit of the Forest Service appropriation from which initially paid or to appropriations for similar purposes currently available at the time of deposit: *Provided further,* That when by the terms of a written agreement either party thereto furnishes materials, supplies, equipment, or services for fire emergencies in excess of its proportionate share, adjustment may be made by reimbursement or by replacement in kind of supplies, materials, and equipment consumed or destroyed in excess of the furnishing party's proportionate share". (16 U.S.C. 572)

Deposits From Timber Purchasers

Sec. 6. Amends P.L. 64-190. So much of the Act of August 11, 1916 (39 Stat. 446, 462; 16 U.S.C. 490), as provides: "That hereafter deposits may be received from timber purchases in such sums as the Secretary of Agriculture may require to cover the cost to the United States of [disposing] of brush and other debris resulting from cutting operations in sales of National Forest timber; such deposits shall be covered into the Treasury and shall constitute a special fund, which is hereby appropriated and made available until expended, as the Secretary of Agriculture may direct, to pay the cost of such work and to make refunds to the depositors of amounts deposited by them in excess of such cost.", is hereby amended to read as follows: "Purchasers of National Forest timber may be required by

the Secretary of Agriculture to deposit the estimated cost to the United States of disposing of brush and other debris resulting from their cutting operations, such deposits to be covered into the Treasury and constitute a special fund, which is hereby appropriated and shall remain available until expended: *Provided*, That any deposits in excess of the amount expended for disposals shall be transferred to miscellaneous receipts, forest-reserve fund, to be credited to the receipts of the year in which such transfer is made.". (16 U.S.C. 490)

Federally Owned Structures and Improvements

Sec. 7. The Secretary of Agriculture, under such regulations as he may prescribe and at rates and for periods not exceeding thirty years as determined by him, is hereby authorized to permit the use by public and private agencies, corporations, firms, associations, or individuals, of structures or improvements under the administrative control of the Forest Service and land used in connection therewith: *Provided,* That as all or a part of the consideration for permits issued under this section, the Secretary may require the permittees at their expense to recondition and maintain the structures and land to a satisfactory standard. (16 U.S.C. 580d)

Providing Meals and Lodging to Other Than Employees

Sec. 8. The Secretary of Agriculture is authorized to furnish persons attending Forest Service demonstrations, and users of National Forest resources and recreational facilities, with meals, lodging, bedding, fuel, and other services, where such facilities are not otherwise available, at rates approximating but not less than the actual or estimated cost thereof and to deposit all moneys received therefor to the credit of the appropriation from which the cost thereof is paid, or a similar appropriation current at the time the moneys are received; *Provided,* That such receipts obtained in excess of $10,000 in any one fiscal year shall be deposited in the Treasury as miscellaneous receipts. (16 U.S.C. 580e)

Sales of Nursery Stock

Sec. 9. The Secretary of Agriculture is authorized, subject to such conditions as he may prescribe, to sell forest-tree seed and nursery stock to States and political subdivisions thereof and to public agencies of other countries, at rates not less than the actual or estimated cost to the United States of procuring or producing such seed or nursery stock, moneys received from the sale thereof to be credited to the appropriation or appropriations of the Forest Service currently available for the procurement or production of seed or nursery stock at the time such moneys are deposited: *Provided*, That the Secretary of Agriculture may exchange with such public agencies forest-tree seed and nursery stock for forest-tree seed or nursery stock of the same or different species upon a determination that such exchange does not exceed the value of the property received: *Provided further,* That no nursery stock shall be sold or exchanged under this section as ornamental or other stock for landscape planting of the types commonly grown by established commercial nursery men. (16 U.S.C. 504a)

Telephone Installation

Sec. 10. Notwithstanding the provisions of section 7 of the Act of August 23, 1912, as amended (31 U.S.C. 679), appropriations for the protection and management of the National Forests and other lands administered by the Forest Service shall be available to pay for telephone service installed in residences of employees and of persons cooperating with the Forest Service who reside within or near such lands when such installation is determined by the Secretary of Agriculture to be needed in protecting such lands: *Provided,* That in addition to the monthly local service charge the Government may pay only such tolls or other charges as are required strictly for the public business. (16 U.S.C. 580f)

Seeding Leased Rangeland

Sec. 11. Whenever such action is deemed to be in the public interest, the Secretary of Agriculture is authorized to pay from any appropriation available for the protection and management of the National Forests all or any part of the cost of leasing, seeding, and protective fencing of public rangeland (other than National Forest land) and privately owned land intermingled with or adjacent to National Forest or other land administered by the Forest Service, if the use of the land to be seeded is controlled by the Forest Service under a lease or agreement which in the judgment of the Chief of the Forest Service gives the Forest Service control over the land for a sufficient period to justify such expenditures: *Provided,* That payment may not be made under authority of this section for the seeding of more than one thousand acres in any one private ownership: *Provided further,* That payment may not be made under authority of this section for the seeding of more than twenty-five thousand acres in any one fiscal year: *Provided further,* That the period of any lease under this authority may not exceed twenty years. (16 U.S.C. 580g)

Use of Grazing Receipts for Range Improvements

Sec. 12. Of the moneys received from grazing fees by the Treasury from each National Forest during each fiscal year there shall be available at the end thereof when appropriated by Congress an amount equivalent to 2 cents per animal-month for sheep and goats and 10 cents per animal-month for other kinds of livestock under permit on such National Forest during the calendar year in which the fiscal year begins, which appropriated amount shall be available until expended on such National Forest, under such regulations as the Secretary of Agriculture may prescribe, for (1) artificial revegetation, including the collection or purchase of necessary seed; (2) construction and maintenance of drift or division fences and stock-watering places, bridges, corrals, driveways, or other necessary range improvements; (3) control of range-destroying rodents; or (4) eradication of poisonous plants and noxious weeds, in order to protect or improve the future productivity of the range. (16 U.S.C. 580h)

Land Acquisition for Buildings

Sec. 13. Section 5 of the Act of March 3, 1925 (43 Stat. 1133; 16 U.S.C. 555), is hereby amended to read as follows: (See P.L. 68-575) (16 U.S.C. 555)

Funds Authorized to be Appropriated

Sec. 14. There are hereby authorized to be appropriated—

(a) such sums as may be necessary for the acquisition of parcels of land and interests in land in Sanders County, Montana, needed by the Forest Service to provide winter range for its saddle, pack, and draft animals;

(b) not to exceed $50,000 for the acquisition of additional land adjacent to the present site of the Forest Products Laboratory at Madison, Wisconsin; and

(c) not to exceed $25,000 for the acquisition of one helicopter landing site in southern California. Land acquired under this section may be subject to such reservations and outstanding interests as the Secretary of Agriculture determines will not interfere with the purpose for which acquired. (16 U.S.C. 580i)

Assistance to Disabled Transient Employees

Sec. 15. Section 6 of the Act of March 3, 1925 (43 Stat. 1133; 16 U.S.C. 557), is hereby amended by substituting a colon for the period at the end thereof and adding the following: (See P.L. 68-575) (16 U.S.C. 557)

Benefits to Injured Employees

Sec. 16. Appropriations of the Forest Service chargeable with salaries and wages shall be available for payment to temporary employees of the Forest Service for loss of time due to injury in official work at rates not in excess of those provided by the United States Employees' Compensation Act, as amended (5 U.S.C. 8102 and the following), when the injured person is in need of immediate financial assistance to avoid hardship: *Provided,* That such payment shall not be made for a period in excess of fifteen days and the United States Employees' Compensation Commission shall be notified promptly of the amount so paid, which amount shall be deducted from the amount, if any, otherwise payable by the United States Employees' Compensation Commission to the employee on account of the injury, the amount so deducted by the Commission to be paid to the Forest Service for deposit to the credit of the Forest Service appropriation from which the expenditure was made: *Provided further,* That when any person assisting in the suppression of forest fires or in other emergency work under the direction of the Forest Service, without compensation from the United States, pursuant to the terms of a contract, agreement, or permit, is injured in such work, the Forest Service may furnish hospitalization and other medical care, subsistence, and lodging for a period of not to exceed fifteen days during such disability, the cost thereof to be payable from the appropriation applicable to the work upon which the injury occurred, except that this proviso shall not apply when such person is within the purview of a State or other compensation Act: *Provided further,* That determination by the Forest Service that payment is allowable under this section shall be final as to payments made hereunder, but such determination or payments with respect to employees shall not prevent the United States Employees Compensation Commission from denying further payments should the Commission determine that compensation is not properly allowable under the provisions of the Employees' Compensation Act. (16 U.S.C. 580j)

Sec. 17. (a) Section 2 of the Act of March 3, 1925 (43 Stat. 1132; 16 U.S.C. 571); the second proviso in section 1 of the Act of May 22, 1928 (45 Stat. 699; 16 U.S.C. 581); and section 1 of the Act of May 27, 1930 (46 Stat. 387; 16 U.S.C. 573), are hereby repealed.

(b) The second proviso in section 13 of the Act of March 1, 1911 (36 Stat. 961, 963), is hereby repealed.

Advisory Boards

Note—Sec. 403 (f) of FLPMA removes authority for Forest Service grazing advisory boards as of Dec. 31, 1985.

Sec. 18. (a) Composition; election; meetings.—

(1) To provide National Forest grazing permittees means for the expression of their recommendations concerning the management and administration of National Forest grazing lands, a local advisory board shall be constituted and elected as hereinafter provided for each National Forest or administrative subdivision thereof whenever a majority of the grazing permittees of such National Forest or administrative subdivision so petitions the Secretary of Agriculture. Each elected local advisory board existing for such purpose at the time of the enactment of this Act, and recognized as such by the Department of Agriculture, shall continue to be the local advisory board for the unit or area it represents, until replaced by a local advisory board or boards constituted and elected as hereinafter provided.

(2) Each such local advisory board shall be constituted and elected under rules and regulations, consistent herewith, now or hereafter approved by the Secretary of Agriculture, and shall be recognized by him as representing the grazing permittees of the National Forest or administrative subdivision thereof for which such local advisory board has been constituted and elected.

(3) Each such local advisory board shall consist of not less than three nor more than twelve members, who shall be National Forest grazing permittees in the area for which such board is constituted, elected, and recognized. In addition, a wildlife representative may be appointed as a member of each such board by the State game commission, or the corresponding public body of the State in which the advisory board is located, to advise on wildlife problems.

(4) Each such local advisory board shall meet at least once annually, at a time to be fixed by such board, and at such other time or times as its members may determine, or on the call of the chairman thereof or of the Secretary of Agriculture or his authorized representative.

(b) Advice and recommendations on matters within jurisdiction.—Upon the request of any party affected thereby, the Secretary of Agriculture, or his duly authorized representative, shall refer to the appropriate local advisory board for its advice and recommendations any matter pertaining to (1) the modification of the terms, or the denial of a renewal of, or a reduction in, a grazing permit, or (2) the establishment or modification of an individual or community allotment. In the event the Secretary of Agriculture, or his duly authorized representative, shall overrule, disregard, or modify any such recommendations, he, or such representative, shall

furnish in writing to the local advisory board his reasons for such action.

(c) Notification by Secretary of Agriculture of intention to issue regulations—

(1) At least thirty days prior to the issuance by the Secretary of Agriculture of any regulation under this Act or otherwise, with respect to the administration of grazing on National Forest lands, or of amendments or additions to, or modifications in, any such regulation, which in his judgment would substantially modify existing policy with respect to grazing in National Forests, or which would materially affect preferences of permittees in the area involved, the local advisory board for each area that will be affected thereby shall be notified of the intention to take such action. If as a result of this notice the Secretary of Agriculture shall receive any recommendation respecting the issuance of the proposed regulation and shall overrule, disregard, or modify any such regulations, he or his representative shall furnish in writing to the local advisory board his reasons for such action.

(2) Any such local advisory board may at any time recommend to the Secretary of Agriculture, or his representative, the issuance of regulations or instructions relating to the use of National Forest lands, seasons of use, grazing capacity of such lands, and any other matters affecting the administration of grazing in the area represented by such board. (16 U.S.C. 580k)

Permits

Sec. 19. The Secretary of Agriculture in regulating grazing on the National Forests and other lands administered by him in connection therewith is authorized, upon such terms and conditions as he may deem proper, to issue permits for the grazing of livestock for periods not exceeding ten years and renewals thereof: *Provided,* That nothing herein shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources. (16 U.S.C. 580*l*)

Cooperative Forestry Research

Sec. 20. For the purpose of fostering and stimulating participation with the Forest Service in forest, range, and watershed management research through investigations, experiments, tests, or such other means as he may deem advisable, and in order to aid in obtaining the fullest cooperation from States and other public and private agencies, organizations, institutions, and individuals, in effectuating such research the Secretary of Agriculture is authorized in accordance with such regulations as he may issue and when in his judgment such cooperative work will be stimulated or facilitated to make funds available to the cooperators without regard to the provisions of section 529 of Title 31, prohibiting advances of public moneys. (16 U.S.C. 581i-1)

General Appropriation Act, 1951

- **Act of September 6, 1950 (P.L. 81-759, Ch. 896, 64 Stat. 595; 31 U.S.C. 1532, 9701)**

Note—Section numbers refer to U.S. Code numbers

Expenditure Limitation

Note—This is part of Chapter XII, General Provisions of the Act.

Sec. 1532. An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. A withdrawal and credit is made by check and without a warrant.
(31 U.S.C. 1532)

Fees and Charges for Government Service

Sec. 9701. (a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States—

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.
(31 U.S.C. 9701)

Smokey Bear Act

- **Act of May 23, 1952 (P.L. 82-359, Ch. 327, 66 Stat. 92; 18 U.S.C. 711; 16 U.S.C. 580p-2)**

"Smokey Bear" Character or Name

Sec. 1. Whoever, except as authorized under rules and regulations issued by the Secretary of Agriculture after consultation with the Association of State Foresters and the Advertising Council, knowingly and for profit manufactures, reproduces, or uses the character "Smokey Bear", originated by the Forest Service, United States Department of Agriculture, in cooperation with the Association of State Foresters and the Advertising Council for use in public information concerning the prevention of forest fires, or any facsimile thereof, or the name "Smokey Bear" shall be fined not more than $250 or imprisoned not more than six months or both.

The Secretary of Agriculture may specially authorize the manufacture, reproduction, or use of the character "Smokey Bear" for a period not to exceed one hundred and eighty days, expiring no later than one year after the enactment hereof, by any person who, because of plans or commitments made prior to the enactment of this Act, would suffer substantial loss if denied such authorization. (18 U.S.C. 711)

Sec. 2. The analysis of chapter 33 immediately preceding section 701 of Title 18 is amended by adding at the end thereof: "Sec. 711. 'Smokey Bear' character or name".

Sec. 3. The Secretary of Agriculture shall deposit into a special account to be available for furthering the nationwide forest-fire prevention campaign all fees collected under regulations promulgated by him relating to "Smokey Bear". (16 U.S.C. 580p-2)

Small Business Act

- **Act of July 30, 1953 (P.L. 83–167, Chapter 282, Title II, Sec. 201-223, 67 Stat. 232, as amended, 15 U.S. C. 631-632, 637b, 644, 651)**

Note—Section numbers refer to U.S. Code numbers

Declaration of Policy

Sec. 631. (a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the over-all economy of the Nation.

(b)(1) It is the declared policy of the Congress that the Federal Government, through the Small Business Administration, acting in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this chapter, to increase their ability to compete in international markets by—

(A) enhancing their ability to export;

(B) facilitating technology transfers;

(C) enhancing their ability to compete effectively and efficiently against imports;

(D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade.

(E) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and

(F) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

(2) The Congress recognizes that the Department of Commerce is the principal Federal agency for trade development and export promotion and that the Department of Commerce and the Small Business Administration work together to advance joint interests. It is the purpose of this chapter to enhance, not alter, their respective roles.

(c) It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small

business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this chapter are also to be used to assist such concerns.

(d)(1) The assistance programs authorized by sections 636(i) and 636(j) of this title are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(2)(A) With respect to the programs authorized by section 636(j) of this title, the Congress finds—

(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership

(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

(iv) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.[1]

(v) that the power to let Federal contracts pursuant to section 637(a) of this title can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

(vi) that the procurement authority under section 637(a) of this title shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(B) It is therefore the purpose of the programs authorized by section 636(j) of this title to—

(i) foster business ownership and development by individuals in groups that own and control little productive capital; and

(ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

(e) Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs.

(f)(1) with respect to the Administration's business development programs the Congress finds—

(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such

persons and improve the functioning of our national economy;

(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Indian Tribes, Asian Pacific Americans, Native Hawaiian Organizations, and other minorities;

(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

(F) that such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

(G) that such procurements also benefit the United States encouraging the expansion of suppliers for such procurement, thereby encouraging competition among such suppliers and promoting economy in such procurements.

(2) It is therefore the purpose of section 637(a) of this title to—

(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and management assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

(g) In administering the disaster loan program authorized by section 636 of this title, to the maximum extent possible, the Administration shall provide assistance and counseling to disaster victims in filing applications, providing information relevant to loan processing, and in loan closing and prompt disbursement of loan proceeds and shall give the disaster program a high priority in allocating funds for administrative expenses.

(h)(1) With respect to the programs and activities authorized by this chapter, the Congress finds that—

(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

(E) it is in the national interest to expeditiously remove discriminatory barriers to the

creation and development of small business concerns owned and controlled by women;

(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this chapter that assist women entrepreneurs to—

(A) vigorously promote the legitimate interest of small business concerns owned and controlled by women;

(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.

Small-Business Concern

Sec. 632. (a) Criteria

(1) For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation: *Provided,* That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $500,000.

(2) In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards (by number of employees or dollar volume of business) by which a business concern is to be recognized as a small business concern for the purposes of this chapter or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency may not prescribe for the use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(A) is being proposed after an opportunity for public notice and comment;

(B) provides for determining, over a period of not less than 3 years—

(i) the size of a manufacturing concern on the basis of the number of its employees during that period; and

(ii) the size of a concern providing services on basis of the average gross receipts of the concern during that period; and

(C) is approved by the Administrator.

(3) When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(b) "Agency" defined—For purposes of this chapter, any reference to an agency or department of the United States, and the term "Federal agency", shall have the meaning given the term "agency" by section 551(1) of Title 5, but does not include the United States Postal Service or the General Accounting Office.

(c) Qualified employee trust; eligibility for loan guarantee; definition; regulations for treatment of trust as qualified employee trust

(1) For purposes of this chapter, a qualified employee trust shall be eligible for any loan guarantee under section 636(a) of this title with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this chapter, the term "qualified employee trust" means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of Title 26)—

(i) which is maintained by such concern, and

(ii) which provides that each participant in the plan is entitled to direct the plans as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of Title 26) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or chapter) must be decided by a majority vote of outstanding common shares voted; and

(B) in the case of any loan guarantee under section 636(a) of this title, the trustee of which enters into an agreement with the Administrator which is binding on the trust and on such small business concern and which provides that—

(i) the loan guaranteed under section 636(a) of this title shall be used solely for the purchase of qualifying employer securities of such concern,

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant's account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a

qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of Title 26),

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of Title 26) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 636(a) of this title, such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

(d) "Qualified Indian tribe" defined—For purposes of section 636 of this title, the term "qualified Indian tribe" means an Indian tribe as defined in section 450b(a) of Title 25, which owns and controls 100 per centum of a small business concern.

(e) "Public or private organization for the handicapped" defined—For purposes of section 636 of this title, the term "Public or private organization for the handicapped" means one—

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(f) "Handicapped individual" defined—For purpose of section 636 of this title, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(g) "Energy measures" defined—For purposes of section 636 of this title, the term "energy measures" includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection—

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h) "Credit elsewhere" defined—For purposes of this chapter, the term "credit elsewhere" means the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

(i) "Homeowners" defined—For purposes of section 636 of this title, the term "homeowners" includes owners and lessees of residential property and also includes personal property.

(j) "Small agricultural cooperative" defined—For the purposes of section 636(b)(2) of this title, the term "small agricultural cooperative" means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141 et seq.), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(k) "Disaster" defined—For the purposes of this chapter, the term "disaster" means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

(l) "Computer crime" defined—For purposes of this chapter—

(1)[1] the term "computer crime" means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m) "Small purchase threshold" defined—For purposes of this chapter, the term "small purchase threshold" has the meaning given such term in section 403(11) of Title 41, Public Contract.

* * * *

Availability of Information

Sec. 637b. (a) For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

(b) Subsection (a) of this section shall not apply to any contract or subcontract under such contract which—

(1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(2) is for services which are personal in nature.

Definitions

Sec. 637c. For purposes of this Act—

(1) the term "Administrator" means the Administrator of the Small Business Administration;

(2) the term "Federal agency" has the meaning given the term "agency" by section 551(1) of Title 5, but does not include the United States Postal Service or the General Accounting Office; and

(3) the term "Government procurement contract" means any contract for the procurement of any goods or services by any Federal agency.

* * * *

Awards or Contracts

Sec. 644. (a) Determination—To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this chapter shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least

procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirements, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representatives believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the four-digit standard industrial classification codes contained in the Standard Industrial Classification Manual published by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contract for such goods or service is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

(b) Placement of contracts by contracting procurement agency—With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c) Programs for blind and handicapped individuals.—

(1) As used in this subsection:

(A) The term "Committee" means the Committee for Purchase

From People Who Are Blind or Severely Disabled established under section 46 of Title 41.

(B) The term "public or private organization for the handicapped" has the same meaning given such term in section 3(e).

(C) The term "handicapped individual" has the same meaning given such term in section 632(f) of this title.

(2)(A) During each of fiscal years 1989 through 1993, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount for each year as follows: In 1989 not more than $30,000,000, in 1990 not more than $40,000,000, and in each of 1991, 1992 and 1993 not more than $50,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 47 of Title 41.

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(d) Priority.—For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor

able expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) Placement of contracts by departments, agencies, and instrumentalities of the executive branch; priorities.—In carrying out small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

(2) concerns which are small business concerns, on the basis of a total set-aside;

(3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;

(4) concerns which are small business concerns, on the basis of a partial set-aside.

(f) Contract awards; other priorities.—After priority is given to the small business concerns specified in subsection (e) of this section, priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which—

(1) are not eligible under subsection (e) of this section;

(2) are not small business concerns; and

(3) will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.

(g) Goals for participation of small business concerns in procurement contracts—

(1) The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. The Government-side goal for participation by small business concerns shall be established at not less than 20 percent of the total value of all prime contract awards for each fiscal year. The Government-wide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts let by such agency. The Administration and the Administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

(2) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, and by small business concerns owned and controlled by socially and economically disadvantaged individuals, in procurement contracts of such agency. Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination. For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by socially and economically disadvantaged individuals. The head of each Federal agency, in attempting to attain such participation, shall consider—

(A) contracts awarded as the result of unrestricted competition; and

(B) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 637(A) of this title.

(h) Reports to Administration; submittal of information to Congress.—

(1) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section.

(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit them to the President. The Administrator's submission to the President shall include the following:

(A) The Government-wide goals for participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and the performance in attaining such goals.

(B) The goals in effect for each agency and the agency's performance in attaining such goals.

(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

(D) The number and the dollar value of contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals through—

(i) noncompetitive negotiation,

(ii) competition restricted to

small business concerns owned and controlled by socially and economically disadvantaged individuals,

(iii) competition restricted to small business concerns, and

(iv) unrestricted competitions, for each agency and on a Government-wide basis.

(E) The number and dollar value of subcontracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(F) The number and dollar value of prime contracts and subcontracts awarded to women-owned small business enterprises.

(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 631b(a) of this title.

(i) Small business set-asides.—Nothing in this chapter or any other provision of law precludes exclusive small business set-asides for procurement of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

(j) Small purchase procedures—Each contract for the procurement of goods and services which has an anticipated value not in excess of the small purchase threshold and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

(k) Office of Small and Disadvantaged Business Utilization; Director—There is hereby established in each Federal agency having procurement powers an office to be known as the "Office of Small and Disadvantaged Business Utilization". The management of each such office shall be vested in an officer or employee of such agency who shall—

(1) be known as the "Director of Small and Disadvantaged Business Utilization" for such agency,

(2) be appointed by the head of such agency,

(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head, except that the director for the Office of the Secretary of Defense shall be responsible only to, and report directly to, such Secretary or the Secretary's designee,

(4) be responsible for the implementation and execution of the functions and duties under this section and section 637 of this title which relate to such agency,

(5) assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such concerns from an executive agency or a contractor, in conformity with chapter 89 of Title 31, or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation,

(6) have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under this section and section 637 of this title,

(7) assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to this section and section 637 of this title, and

(8) cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection, and

(9) make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a) of this section, or section 637(a) of this title or section 2323 of Title 10. Such recommendations shall be made with due regard to the requirements of subsection (m) of this section, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.

This subsection shall not apply to the Administration.

(*l*) Breakout procurement center representatives.—

(1) The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6) of this section.

(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(C) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data;

(E) have access to procurement records and other data of the

procurement center commensurate with the level of such representative's approved security clearance classification;

(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

(3) A breakout procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the breakout procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6) of this section.

(5)(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

(i) full-time employees of the Administration; and

(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(6) For purposes of this subsection, the term "major procurement center" means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative.

(7)(A) At such times as the Administrator deems appropriate, the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is

assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) The breakout procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within sixty calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(m) Relationship to other procurement programs.—

(1) Each agency subject to the requirements of section 2323 of Title 10 shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 637(a) of this title in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 637(a) of this title.

(2) All procurement center representatives (including those referred to in subsection (k)(6) of this section), in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurement that may be used for the programs established under this section, section 637(a) of this title, and section 2323 of Title 10.

(n) Determination of labor surplus areas.—For the purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

(o) Costs of contract performance and manufacturing.—

(1) A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees that—

(A) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

(B) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(2) The Administrator may change the percentage under subparagraph (A) or (B) of paragraph (1) if the Administrator determines that such change is necessary to reflect conventional industry practices

among business concerns that are below the numerical size standard for businesses in that industry category.

(3) The Administration shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (2).

Offenses and Penalties

Sec. 645. (a) False statements; overvaluation of securities.—Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

(b) Embezzlement, etc.—Whoever being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

(c) Concealment, etc.—Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(d) Misrepresentation, etc.—

(1) Whoever misrepresents the status of any concern or person as a "small business concern" or "small business concern owned and controlled by socially and economically disadvantaged individuals", in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 638 or 644 of this title;

(B) subcontract to be awarded pursuant to section 637(a) of this title;

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 637(d) of this title; or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 637(d) of this title; for a definition of program eligibility, shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than $500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and

(D) be ineligible for participation in any program or activity conducted under the authority of this chapter or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

(e) Representations under subsection (d) to be in writing.—Any representation of the status of any concern or person as a "small business concern" or "small business concern owned and controlled by socially and economically disadvantaged individuals" in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

(f) Misrepresentation of compliance with section 636(j)(10) (I).—Whoever falsely certifies past compliance with the requirements of section 636(j)(10)(I) of this title shall be subject to the penalties prescribed in subsection (d) of this section.

* * * *

National Small Business Tree Planting Program

Sec. 651. (a) Authorization of grants and contracts with States.—The Administrator is authorized to make grants to or to enter into contracts with any State for the purpose of contracting with small businesses to plant trees on land owned or controlled by such State or local government. The Administrator shall require as a condition of any grant (or amendment or modification thereof) under this section that the applicant also contribute to the project a sum equal to at least 25 per centum of a particular project cost from sources other than the Federal Government. Such non-Federal money may include inkind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any grant be used to pay for land or land charges: *Provided,* That not less than one-half of the amounts appropriated under this section shall be allocated to each State, the Dis-

less than one-half of the amounts appropriated under this section shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum.

(b) Establishment by Administrator.—In order to accomplish the objectives of this section, the Administrator, in consultation with appropriate Federal agencies, shall be responsible for formulating a national small business tree planting program. Based on this program, a State may submit a detailed proposal for tree planting by contract.

(c) Utilization of small business concerns in implementing program.—To encourage and develop the capacity of small business concerns, to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, grantees are directed to utilize small business contractors or concerns in connection with the program established by this section, and shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the project.

(d) Cooperation of Federal agencies; technical services.—For purposes of this section, agencies of the Federal Government are hereby authorized to cooperate with all grantees and with State foresters or other appropriate officials by providing without charge, in furtherance of this program, technical services with respect to the planting and growing of such trees.

(e) Appropriations.—There are authorized to be appropriated to carry out the objectives of this section, $15,000,000 for fiscal year 1991 and $30,000,000 for each of the fiscal years 1992 through 1994, and all of such sums may remain available until expended.

(f) Rules and regulations—Notwithstanding any other law, rule, or regulation, the administration shall publish in the Federal Register proposed rules and regulations implementing this section within sixty days after November 5, 1990, and shall publish final rules and regulations within one hundred and twenty days of November 5, 1990.

(g) Definitions.—As used in this section:

(1) the term "local government" includes political subdivisions of a State such as counties, parishes, cities, towns and municipalities;

(2) the term "planting" includes watering, application of fertilizer and herbicides, pruning and shaping, and other subsequent care and maintenance for a period of three years after the trees are planted; and

(3) the term "State" includes any agency thereof.

(h) Annual report to the President and Congress.—The Administrator shall submit annually to the President and the Congress a report on activities within the scope of this section.

Watershed Protection and Flood Prevention Act

- **Act of August 4, 1954 (P.L. 83-566, 68 Stat. 666 as amended; 16 U.S.C. 1001(note), 1001-1003, 1003a, 1004–1006, 1006a–b, 1008, 1010; 33 U.S.C. 701b(note))**

Purpose

Sec. 1. Erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting, and improving the Nation's land and water resources and the quality of the environment. (16 U.S.C. 1001)

Definitions

Sec. 2. For the purposes of this Act, the following terms shall mean—

The "Secretary"—The Secretary of Agriculture of the United States. "Works of improvement"—any undertaking for—

(1) flood prevention (including structural and land-treatment measures),

(2) the conservation, development, utilization, and disposal of water, or

(3) the conservation and proper utilization of land in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than twelve thousand five hundred acre-feet of floodwater detention capacity, and more than twenty-five thousand acre-feet of total capacity. No appropriation shall be made for any plan involving an estimated Federal contribution to construction costs in excess of $5,000,000 or which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the appropriate committees of the Senate and House of Representatives: *Provided,* That in the case of any plan involving no single structure providing more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives and in the case of any plan involving any single structure of more than 4,000 acre-feet of total capacity the appropriate committees shall be the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives, respectively. Each project must contain benefits directly related to agriculture, including rural communities, that account for at least 20 percent of the total benefits of the project. A number of such subwatersheds when they are component parts of a larger watershed may be planned

together when the local sponsoring organizations so desire.

"Local organization"—any State, political subdivision thereof, soil or water conservation district, flood prevention or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement; or any irrigation or reservoir company, water users' association, or similar organization having such authority and not being operated for profit that may be approved by the Secretary; or any Indian tribe or tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), having authority under Federal, State, or Indian tribal law to carry out, maintain, and operate the works of improvement. (16 U.S.C. 1002)

Assistance to Local Organizations

Sec. 3. In order to assist local organizations in preparing and carrying out plans for works of improvement, the Secretary is authorized, upon application of local organizations if such application has been submitted to, and not disapproved within 45 days by, the State agency having supervisory responsibility over programs provided for in this Act, or by the Governor if there is no State agency having such responsibility—

(1) to conduct such investigations and surveys as may be necessary to prepare plans for works of improvement;

(2) to prepare plans and estimates required for adequate engineering evaluation;

(3) to make allocations of costs to the various purposes to show the basis of such allocations and to determine whether benefits exceed costs;

(4) to cooperate and enter into agreements with and to furnish financial and other assistance to local organizations: *Provided,* That, for the land-treatment measures, the Federal assistance shall not exceed the rate of assistance for similar practices under existing national programs;

(5) to obtain the cooperation and assistance of other Federal agencies in carrying out the purposes of this section;

(6) to enter into agreements with landowners, operators, and occupiers, individually or collectively, based on conservation plans of such landowners, operators, and occupiers which are developed in cooperation with and approved by the soil and water conservation district in which the land described in the agreement is situated, to be carried out on such land during a period of not to exceed ten years, providing for changes in cropping systems and land uses and for the installation of soil and water conservation practices and measures needed to conserve and develop the soil, water, woodland, wildlife, energy, and recreation resources of and enhance the water quality of lands within the area included in plans for works of improvement, as provided for in such plans, including watershed or subwatershed work plans in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented. Applications for assistance in developing such conservation plans shall be made in writing to the soil and water conservation district involved, and the proposed agreement shall be reviewed by such district. In return for such agreements by landowners, operators, and occupiers the Secretary shall agree to share the costs of carrying out those practices and

measures set forth in the agreement for which he determines that cost sharing is appropriate and in the public interest. The portion of such costs, including labor, to be shared shall be that part which the Secretary determines is appropriate and in the public interest for the carrying out the practices and measures set forth in the agreement, except that the Federal assistance shall not exceed the rate of assistance for similar practices and measures under existing national programs. The Secretary may terminate any agreement with a landowner, operator, or occupier by mutual agreement if the Secretary determines that such termination would be in the public interest, and may agree to such modifications of agreements, previously entered into hereunder, as he deems desirable to carry out the purposes of this paragraph or to facilitate the practical administration of the agreements provided for herein. Notwithstanding any other provision of law, the Secretary, to the extent he deems it desirable to carry out the purposes of this paragraph, may provide in any agreement hereunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of any crop; or (2) surrender of any such history and allotments. (16 U.S.C. 1003)

Cost Share Assistance

Sec. 3A. (a) Easements.—The Secretary may provide cost share assistance to project sponsors to enable such sponsors to acquire perpetual wetland or floodplain conservation easements to perpetuate, restore and enhance the natural capability of wetlands and floodplains to retain excessive floodwaters, improve water quality and quantity, and provide habitat for fish and wildlife.

(b) Amount.—The Secretary shall require that project sponsors of watershed projects provide up to 50 percent of the cost of acquiring easements under subsection (a). (16 U.S.C. 1003a)

Conditions of Assistance

Sec. 4. The Secretary shall require as a condition to providing Federal assistance for the installation of works of improvement that local organizations shall—

(1) acquire, or with respect to interests in land to be acquired by condemnation provide assurances satisfactory to the Secretary that they will acquire, without cost to the Federal Government from funds appropriated for the purposes of this act, such land, easements, or rights--of-way as will be needed in connection with works of improvement installed with Federal assistance: *Provided,* That when a local organization agrees to operate and maintain any reservoir or other area included in a plan for public fish and wildlife or recreational development, the Secretary shall be authorized to bear not to exceed one-half of the costs of (a) the land, easements, or rights-of-way acquired or to be acquired by the local organization for such reservoir or other area, and (b) minimum basic facilities needed for public health and safety, access to, and use of such reservoir or other area for such purposes: *Provided further,* That the Secretary shall be authorized to participate in recreational development in any watershed project only to the extent that the need therefor is

demonstrated in accordance with standards established by him, taking into account the anticipated man-days of use of the projected recreational development and giving consideration to the availability within the region of existing water-based outdoor recreational developments: *Provided further,* That the Secretary shall be authorized to participate in not more than one recreational development in a watershed project containing less than seventy-five thousand acres, or two such developments in a project containing between seventy-five thousand one hundred and fifty thousand acres, or three such developments in projects exceeding one hundred and fifty thousand acres: *Provided further,* That when the Secretary and a local organization have agreed that the immediate acquisition by the local organization of land, easements, or rights-of-way is advisable for the preservation of site for works of improvement included in a plan from encroachment by residential, commercial, industrial, or other development, the Secretary shall be authorized to advance to the local organization from funds appropriated for construction of works of improvement the amounts required for the acquisition of such land, easements or rights-of-way; and, except where such costs are to be borne by the Secretary, such advance shall be repaid by the local organization, with interest, prior to construction of the works of improvement, for credit to such construction funds: *Provided further,* That the Secretary shall be authorized to bear an amount not to exceed one-half of the costs of the land, easements, or rights-of-way acquired or to be acquired by the local organization for mitigation of fish and wildlife habitat losses, and that such acquisition is not limited to the confines of the watershed project boundaries;

(2) assume (A) such proportionate share, as is determined by the Secretary to be equitable in consideration of national needs and assistance authorized for similar purposes under other Federal programs, of the costs of installing any works of improvement, involving Federal assistance (excluding engineering costs) which is applicable to the agricultural phases of the conservation, development, utilization, and disposal of water or for fish and wildlife development, recreational development, ground water recharge, water quality management, or the conservation and proper utilization of land: *Provided,* That works of improvement for water quality management shall consist primarily of water storage capacity in reservoirs for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source, and shall be consistent with standards and regulations adopted by the Water Resources Council on Federal cost sharing for water quality management, and (B) all of the cost of installing any portion of such works applicable to other purposes except that any part of the construction (including engineering costs) applicable to flood prevention and features relating thereto shall be borne by the Federal Government and paid for by the Secretary out of funds appropriated for the purposes of this Act: *Provided,* That in addition to and without limitation on the authority of the Secretary to make loans or advancements under section 8, the Secretary may pay for any storage of water for present or anticipated future demands or needs for municipal or industrial water

included in any reservoir structure constructed or modified under the provisions of this Act as hereinafter provided: *Provided further,* That the cost of water storage to meet future demands may not exceed 30 per centum of the total estimated cost of such reservoir structure and the local organization shall give reasonable assurances, and there is evidence, that such demands for the use of such storage will be made within a period of time which will permit repayment within the life of the reservoir structure of the cost of such storage: *Provided further,* That the Secretary shall determine prior to initiation of construction or modification of any reservoir structure including such water supply storage that there are adequate assurances by the local organization or by an agency of the State having authority to give such assurances, that the Secretary will be reimbursed the cost of water supply storage for anticipated future demands, and that the local organization will pay not less than 50 per centum of the cost of storage for present water supply demands: *And provided further,* That the cost to be borne by the local organization for anticipated future demands may be repaid within the life of the reservoir structure but in no event to exceed fifty years after the reservoir structure is first used for the storage of water for anticipated future water supply demands, except that (1) no reimbursement of the cost of such water supply storage for anticipated future demands need be made until such supply is first used, and (2) no interest shall be charged on the cost of such water-supply storage for anticipated future demands until such supply is first used, but in no case shall the interest-free period exceed ten years. The interest rate used for purposes of computing the interest on the unpaid balance shall be determined in accordance with the provisions of section 8.

(3) make arrangements satisfactory to the Secretary for defraying costs of operating and maintaining such works of improvement, in accordance with regulations presented by the Secretary of Agriculture.

(4) acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to State law, as may be needed in the installation and operation of the work of improvement.

(5) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than 50 per centum of the lands situated in the drainage area above each retention reservoir to be installed with Federal assistance; and

(6) submit a plan of repayment satisfactory to the Secretary for any loan or advancement made under the provisions of section 8. (16 U.S.C. 1004)

Works of Improvement

Sec. 5. (1) Engineering Services.—At such time as the Secretary and the interested local organization have agreed on a plan for works of improvement, and the Secretary has determined that the benefits exceed the costs, and the local organization has met the requirements for participation in carrying out the works of improvement as set forth in section 4, the local organization may secure engineering and other services, including the design, preparation of contracts and specifications, awarding of contracts, and supervision of construction, in connection with such works of improvement, by retaining or employing a professional engineer or engineers satisfactory to the

Secretary or may request the Secretary to provide such services: *Provided,* That if the local organization elects to employ a professional engineer or engineers, the Secretary shall reimburse the local organization for the costs of such engineering and other services secured by the local organization as are properly chargeable to such works of improvement in an amount not to exceed the amount agreed upon in the plan for works of improvement or any modification thereof: *Provided further,* That the Secretary may advance such amounts as may be necessary to pay for such services, but such advances with respect to any works of improvement shall not exceed 5 per centum of the estimated installation cost of such works.

(2) Federal Construction.—Except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any contract for the construction of any structure: *Provided,* That if requested to do so by the local organization, the Secretary may enter into contracts for the construction of structures.

(3) Transmission of certain plans to Congress.—Whenever the estimated Federal contribution to the construction cost of works of improvement in the plan for any watershed or subwatershed area shall exceed $5,000,000, or the works of improvement include any structure having a total capacity in excess of twenty-five hundred acre-feet, the Secretary shall transmit a copy of the plan and the justification therefor to the Congress through the President.

(4) Transmission of certain plans and recommendations to Congress.—Any plan for works of improvement involving an estimated Federal contribution to construction costs in excess of $5,000,000 or including any structure having acre-feet (a) which includes works of improvement for reclamation or irrigation, or which affects public or other lands or wildlife under the jurisdiction of the Secretary of the Interior, (b) which includes Federal assistance for floodwater detention structures, (c) which includes features which may affect the public health, or (d) which includes measures for control or abatement of water pollution, shall be submitted to the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, or the Administrator of the Environmental Protection Agency, respectively, for his views and recommendations at least thirty days prior to transmission of the plan to the Congress through the President. The views and recommendations of the Secretary of the Interior, the Secretary of the Army, the Secretary of Health, Education, and Welfare, and the Administrator of the Environmental Protection Agency, if received by the Secretary prior to the expiration of the above thirty-day period, shall accompany the plan transmitted by the Secretary to the Congress through the President.

(5) Rules and regulations.—Prior to any Federal participation in the works of improvement under this Act, the President shall issue such rules and regulations as he deems necessary or desirable to carry out the purposes of this Act, and to assure the coordination of the work authorized under this Act and related work of other agencies, including the Department of the Interior and the Department of the Army. (16 U.S.C. 1005)

Cooperation with Other Agencies

Sec. 6. The Secretary is authorized in cooperation with other Federal and with States and local

agencies to make investigations and surveys of the watersheds of rivers and other waterways as a basis for the development of coordinated programs. In areas where the programs of the Secretary of Agriculture may affect public or other lands under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture in the planning and development of works or programs for such lands. (16 U.S.C. 1006)

Repeal of Previous Authorities

Sec. 7. The provisions of the Act of June 22, 1936 (49 Stat. 1570), as amended and supplemented, conferring authority upon the Department of Agriculture under the direction of the Secretary of Agriculture to make preliminary examinations and surveys to prosecute works of improvement for runoff and waterflow retardation and soil erosion prevention on the watersheds of rivers and other waterways are hereby repealed: *Provided,* That (a) the authority of that Department of Agriculture, under the direction of the Secretary, to prosecute the works of improvement for runoff and waterflow retardation and soil erosion prevention authorized to be carried out by the Department by the Act of December 22, 1944 (58 Stat. 887), as amended, and (b) the authority of the Secretary of Agriculture to undertake emergency measures for runoff retardation and soil erosion prevention authorized to be carried out by section 7 of the Act of June 28, 1938 (52 Stat. 1215), as amended by section 216 of the Act of May 17, 1950 (64 Stat. 163), shall not be affected by the provisions of this section: *Provided further,* That in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, the Secretary of Agriculture is authorized to prosecute additional works of improvement for the conservation, development, utilization, and disposal of water in accordance with the provisions of section 4 of this Act or any amendments hereafter made thereto. (33 U.S.C. 701b(note))

Watershed Loan Authority

Sec. 8. The Secretary is authorized to make loans or advancements (a) to local organizations to finance the local share of costs of carrying out works of improvement provided for in this Act, and (b) to State and local agencies to finance the local share of costs of carrying out works of improvement (as defined in section 2 of this Act) in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented: *Provided,* That the works of improvement in connection with said eleven watershed improvement programs shall be integral parts of watershed or subwatershed work plans agreed upon by the Secretary of Agriculture and the concerned State and local agencies. Such loans or advancements shall be made under contracts or agreements which will provide, under such terms and conditions as the Secretary deems appropriate, for the repayment thereof in not more than fifty years from the date when the principal benefits of the works of improvement first become available, with interest at the average rate as determined by the Secretary of the Treasury, payable by the Treasury upon its marketable public obligations outstanding at the beginning of the fiscal year in which the loan or

advancement is made, which are neither due nor callable for redemption for fifteen years from date of issue. With respect to any single plan for works of improvement, the amount of any such loan or advancement shall not exceed $5,000,000. (16 U.S.C. 1006a)

Extent of Authority

Sec. 9. The provisions of this Act shall be applicable to Hawaii, Alaska, Puerto Rico, and the Virgin Islands. (16 U.S.C. 1006b)

Authorization of Funds

Sec. 10. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, such sums to remain available until expended. No appropriation hereafter available for assisting local organizations in preparing and carrying out plans for works of improvement under the provisions of section 3 or clause (a) of section 8 of this Act shall be available for any works of improvement pursuant to this Act or otherwise in connection with the eleven watershed improvement programs authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, or for making loans or advancements to State and local agencies as authorized by section 13 of the Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, or for making loans or advancements to State and local agencies as authorized by clause (b) of section 8. (16 U.S.C. 1007)

Citation

Sec. 11. This Act may be cited as the "Watershed Protection and Flood Prevention Act". (16 U.S.C. 1001(note))

Conservation and Development of Wildlife Resources

Sec. 12. When the Secretary approves the furnishing of assistance to a local organization in preparing a plan for works of improvement as provided for in section 3—

(1) The Secretary shall so notify the Secretary of the Interior in order that the latter, as he desires, may make surveys and investigations and prepare a report with recommendations concerning the conservation and development of wildlife resources and participate, under arrangements satisfactory to the Secretary of Agriculture, in the preparation of a plan for works of improvement that is acceptable to the local organization and the Secretary of Agriculture.

(2) Full consideration shall be given to the recommendations contained in any such report of the Secretary of the Interior as he may submit to the Secretary of Agriculture prior to the time the local organization and the Secretary of Agriculture have agreed on a plan for works of improvement. The plan shall include such of the technically and economically feasible works of improvement for wildlife purposes recommended in the report by the Secretary of the Interior as are acceptable to, and agreed to, by the local organization and the Secretary of Agriculture, and such report of the Secretary of the Interior shall, if requested by the Secretary of the Interior, accompany the plan for works of improvement when it is submitted to the Secretary of Agriculture for approval or transmitted to the Congress through the President.

(3) The cost of making surveys and investigations and of preparing reports concerning the conservation and development of wildlife resources shall be borne by the

Secretary of the Interior out of funds appropriated to his Department. (16 U.S.C. 1008)

Data

Sec. 13. The Secretary shall collect and maintain data on a national and State by State basis concerning—

(1) expenditures for the individual flood control and conservation measures for which assistance is provided under this Act; and

(2) the expected flood control or environmental (including soil erosion) benefits that will result from the implementation of such measures. (16 U.S.C. 1010)

Permits for Public Buildings and Other Public Works

- **Act of September 3, 1954 (P.L. 83-771, 68 Stat, 1146; 43 U.S.C. 931c, 931d)**

Note—This Act is the basic authority for authorizing the use of National Forest lands by State and local governments for buildings and other facilities. It does not include rights-of-way which are now authorized by FLPMA (P.L. 94-579).

Sec. 1. That the head of any department or agency of the Government of the United States having jurisdiction over public lands and national forests, except national parks and monuments, of the United States is hereby authorized to grant permits, leases, or easements, in return for the payment of a price representing the fair market value of such permit, lease, or easement, to be fixed by such head of such department or agency through appraisal, for a period not to exceed thirty years from the date of any such permit, lease, or easement to States, counties, cities, towns, townships, municipal corporations, or other public agencies for the purpose of constructing and maintaining on such lands public buildings or other public works. In the event such lands cease to be used for the purpose for which such permit, lease, or easement was granted, the same shall thereupon terminate. (43 U.S.C. 931c)

Sec. 2. The authority conferred by Sec. 1 of this Act shall be in addition to, and not in derogation of any authority heretofore conferred upon the head of any department or agency of the Government of the United States to grant permits, leases, easements, or rights-of-way. (43 U.S.C. 931d)

Clean Air Act

- **Act of July 14, 1955 (P.L. 84-159, 69 Stat. 322, as amended; 42 U.S.C. 7401, 7403, 7410, 7416, 7418, 7470, 7472, 7474, 7475, 7491, 7506, 7602)**

Note—Major amendments to the Clean Air Act were made by P.L. 88-206 and P.L. 95-95. Amendments are reflected in sections below.

TITLE I—PROGRAMS AND ACTIVITIES

PART A — AIR QUALITY AND EMISSION LIMITATIONS

Findings and Purposes

Sec. 101. (a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments; and

(4) that federal financial assistance and leadership is essential for the development of cooperative federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this title are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention—A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention. (42 U.S.C. 7401)

* * * *

Research, Investigation, Training, and Other Activities

Sec. 103. (a) Research and development program for prevention

and control of air pollution.—The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research; and

(5) conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.

(b) Authorized activities of Administrator in establishing research and development program.—In carrying out the provisions of the preceding subsection the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41;

(5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof;

(7) develop effective and practical processes, methods, and prototype devices for the prevention of control of air pollution; and

(8) construct facilities, provide equipment, and employ staff as necessary to carry out this chapter.

In carrying out the provisions of subsection (a) of this section, the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5) of this section. Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge. (42 U.S.C. 7403)

* * * *

State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards

Sec. 110. (a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems.—

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph. (42 U.S.C. 7410)

* * * *

Retention of State Authority

Sec. 116. Except as otherwise provided in sections 1857c-10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation

under such plan or section. (42 U.S.C. 7416)

Control of Pollution from Federal Facilities

Sec. 118. (a) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable. (42 U.S.C. 7418)

* * * *

PART C — PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Subpart 1

Purposes

Sec. 160. The purposes of this part are as follows—

(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all national ambient air quality standards;

(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;

(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

(5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for

informed public participation in the decisionmaking process. (42 U.S.C. 7470)

* * * *

Initial Classifications

Sec. 162. (a) Upon the enactment of this part, all—

(1) international parks,

(2) national wilderness areas which exceed 5,000 acres in size,

(3) national memorial parks which exceed 5,000 acres in size, and

(4) national parks which exceed six thousand acres in size, and which are in existence on August 7, 1977 shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977 shall be class I areas which may be redesignated as provided in this part. The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(b) All areas in such State designated pursuant to section 107(d) of this Act as attainment or unclassifiable which are not established as class I under subsection (a) of this section shall be class II areas unless redesignated under section 164. (42 U.S.C. 7472)

* * * *

Area Redesignation

Sec. 164. (a) Except as otherwise provided under subsection (c), a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II—

(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, and national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and

(2) a national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

The extent of the areas referred to in paragraph (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990. Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 7472(a) of this title) may be redesignated by the State as class III if—

(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

(B) such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

(C) such redesignation otherwise meets the requirements of this part. Subparagraph (A) of this

paragraph shall not apply to area redesignations by Indian tribes.

(b)(1)(A) Prior to redesignation of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any federal lands, the State shall provide written notice to the appropriate federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such redesignation and such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the federal land manager). (42 U.S.C. 7474)

* * * *

Preconstruction Requirements

Sec. 165. (a) No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—

* * * *

(d)(1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

(2)(A) The Administrator shall provide notice of the permit application to the federal land manager and the federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The federal land manager and the federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C)(i) In any case where the federal official charged with direct responsibility for management of any lands within a class I area or the federal land manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility

may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

(ii) In any case where the federal land manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the federal land manager, and the federal land manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such land (including visibility) notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the State may issue a permit.

* * * *

(D)(i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C)(iii) demonstrates to the satisfaction of the governor, after notice and public hearing, and the governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

(ii) In any case in which the governor recommends a variance under this subparagraph in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President. The President may approve the governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the governor and the federal land manager. (42 U.S.C. 7475)

* * * *

Subpart 2

Visibility Protection For Federal Class I Areas

Sec. 169A. (a)(1) Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I federal areas which impairment results from manmade air pollution.

(2) Not later than six months after August 7, 1977, the Secretary of the Interior in consultation with other federal land managers shall review all mandatory class I federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after August 7, 1977, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I federal areas in which he determines visibility is an important value.

* * * *

(c)(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A), upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I federal area.

(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a)(2) that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate federal land manager or managers with the Administrator's determination under this subsection.

(d) Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 110(C)) shall consult in person with the appropriate federal land manager or managers and shall include a summary of the conclusions and recommendations of the federal land managers in the notice to the public.

(e) In promulgating regulations under this section, the Administrator shall not require the use of any automatic buffer zone or zones.

* * * *

(g) For the purposes of this section—

* * * *

(5) the term "mandatory class I federal areas" means federal areas which may not be designated as other than class I under this part;

(6) the terms "visibility impairment" and "impairment of visibility" shall include reduction in visual range and atmosphere discoloration; (42 U.S.C. 7491)

* * * *

PART D — PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

* * * *

Limitations on Certain Federal Assistance

Note—Sec. 176 (a) and (b) were repealed by P.L. 101-549, Title I, Section 110(4).

Sec. 176. (c) No department, agency, or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110. The assurance of conformity to such plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. (42 U.S.C. 7506)

* * * *

TITLE III — GENERAL

* * * *

Definitions

Sec. 302. When used in this Act—

* * * *

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands. (42 U.S.C. 7602)

Multiple Use Mining Act of 1955

- **Act of July 23, 1955 (P.L. 84-167, 69 Stat. 368, as amended; 30 U.S.C. 611-615)**

Note.—Sections one and two amended the Materials Act of 1947, P.L. 80-291. See Section 1 and 3 of that act for those provisions.

Common Varieties of Sand, Stone, Gravel, Pumice, Pumicite, or Cinders, and Petrified Wood

Sec. 3. No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided*, however, That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this subchapter and sections 601 and 603 of this title does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not inlude so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more. "Petrified wood" as used in this subchapter and sections 601 and 603 of this title means agatized, opalized, petrified, or silicified wood, or any material formed by the replacement of wood by silica or other matter.
(30 U.S.C. 611)

Unpatented Mining Claims

Sec. 4. (a) Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonable incident thereto.

(b) Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided*, however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto—*Provided further*, That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to

the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided further*, That nothing in this subchapter and sections 601 and 603 of this title shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

(c) Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under subsection (b) of this section. Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management. (30 U.S.C. 612)

Procedure for Determining Title Uncertainties

Sec. 5. (a) The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof on the date of such examination, setting forth such fact, or, if any person or persons were so found to be actual possession or engaged in such working on the date of such examination, setting forth the name and address of each suchperson, unless affiant shall have been unable through reasonable

inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's, or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

Thereupon the Secretary of the Interior, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated.

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—

(1) the date of location;

(2) the book and page of recordation of the notice or certificate of location;

(3) the section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(4) whether such claimant is a locator or purchaser under such location; and

(5) the name and address of such claimant and names and addresses so far as know to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (iii) to preclude hereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claimant of

any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims.

If such notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks, or, if in a weekly paper, in nine consecutive issues, or if in a semiweekly or triweekly paper, in the issue of the same day of each week for nine consecutive weeks.

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication—

(1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail or by certified mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section, and shall cause a copy of such notice to be mailed by registered mail or by certified mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

(b) If any claimant under any unpatented mining claim heretofore located which embraces any of the lands described in any notice published in accordance with the provisions of subsection (a) of this section, shall fail to file a verified statement, as provided in such subsection (a), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in subsection (e) of this section, (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims.

(c) If any verified statement shall be filed by a mining claimant as provided in subsection (a) of this section, then the Secretary of Interior shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to, or interest in or under such mining claim, which the mining claimant may assert contrary to or in conflict with the limitations and restrictions specified in section 612 of this title as to hereafter located unpatented mining claims, which place of hearing shall be in the county where the lands in question or parts thereof are located, unless

the mining claimant agrees otherwise. Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any singlehearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearing shall be set as shall be necessary to comply with this provision. The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals shall follow the then established general procedures and rules of practice of the Department of the Interior in respect to contests or protests affecting public lands of the United States. If, pursuant to such a hearing the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's so asserted right or interest under the mining claim, then no subsequent proceedings under this section shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by that particular published notice.

(d) Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as provided in subsection (a) of this section, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts right—

(1) the date of location;

(2) the book and page of the recordation of the notice or certificate of location; and

(3) the section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

Other than in respect to the requirements of subsection (a) of this section as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

(e) If any department or agency requesting publication shall fail to comply with the requirements of subsection (a) of this section as to the personal delivery or mailing of a copy of notice to any person, the

publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice, shall in no manner affect, diminish, prejudice or bar any rights of that person. (30 U.S.C. 613)

Waiver of Rights

Sec 6. The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 612 of this title as to hereafter located unpatented mining claims. The execution and acknowledgement of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 612 of this title in all respects as if said mining claim had been located after July 23, 1955, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof. (30 U.S.C. 614)

Limitation of Existing Rights

Sec. 7. Nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 613 of this title, or as a result of a waiver and relinquishment pursuant to section 614 of this title; and nothing in this subchapter and sections 601 and 603 of this title shall be construed in any manner to authorized inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law. (30 U.S.C. 615)

Mining Claims Rights Restoration Act of 1955

- **Act of August 11, 1955 (P.L. 84-359, Ch. 797, 69 Stat. 681; 30 U.S.C. 621)**

Sec. 1. That this Act may be cited as the "Mining Claims Rights Restoration Act of 1955."

Conditions of Entry

Sec. 2. (a) All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: *Provided,* That all power rights to such lands shall be retained by the United States: *Provided further,* That locations made under this Act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948, Public Law 477 (Eightieth Congress, second session): *And Provided further,* That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such pro-spective licensee more than once.

Note—Transfer of functions: The functions of the Federal Power Commission and of the members, officers, and components were transferred to and vested in, . . . the Secretary of Energy . . . as part of the creation of the Department of Energy by P.L. 95-91, August 4, 1977, 91 Stat. 565.

(b) Placer claims.—The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act, [i.e., 30 U.S.C. 623]. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail or certified mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the lands included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in

which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed in compliance with the United States mining laws.

The Secretary shall establish such rules and regulations as he deems desirable concerning bonds and deposits with respect to the restoration of lands to their condition prior to placer mining operations. Moneys received from any bond or deposit shall be used for the restoration of the surface of the claim involved, and any money received in excess of the amount needed for the restoration of the surface of that claim shall be refunded.

(c) Validity of withdrawals unaffected.—Nothing in this Act shall affect the validity of withdrawals or reservations for purposes other than power development. (30 U.S.C. 621)

Note—For details of other sections of the Mining Claims Rights Restoration Act see 30 U.S.C. 622-625.

Interchange With Department of Defense

- **Act of July 26, 1956 (P.L. 84-804, 70 Stat. 656, as amended; 16 U.S.C. 505a, 505b)**

Interchange of Lands

Sec. 1. The Secretary of Agriculture with respect to National Forest System lands and the Secretary of a military department with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a unit of the National Forest System are authorized, subject to any applicable provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) to interchange such lands, or any part thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and will provide maximum use thereof for authorized purposes: *Provided,* That no such interchange of lands shall become effective until forty-five days (counting only days occurring during any regular or special session of the Congress) after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. (16 U.S.C. 505a)

Laws Applicable

Sec. 2. Any National Forest System lands which are transferred to a military department in accordance with this Act shall be thereafter subject only to laws applicable to other lands within the military installation or other public works project for which such lands are required and any lands which are transferred to the Department of Agriculture in accordance with this Act shall become subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended. Lands interchanged under the authority of this Act shall be deemed to include interests in lands. (16 U.S.C. 505b)

Department of Agriculture Organic Act of 1956

- **Act of August 3, 1956 (P.L. 84-979, Ch. 950, 70 Stat. 1032; 7 U.S.C. 428a, 2228, 2233; 16 U.S.C. 579b)**

* * * *

Expenditures for Advisory Committees

Sec. 4. Funds available for carrying out the activities of the Department of Agriculture shall be available for expenses of advisory committees, including travel expenses in accordance with the provisions of section 5703 of Title 5 of the United States Code. (7 U.S.C. 2233)

Employee Subsistence

Sec. 5. The Department of Agriculture is authorized to furnish subsistence to employees without consideration as, or deductions from, the compensation of such employees where warranted by emergency condition connected with the work under such regulations as the Secretary of Agriculture may prescribe. (7 U.S.C. 2228)

* * * *

Acquisition of Land; Options

Sec. 11. (a) The Department of Agriculture is authorized to acquire land, or interest therein, by purchase, exchange or otherwise, as may be necessary to carry out its authorized work: *Provided,* That no acquisition shall be made under this authority unless provision is made therefor in the applicable appropriation or other law.

(b) Appropriations for the Department of Agriculture which are available for the purchase of land may be expended for options to purchase land: *Provided,* That not to exceed $1 may be expended for each option to purchase any particular tract or tracts of land unless otherwise provided in appropriation or other law. (7 U.S.C. 428a)

* * * *

Working Capital Fund

Sec. 13. There is established a working capital fund which shall be available without fiscal year limitation for expenses necessary, including the purchase or construction of buildings and improvements within the limitations thereon set forth in the appropriations for the Forest Service, for furnishing supply and equipment services in support of programs of the Forest Service. The Secretary of Agriculture is authorized to transfer to the fund, without reimbursement, and to capitalize in the fund at fair and reasonable values, such receivables, inventories, equipment, and other assets as he may determine, and assume the liabilities in connection with such assets: *Provided,* That the fund shall be credited with advance payments in connection with firm orders and reimbursements from appropriations and funds of the Forest Service, other departmental and Federal agencies, and from other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities and service. (16 U.S.C. 579b)

Fish and Wildlife Act of 1956

- **Act of August 8, 1956 (P.L. 84-1024, Ch. 1036, 70 Stat 1119, 16 U.S.C. 742a, 742d, 742e, 742i, 742j)**

Declaration of policy

Sec. 2. The Congress declares that the fish, shellfish, and wildlife resources of the Nation make a material contribution to our national economy and food supply, as well as a material contribution to the health, recreation, and well-being of our citizens; that such resources are a living renewable form of national wealth that is capable of being maintained and greatly increased with proper management, but equally capable of destruction if neglected or unwisely exploited; that such resources afford outdoor recreation throughout the Nation and provide employment, directly or indirectly, to a substantial number of citizens; that the fishing industries strengthen the defense of the United States through the provision of a trained seafaring citizenry and action-ready fleets of seaworthy vessels; that the training and sport afforded by fish and wildlife resources strengthen the national defense by contributing to the general health and physical fitness of millions of citizens; and that properly developed, such fish and wildlife resources are capable of steadily increasing these valuable contributions to the life of the Nation.

The Congress further declares that the fishing industry, in its several branches, can prosper and thus fulfill its proper function in national life only if certain fundamental needs are satisfied by means that are consistent with the public interest and in accord with constitutional functions of governments. Among these needs are—

(1) Freedom of enterprise.—freedom to develop new areas, methods, products, and markets in accordance with sound economic principles, as well as freedom from unnecessary administrative or legal restrictions that unreasonably conflict with or ignore economic needs;

(2) Protection of opportunity.—maintenance of an economic atmosphere in which domestic production and processing can prosper; protection from subsidized competing products; protection of opportunity to fish on the high seas in accordance with international law;

(3) Assistance.—assistance consistent with that provided by the Government for industry generally, such as is involved in promoting good industrial relations, fair trade standards, harmonious labor relations, better health standards and sanitation; and including, but not limited to—

(a) services to provide current information on production and trade, market promotion and development, and an extension service,

(b) research services for economic and technologic development and resource conservation, and

(c) resource management to assure the maximum sustainable production for the fisheries.

The Congress further declares that the provisions of this Act are necessary in order to accomplish the objective of proper resource development, and that this Act shall be administered with due regard to the inherent right of every citizen and resident of the United States to engage in fishing for his own pleasure, enjoyment, and betterment, and

with the intent of maintaining and increasing the public opportunities for recreational use of our fish and wildlife resources; and stimulating the development of a strong, prosperous, and thriving fishery and fish processing industry. (16 U.S.C. 742a)

* * * *

Investigations, Information, Reports

Sec. 5. (a) The Secretary shall conduct continuing investigations, prepare and disseminate information, and make periodical reports to the public, to the President, and to Congress, with respect to the following matters:

(1) The production and flow to market of fish and fishery products domestically produced, and also those produced by foreign producers which affect the domestic fisheries;

(2) The availability and abundance and the biological requirements of the fish and wildlife resources;

(3) The competitive economic position of the various fish and fishery products with respect to each other, and with respect to competitive domestic and foreign-produced commodities;

(4) The collection and dissemination of statistics on commercial and sport fishing;

(5) The collection and dissemination of statistics on the nature and availability of wildlife, progress in acquisition of additional refuges and measures being taken to foster a coordinated program to encourage and develop wildlife values:

(6) The improvement of production and marketing practices in regard to commercial species and the conduct of educational and extension services relative to commercial and sport fishing, and wildlife matters;

(7) Any other matters which in the judgment of the Secretary are of public interest in connection with any phases of fish and wildlife operations. (16 U.S.C. 742d)

* * * *

Transfer of Functions to Secretary

Sec. 6. (a) Functions of Secretaries of Agriculture, Commerce, etc.—There shall be transferred to the Secretary all functions of the Secretary of Agriculture, the Secretary of Commerce, and the head of any other department or agency, as determined by the Director of the Bureau of the Budget to relate primarily to the development, advancement, management, conservation, and protection of commercial fisheries; but nothing in this section shall be construed to modify the authority of the Department of State or the Secretary of State to negotiate or enter into any international agreements, or conventions with respect to the development, management, or protection of any fisheries and wildlife resources or with respect to international commissions operating under conventions to which the United States is a party.

(b) Transfer of personnel, property, records, etc.—There shall be transferred to the Department of the Interior so much of the personnel, property, facilities, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) as the Director of the Bureau of the Budget determines to be necessary in connection with the exercise of any functions transferred to the secretary pursuant to subsection (a) of this section.

(c) Cooperation of other departments and agencies.—The Secretary may request and secure the advice or assistance of any department or agency of the Government in

carrying out the provisions of this Act, and any such department or agency which furnishes advice or assistance to the Secretary may expend its own funds for such purposes, with or without reimbursement from the Secretary as may be agreed upon between the Secretary and the department or agency. (16 U.S.C. 742e)

* * * *

Rights of States

Sec. 10. The rights of States.—Nothing in this Act shall be construed (1) to interfere in any manner with rights of any State under the Submerged Lands Act (Public Law 31, Eighty-third Congress) or otherwise provided by law, or to supersede any regulatory authority over fisheries exercised by the States either individually or under interstate compacts; or (2) to interfere in any manner with the authority exercised by any International Commission established under any treaty or convention to which the United States is a party. (16 U.S.C. 742i)

Authorization for Appropriation

Sec. 11. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. (16 U.S.C. 742j)

* * * *

Forest Service Omnibus Act of 1958

- **Act of June 20, 1958 (P.L. 85-464, 72 Stat. 216; 16 U.S.C. 502, 554b, 556b, 556c, 565b, 579c)**

Care of Forest Service Owned Pack Stock by Others

Sec. 1. The Act of March 4, 1913, as amended (16 U.S.C. 502), is hereby amended by substituting for the last proviso of subsection (c) the following: (see P.L. 62-430)

Claims for Lost Personal Effects in Fire or Flood

Sec. 2. Funds available to the Forest Service may be used in amounts not exceeding $100 in any single claim, for reimbursing employees of the Forest Service for loss of or damage to clothing and other personal effects resulting from fires, floods, or other casualties at or near the place in which such property is temporarily stored during services of the employees in connection with such casualties. (16 U.S.C. 556c)

Transporting Employee Automobiles

Sec. 3. Funds available to the Forest Service may be used, in accordance with regulations prescribed by the Secretary of Agriculture (hereinafter referred to in this Act as Secretary) for expenses of transporting automobiles of employees of that Service between points in Alaska in connection with transfers of official stations of such employees to meet the needs of the Service. (16 U.S.C. 556b)

Medical Services for Forest Service Employees

Sec. 4. Section 202 of the Act of September 21, 1944 (16 U.S.C. 554b), is hereby amended to read as follows: (see P.L. 78-425)

Transfer of Fire Control Structures

Sec. 5. The Secretary is authorized, subject to such conditions as he may prescribe, to transfer, without reimbursement or at such prices and upon such terms as he may impose, to States and political subdivisions or agencies thereof fire lookout towers and other structures or improvements used by the Forest Service for fire prevention or suppression purposes, and the land used in connection therewith if such land is outside National Forest boundaries, when they are no longer needed by the Forest Service for such purposes but are of value to the State or political subdivision or agency thereof in its fire protection system: *Provided,* That if any property so transferred is not put to use for the purpose for which it was transferred within two years from the date of transfer, or if, within fifteen years from the date of transfer, any such property should cease to be used for the purpose for which it was transferred for a period of two years, title thereto shall revert to and immediately revest in the United States. (16 U.S.C. 565b)

Telephone Service to Cooperators

Sec. 6. Section 10 of the Act of April 24, 1950 (64 Stat. 82), is hereby amended to read as follows— (see P.L. 81-478).

Receipts From Forfeitures

Sec. 7. Any moneys received by the United States with respect to lands under the administration of the Forest Service (1) as a result of the forfeiture of a bond or deposit by a permittee or timber purchaser for failure to complete performance of improvement, protection, or rehabilitation work required under the permit or timber sale contract or (2) as a result of a judgment, compromise, or settlement of any claim, involving present or potential damage to lands or improvements, shall be covered into the Treasury and are hereby appropriated and made available until expended to cover the cost to the United States of any improvement, protection, or rehabilitation work on lands under the administration of the Forest Service rendered necessary by the action which led to the forfeiture, judgment, compromise, or settlement: *Provided,* That any portion of the moneys so received in excess of the amount expended in performing the work necessitated by the action which led to their receipt shall be transferred to miscellaneous receipts. (16 U.S.C. 579c)

* * * *

Townsite Act

- **Act of July 31, 1958 (P.L. 85-569, 72 Stat. 438, as amended; 16 U.S.C. 478a)**

When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: *Provided, however,* That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands. (16 U.S.C. 478a)

Forest Highways

- **Act of August 27, 1958 (P.L. 85-767, 72 Stat. 885; 23 U.S.C. 101, 135, 201-205, 217)**

Note—Section numbers refer to U.S. code sections.

Note—The laws relating to highways were revised, codified and reenacted as Title 23, United States Code, "Highways", by the Act of August 27, 1958 (72 Stat. 885). Subsequent amendments, including those found in the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, are incorporated herein. Sections shown are of Title 23 of the United States Code.

Sec. 101. (a) As used in this title, unless the context requires otherwise—

* * * *

The term "Federal lands highways" means forest highways, public lands highways, park roads, parkways, and Indian reservation roads which are public roads.

The term "forest road or trail" means a road or trail wholly or partly within, or adjacent to, and serving the National Forest system and which is necessary for the protection, administration, and utilization of the National Forest system and the use and development of its resources.

The term "forest development roads and trails" means a forest road or trail under the jurisdiction of the Forest Service.

The term "forest highway" means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

* * * *

The term "Federal-aid highways" means highways eligible for assistance under this chapter other than highways classified as local roads or rural minor collectors.

* * * *

The term "public lands highway" means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

Statewide Planning

Sec. 135. (a) General requirements.—It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve all areas of the State efficiently and effectively. Subject to section 134 of this title, the State shall develop transportation plans and programs for all areas of the State. Such plans and programs shall provide for development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal State transportation system. The

process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems.

* * * *

(d) Additional requirements.—Each State in carrying out planning under this section shall, at a minimum, consider the following:

* * * *

(2) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development.

* * * *

Authorizations

Sec. 201. The provisions of this title shall apply to all unappropriated authorizations contained in prior Acts, and also to all unexpended appropriations heretofore made, providing for the expenditure of Federal funds on the following classes of highways: Forest highways, forest development roads and trails, park roads and trails, parkways, Indian reservation roads, public lands highways, and defense access roads. All such authorizations and appropriations shall continue in full force and effect, but hereafter obligations entered into and expenditures made pursuant thereto shall be subject to the provisions of this title.

Allocations

Sec. 202. (a) On October 1 of each fiscal year, the Secretary shall allocate the sums authorized to be appropriated for such fiscal year for forest development roads and trails according to the relative needs of the various National Forests. Such allocation shall be consistent with the renewable resource and land use planning for the various national forests.

* * * *

Availability of Funds

Sec. 203. Funds authorized for forest development roads and trails, public lands development roads and trails, park road, parkways, Indian reservation roads, and public lands highways shall be available for contract upon apportionment, or on October 1 of the fiscal year for which authorized if no apportionment is required. Any amount remaining unexpended for a period of three years after the close of the fiscal year for which authorized shall lapse. The Secretary of the Department charged with the administration of such funds is granted authority to incur obligations, approve projects, and enter into contracts under such authorizations and his action in doing so shall be deemed a contractual obligation of the United States for the payment of the cost thereof and such funds shall be deemed to have been expended when so obligated. Any funds heretofore or hereafter authorized for any fiscal year for forest development roads and trails, public lands development roads and trails, park road, parkways, Indian roads, and public lands highways shall be

deemed to have been expended if a sum equal to the total of the sums authorized for such fiscal year and previous fiscal years since and including the fiscal year ending June 30, 1955, shall have been obligated. Any of such funds released by payment of final voucher or modification of project authorizations shall be credited to the balance of unobligated authorizations and be immediately available for expenditure.

Federal Lands Highways Program

Sec. 204. (a) Recognizing the need for all Federal roads which are public roads to be treated under the same uniform policies as roads which are on the Federal-aid systems, there is established a coordinated Federal lands highways program which shall consist of the public lands highways, park roads, parkways, and Indian reservation roads as defined in section 101 of this title. The Secretary, in cooperation with the Secretary of the Interior and the Secretary of Agriculture, shall develop appropriate transportation planning procedures and safety, bridge, and pavement management systems for roads funded under the Federal Lands Highway Program. Notwithstanding any other provision of this title, no public lands highway project may be undertaken in any State pursuant to this section unless the State concurs in the selection and planning of the project.

(b) Funds available for public lands highways shall be used by the Secretary to pay for the cost of planning, research engineering and construction thereof. Funds available for park roads, parkways, and Indian reservation roads shall be used by the Secretary or the Secretary of the Interior to pay for the cost of planning, research, engineering and construction thereof. In connection therewith, the Secretary and the Secretary of the Interior, as appropriate, may enter into construction contracts and such other contracts with a State or civil subdivision thereof or Indian tribe as deemed advisable. In the case of Indian reservation roads, Indian labor may be employed in such construction and improvement under such rules and regulations as may be prescribed by the Secretary of the Interior. No ceiling on Federal employment shall be applicable to construction or improvement of Indian reservation roads. Funds available for each class of Federal lands highways shall be available for any kind of transportation project eligible for assistance under this title that is within or adjacent to or provides access to the areas served by the particular class of Federal lands highways. The Secretary of Interior may reserve funds from the Bureau of Indian Affairs' administrative funds associated with the Indian reservation roads program to finance the Indian technical centers authorized under section 326.

(c) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title. Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent funds apportioned for Indian reservation roads from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including annual

funding request responsibility, for road maintenance programs on Indian reservations.

(d) Cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement, and any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands highways to which such funds were contributed.

(e) Construction of each project shall be performed by contract awarded by competitive bidding, unless the Secretary or the Secretary of the Interior shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Notwithstanding the foregoing, the provisions of section 23 of the "Buy Indian" Act of June 25, 1910 (36 Stat. 891), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2205) shall apply to all funds administered by the Secretary of the Interior which are appropriated for the construction and improvement of Indian reservation roads.

(f) All appropriations for the construction and improvement of each class of Federal lands highways shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land management agency.

(g) The Secretary shall transfer to the Secretary of Agriculture from appropriations for forest highways such amounts as may be needed to cover necessary administrative expenses of the Forest Service in connection with forest highways.

(h) Eligible projects.—Funds available for each class of Federal lands highways may be available for the following:

(1) Transportation planning for tourism and recreational travel including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.

(2) Adjacent vehicular parking areas.

(3) Interpretive signage.

(4) Acquisition of necessary scenic easements and scenic or historic sites.

(5) Provision for pedestrians and bicycles.

(6) Construction and reconstruction of roadside rest areas including sanitary and water facilities.

(7) Other appropriate public road facilities such as visitor centers as determined by the Secretary.

(i) Transfers to Secretary of the Interior.—The Secretary shall transfer to the Secretary of the Interior from the appropriation for public land highways amounts as may be needed to cover necessary administrative costs of the Bureau of Land Management in connection with public lands highways.

(j) Indian reservation roads planning.—Up to 2 percent of funds made available for Indian reservation roads for each fiscal year shall be allocated to those Indian tribal governments applying for transportation planning pursuant to the provisions of the Indian Self-Determination and Education Assistance Act. The Indian tribal government, in cooperation with the Secretary of the Interior, and as may be appropriate, with a State, local government, or metropolitan planning organization, shall develop a transportation improvement program, that includes all Indian reservation road projects proposed for funding. Projects shall be selected by the Indian tribal

government from the transportation improvement program and shall be subject to the approval of the Secretary of the Interior and the Secretary.

Forest Development Roads And Trails

Sec. 205. (a) Funds available for forest development roads and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost $50,000 or more per mile or $50,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than $50,000 per mile or $50,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for forest development roads and trails shall be available for adjacent vehicular parking areas and for sanitary, water, and fire control facilities.

Bicycle Transportation and Pedestrian Walkways

Sec. 217.

* * * *

(c) Use of Federal lands highway funds.—Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities in conjunction with such trails, roads, highways, and parkways.

(d) State bicycle and pedestrian coordinators.—Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

* * * *

(j) Bicycle transportation facility defined.—For purposes of this section, a "bicycle transportation facility" means new or improved lanes, paths, or shoulders for use by bicyclists, traffic control devices, shelters, and parking facilities for bicycles.

Weeks Act Status for Certain Lands

- **Act of September 2, 1958 (P.L. 85-862, 72 Stat. 1571; 16 U.S.C. 521a)**

In order to facilitate the administration, management, and consolidation of the National Forests, all lands of the United States within the exterior boundaries of National Forests which were or hereafter are acquired for or in connection with the National Forests or transferred to the Forest Service, Department of Agriculture for administration and protection substantially in accordance with National Forest regulations, policies, and procedures, excepting (a) lands reserved from the public domain or acquired pursuant to laws authorizing the exchange of land or timber reserved from or part of the public domain, and (b) land within the official limits of towns or cities, notwithstanding the provisions of any other Act, are hereby made subject to the Weeks Act of March 1, 1911 (36 Stat. 961), as amended, and to all laws, rules, and regulations applicable to National Forest lands acquired thereunder: *Provided,* That nothing in this Act shall be construed as (1) affecting the status of lands administered by the Secretary of Agriculture under the Act of June 24, 1954 (68 Stat. 270), and which are revested Oregon and California Railroad grant lands, administered as National Forest lands, or (2) changing the disposition of revenues from or authorizing the exchange of the lands, or the timber thereon, described in the Act of February 11, 1920 (Ch. 69, 41 Stat. 405), the Act of September 22, 1922 (Ch. 407, 42 Stat. 1019), and the Act of June 4, 1936 (Ch. 494, 49 Stat. 1460). (16 U.S.C. 521a)

Wild Horse Protection

- **Act of September 8, 1959 (P.L. 86-234, 73 Stat. 470; 18 U.S.C. 47)**

(a) Whoever uses an aircraft or a motor vehicle to hunt, for the purpose of capturing or killing, any wild unbranded horse, mare, colt, or burro running at large on any of the public land or ranges shall be fined not more than $500, or imprisoned not more than six months, or both.

(b) Whoever pollutes or causes the pollution of any watering hole on any of the public land or ranges for the purpose of trapping, killing, wounding, or maiming any of the animals referred to in the preceding paragraph shall be fined not more than $500, or imprisoned not more than six months, or both.

(c) As used in this act:

(1) The term "aircraft" means any contrivance used for flight in the air; and

(2) The term "motor vehicle" includes an automobile, automobile truck, automobile wagon, motorcycle, or any other self propelled vehicle designed for running on land. (18 U.S.C. 47)

Note—See Wild Horses and Burros Protection Act of 1971.

ACTS OF THE 1960'S

Functions Transfer (Interior to Agriculture)

- **Act of June 11, 1960 (P.L. 86-509, 74 Stat. 205; 7 U.S.C. 2201(note))**

Sec. 1. Except as otherwise provided in section 2 hereof, the following functions are hereby transferred to the Secretary of Agriculture:

(a) The functions of the Secretary of the Interior under the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485, 486), with respect to exchanges of non-Federal lands for National Forest lands or timber.

(b) The functions of the Secretary of the Interior under the Act of February 2, 1922 (42 Stat. 362), with respect to exchanges of lands in private ownership within or within six miles of the Deschutes National Forest for National Forest lands, or for timber from any National Forest, in the State of Oregon.

(c) The functions of the Secretary of the Interior under the Act of June 7, 1924 (42 Stat. 643), except section 2 thereof, with respect to exchanges of privately owned lands for National Forest timber in New Mexico.

(d) The functions of the Secretary of the Interior under the Act of April 12, 1925 (43 Stat. 739), except section 2 thereof, with respect to exchanges of privately owned lands for National Forest timber in New Mexico.

(e) The functions of the Secretary of the Interior under the Act of April 21, 1926 (44 Stat. 303), except section 2 thereof, with respect to exchanges of privately owned lands for National Forest lands or timber in New Mexico and Arizona.

(f) The functions of the Secretary of the Interior under section 2 of the Act of May 26, 1926 (44 Stat. 655; 16 U.S.C. 38), with respect to exchanges of lands held in private or State ownership for National Forest lands or timber in Montana.

(g) The functions of the Secretary of the Interior under the Act of June 15, 1926 (44 Stat. 746), with respect to exchanges of State lands for National Forest lands in New Mexico.

(h) The functions of the Secretary of the Interior under the Act of December 7, 1942 (56 Stat. 1042), with respect to exchange transactions in which lands under the jurisdiction of the Secretary of Agriculture are exchanged for State lands in Minnesota which are to be under the jurisdiction of the Secretary of Agriculture after their acquisition by the United States.

(i) The function of the Secretary of the Interior (originally vested in the Commissioner of the General Land Office) under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872), with respect to execution of quitclaim deeds for lands conveyed to the United States in connection with exchange transactions involving lands under the jurisdiction of the Secretary of Agriculture.

(j) The functions of the Secretary of the Interior under section 2(b) of the Joint Resolution of August 8, 1947 (61 Stat. 921), with respect to appraisals and sales of certain lands within the Tongass National Forest.

(k) The functions of the Secretary of the Interior under section 10 of the Act of March 1, 1911 (36 Stat. 962; 16 U.S.C. 519), with respect to

sales of small tracts of acquired National Forest lands found chiefly valuable for agriculture.

(*l*) The functions of the Secretary of the Interior under section 402 of Reorganization Plan Numbered 3 of 1946 (60 Stat. 1099), section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c), the Act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508b), section 3 of the Act of June 28, 1952 (66 Stat. 285), or otherwise, with respect to the use and disposal from lands under the jurisdiction of the Secretary of Agriculture of those mineral materials which the Secretary of Agriculture is authorized to dispose of from other lands under his jurisdiction under the Act of July 31, 1947 (61 Stat. 681), as amended by the Act of July 23, 1955 (69 Stat. 367; 30 U.S.C. 601 and the following).

Authority for Conveyance of Land and Minerals

Sec. 2. (a) In no case covered by subsections (a), (b), (e), (g), and (h) of section 1 hereof shall the exchange provide for the patenting of land by the United States without a reservation of minerals (1) unless the Secretary of Agriculture has obtained the advice of the Secretary of the Interior that the land is nonmineral in character, or (2) unless the Secretary of the Interior approves of the valuation and disposition of the minerals in the lands to be patented. A sale of land covered by subsection (j) of section 1 hereof shall be made by the Secretary of Agriculture without a reservation of minerals only after consultation with, and the approval of, the Secretary of the Interior as to the valuation and disposition of the minerals. No lands of the United States shall be exchanged in any case covered by subsection (f) of section 1 hereof unless the Secretary of Agriculture has obtained the advice of the Secretary of the Interior that such lands are nonmineral in character.

(b) Nothing in this Act shall be construed to authorize the Secretary of Agriculture to determine or adjudicate the validity or invalidity of any mining claim or part thereof.

(c) Nothing in subsection (1) of section 1 hereof shall be construed to authorize the Secretary of Agriculture to dispose of coal, phosphate, sodium, potassium, oil, oil shale, gas, or sulfur, or to dispose of any minerals which would be subject to disposal under the mining laws if said laws were applicable to the lands in which the minerals are situated.

(d) Upon approval by the Secretary of Agriculture pursuant to the provisions of this Act of any exchange or sale, respectively, of National Forest lands under the provisions of law referred to in subsections (a), (b), (e), (f), (g), and (j), of section 1, hereof, the Secretary of the Interior, upon the recommendation of the Secretary of Agriculture, shall issue the patent therefor.

(e) All conveyances under the Act referred to in subsection (h) of section 1 hereof of National Forest lands reserved from the public domain shall, upon recommendation of the Secretary of Agriculture, be made by the Secretary of the Interior.

Multiple-Use Sustained-Yield Act of 1960

- **Act of June 12, 1960 (P.L. 86-517, 74 Stat. 215; 16 U.S.C. 528(note), 528-531)**

Sec. 1. It is the policy of the Congress that the National Forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the National Forests were established as set forth in the Act of June 4, 1897 (16 U.S.C. 475). Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the National Forests. Nothing herein shall be construed so as to affect the use or lands or administration of the mineral resources of National Forest lands or to affect the use or administration of Federal lands not within National Forests. (16 U.S.C. 528)

Sec. 2. The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the National Forests for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the National Forests due consideration shall be given to the relative values of the various resources in particular areas. The establishment and maintenance of areas of wilderness are consistent with the purposes and provisions of this Act. (16 U.S.C. 529)

Sec. 3. In the effectuation of this Act the Secretary of Agriculture is authorized to cooperate with interested State and local governmental agencies and others in the development and management of the National Forests. (16 U.S.C. 530)

Sec. 4. As used in this Act, the following terms shall have the following meanings:

(a) "Multiple use" means the management of all the various renewable surface resources of the National Forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the National Forests without impairment of the productivity of the land. (16 U.S.C. 531)

Sec. 5. This Act may be cited as the "Multiple-Use Sustained-Yield Act of 1960." (16 U.S.C. 528(note))

Sikes Act
(Fish and Wildlife Conservation)

- **Act of September 15, 1960 (P.L. 86-797, 74 Stat. 1052, as amended; 16 U.S.C. 670g-670*l*, 670o)**

Interior/Agriculture Coordination

Sec. 201. (a) The Secretary of the Interior and the Secretary of Agriculture shall each, in cooperation with the State agencies and in accordance with comprehensive plans developed pursuant to section 202 of this title, plan, develop, maintain, and coordinate programs for the conservation and rehabilitation of wildlife, fish, and game. Such conservation and rehabilitation programs shall include, but not be limited to, specific habitat improvement projects and related activities and adequate protection for species considered threatened or endangered.

(b) . . . The Secretary of Agriculture shall implement such conservation and rehabilitation programs on public land under his jurisdiction. (16 U.S.C. 670g)

Comprehensive Planning and State Cooperation

Sec. 202. (a)(1) The Secretary of the Interior shall develop, in consultation with the State agencies, a comprehensive plan for conservation and rehabilitation programs to be implemented on public land under his jurisdiction and the Secretary of Agriculture shall do the same in connection with public land under his jurisdiction.

* * * *

(b) Each comprehensive plan developed pursuant to this section shall be consistent with any overall land use and management plans for the lands involved. In any case in which hunting, trapping, or fishing (or any combination thereof) of resident fish and wildlife is to be permitted on public land under a comprehensive plan, such hunting, trapping,and fishing shall be conducted in accordance with applicable laws and regulations of the State in which such land is located.

(c)(1) Each State agency may enter into a cooperative agreement with—

(A) the Secretary of Interior. . . .

(B) the Secretary of Agriculture with respect to those conservation and rehabilitation programs to be implemented under this title within the State on public land which is under his jurisdiction;

(C) the Secretary of Interior. . . .

Conservation and rehabilitation programs developed and implemented pursuant to this title shall be deemed as supplemental to wildlife, fish, and game-related programs conducted by the Secretary of the Interior and the Secretary of Agriculture pursuant to other provisions of law. Nothing in this title shall be construed as limiting the authority of the Secretary of the Interior or the Secretary of Agriculture, as the case may be, to manage the

National Forests or other public lands for wildlife and fish and other purposes in accordance with the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531) or other applicable authority.

(2) Any conservation and rehabilitation program included within a cooperative agreement entered into under this subsection may be modified in a manner mutually agreeable to the State agency and the Secretary concerned . . .

(3) Each cooperative agreement entered into under this subsection shall—

(A) specify those areas of public land within the State on which conservation and rehabilitation programs will be implemented;

(B) provide for fish and wildlife habitat improvements or modifications, or both;

(C) provide for range rehabilitation where necessary for support of wildlife;

(D) provide adequate protection for fish and wildlife officially classified as threatened or endangered pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or considered to be threatened, rare, or endangered by the State agency;

(E) require the control of off-road vehicle traffic;

(F) if the issuance of public land area management stamps is agreed to pursuant to section 203(a) of this title—

(i) contain such terms and conditions as are required under section 203(b) of this title;

(ii) require the maintenance of accurate records and the filing of annual reports by the State agency to the Secretary of the Interior or the Secretary of Agriculture, or both, as the case may be, setting forth the amount and disposition of the fees collected for such stamps; and

(iii) authorize the Secretary concerned and the Comptroller General of the United States, or their authorized representatives, to have access to such records for purposes of audit and examination; and

(G) contain such other terms and conditions as the Secretary concerned and the State agency deem necessary and appropriate to carry out the purposes of this title.

A cooperative agreement may also provide for arrangements under which the Secretary concerned may authorize officers and employees of the State agency to enforce, or to assist in the enforcement of, section 204(a) of this title.

(4) Except where limited under a comprehensive plan or pursuant to cooperative agreement, hunting, fishing, and trapping shall be permitted with respect to resident fish and wildlife in accordance with applicable laws and regulations of the State in which such land is located on public land which is the subject of a conservation and rehabilitation program implemented under this title.

(5) The Secretary of the Interior and the Secretary of Agriculture, as the case may be, shall prescribe such regulations as are deemed necessary to control, in a manner consistent with the applicable comprehensive plan and cooperative agreement, the public use of public land which is the subject of any conservation and rehabilitation program implemented by him under this title. (16 U.S.C. 670h)

Public Land Management Area Stamp

Sec. 203. (a) Any State agency may agree with the Secretary of the

Interior and the Secretary of Agriculture (or with the Secretary of the Interior or the Secretary of the Agriculture, as the case may be, if within the State concerned all conservation and rehabilitation programs under this title will be implemented by him) that no individual will be permitted to hunt, trap, or fish on any public land within the State which is subject to a conservation and rehabilitation program implemented under this title unless at the time such individual is engaged in such activity he has on his person a valid public land management area stamp issued pursuant to this section.

(b) Any agreement made pursuant to subsection (a) of this section to require the issuance of public land management area stamps shall be subject to the following conditions:

(1) Such stamps shall be issued, sold, and the fees therefor collected, by the State agency or by the authorized agents of such agency.

(2) Notice of the requirement to possess such stamps shall be displayed prominently in all places where State hunting, trapping, or fishing licenses are sold. To the maximum extent practicable, the sale of such stamps shall be combined with the sale of such State hunting, trapping, and fishing licenses.

(3) Except for expenses incurred in the printing, issuing, or selling of such stamps, the fees collected for such stamps by the State agency shall be utilized in carrying out conservation and rehabilitation programs implemented under this title in the State concerned. Such fees may be used by the State agency to acquire lands or interests therein from willing sellers or donors to provide public access to program lands that have no existing public access for enhancement of outdoor recreation and wildlife conservation: *Provided,* That the Secretary of Agriculture and the Secretary of the Interior maintain such access, or ensure that maintenance is provided for such access, through or to lands within their respective jurisdiction.

(4) The purchase of any such stamp shall entitle the purchaser thereof to hunt, trap, and fish on any public land within such State which is the subject of a conservation or rehabilitation program implemented under this title except to the extent that the public use of such land is limited pursuant to a comprehensive plan or cooperative agreement; but the purchase of any such stamp shall not be construed as (A) eliminating the requirement for the purchase of a migratory bird hunting stamp as set forth in the first section of the Act of March 16, 1934, commonly referred to as the Migratory Bird Hunting Stamp Act (16 U.S.C. 718a), or (B) relieving the purchaser from compliance with any applicable State game and fish laws and regulations.

(5) The amount of the fee to be charged for such stamps, the age at which the individual is required to acquire such a stamp, and the expiration date for such stamps shall be mutually agreed upon by the State agency and the Secretary or Secretaries concerned; except that each such stamp shall be void not later than one year after the date of issuance.

(6) Each such stamp must be validated by the purchaser thereof by signing his name across the face of the stamp.

(7) Any individual to whom a stamp is sold pursuant to this section shall upon request exhibit such stamp for inspection to any officer or employee of the Department of

the Interior or the Department of Agriculture, or to any other person who is authorized to enforce section 204(a) of this title. (16 U.S.C. 670i)

Jurisdiction and Enforcement

Sec. 204. (a)(1) Any person who hunts, traps, or fishes on any public land which is subject to a conservation and rehabilitation program implemented under this title without having on his person a valid public land management area stamp, if the possession of such a stamp is required, shall be fined not more than $1,000, or imprisoned for not more than six months, or both.

(2) Any person who knowingly violates or fails to comply with any regulations prescribed under section 202(c)(5) of this title shall be fined not more than $500, or imprisoned not more than six months, or both.

(b)(1) For the purpose of enforcing subsection (a) of this section, the Secretary of the Interior and the Secretary of Agriculture may designate any employee of their respective departments, and any State officer or employee authorized under a cooperative agreement to enforce such subsection (a), to (i) carry firearms; (ii) execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; (iii) make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view; (iv) search without warrant or process any person, place or conveyance as provided by law; and (v) seize without warrant or process any evidentiary item as provided by law.

(2) Upon the sworn information by a competent person, any United States magistrate or court of competent jurisdiction may issue process for the arrest of any person charged with committing any offense under subsection (a) of this section.

(3) Any person charged with committing any offense under subsection (a) of this section may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401 of title 18, United States Code.

(c) All guns, traps, nets, and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in committing an offense under subsection (a) of this section shall be subject to forfeiture to the United States and may be seized and held pending the prosecution of any person arrested for committing such offense. Upon conviction for such offense, such forfeiture may be adjudicated as a penalty in addition to any other provided for committing such offense.

(d) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with the provisions of this section; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for the purposes of this section, be exercised or performed by the Secretary of the Interior or the Secretary of Agriculture, as the case may

be, or by such persons as he may designate. (16 U.S.C. 670j)

Definitions

Sec. 205. As used in this title—

* * * *

(3) The term "off-road vehicle" means any motorized vehicle designed for, or capable of, cross-country travel on or immediately over land, water, sand, snow ice, marsh, swampland, or other natural terrain; but such term does not include—

(A) any registered motorboat at the option of each State;

(B) any military, fire, emergency, or law enforcement vehicle when used for emergency purposes; and

(C) any vehicle the use of which is expressly authorized by the Secretary of the Interior or the Secretary of Agriculture under a permit, lease, license, or contract.

(4) The term "public land" means all lands under the respective jurisdiction of the Secretary of the Interior, the Secretary of Agriculture, the Chairman, and the Administrator, except land which is, or hereafter may be, within or designated as—

(A) a military reservation;

(B) a unit of the National Park System;

(C) an area within the national wildlife refuge system;

(D) an Indian reservation; or

(E) an area within an Indian reservation or land held in trust by the United States for an Indian or Indian tribe.

(5) The term "State agency" means the agency or agencies of a State responsible for the administration of the fish and game laws of the State.

(6) The term "conservation and rehabilitation programs" means to utilize those methods and procedures which are necessary to protect, conserve, and enhance wildlife, fish, and game resources to the maximum extent practicable on public lands subject to this title consistent with any overall land use and management plans for the lands involved. Such methods and procedures shall include, but shall not be limited to, all activities associated with scientific resources management such as protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking in conformance with the provisions of this title. Nothing in this term shall be construed as diminishing the authority or jurisdiction of the States with respect to the management of resident species of fish, wildlife, or game, except as otherwise provided by law. (16 U.S.C. 670k)

Exceptions

Sec. 206. Notwithstanding any other provision in this title, section 203 of this title shall not apply to land which is, or hereafter may be, within or designated as Forest Service land or a Bureau of Land Management land of any State in which all Federal lands therein comprise 60 percent or more of the total area of such State; except that in any such State, any appropriate State agency may agree with the Secretary of Agriculture or the Secretary of the Interior, or both, as the case may be, to collect a fee as specified in such agreement at the point of sale of regular licenses to hunt, trap, or fish in such State, the proceeds of which shall be utilized in carrying out conservation and rehabilitation programs implemented under this

title in the State concerned and for no other purpose. (16 U.S.C. 670*l*)

* * * *

Authorized Appropriations

Sec. 209 (a) (Note—Secretary of Interior)

(b) There are authorized to be appropriated the sum of $12,000,000 for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, and 1993 to enable the Secretary of Agriculture to carry out his functions and responsibilities under this subchapter. Such funds shall be in addition to those provided under other provisions of law. In requesting such funds under this subsection the Secretary shall take into account fish and wildlife program needs, including those for projects, identified in the State comprehensive plans as contained in the program developed pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1601-1610, P.L. 95-307).

(c) The Secretary of the Interior and the Secretary of Agriculture may each use any authority available to him under other laws relating to fish, wildlife, or plant conservation or rehabilitation for purposes of carrying out the provisions of this Act.

(d) The Secretary of the Interior and the Secretary of Agriculture may each make purchases and contracts for property and services from, or provide assistance to, the State agencies concerned, if such property, services or assistance is required to implement those projects and programs carried out on, or of benefit to, Federal lands and identified in the comprehensive plans or cooperative agreements developed under section 202 of this Act, without regard to title III (other than section 304) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251-260). Contract authority provided in this section is effective only to such extent or in such amounts as are provided in appropriation Acts. (16 U.S.C. 670o)

Leases Around Reservoirs

- **Act of March 3, 1962 (P.L. 87-411, 76 Stat. 20; 16 U.S.C. 460d-2)**

The Secretary of Agriculture is authorized to amend any lease entered into with respect to lands under the jurisdiction of the Forest Service providing for the construction, maintenance, and operation of commercial recreational facilities at a Federal reservoir project so as to provide for the adjustment, either by increase or decrease, from time to time during the term of such lease of the amount of rental or other consideration payable to the United States under such lease, when and to the extent he determines such adjustment to be necessary or advisable in the public interest. No adjustment shall be made under the authority of this Act so as to increase or decrease the amount of rental or other consideration payable under such lease for any period prior the date of such adjustment. (16 U.S.C. 460d-2)

Contract Work Hours and Safety Standards Act

- **Act of August 13, 1962 (P.L. 87-581, 76 Stat. 357, as amended; 40 U.S.C. 327-333)**

Short Title

Sec. 2. That this Act in Title I may be cited as the "Work Hours and Safety Act of 1962". (40 U.S.C. 327(note))

Secretary Defined

Sec. 101. As used herein, the term "Secretary" means the Secretary of Labor, United States Department of Labor. (40 U.S.C. 327)

Forty Hour Week; Overtime Compensation

Sec. 102. (a) Notwithstanding any other provisions of law, the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103, of this act shall be computed on the basis of a standard workweek of forty hours, and work in excess of such standard workweek shall be permitted subject to provisions of this section. Fore each workweek in which any such laborer or mechanic is employed such wages shall include compensation, at a rate not less than one and one-half times the basic rate of pay, for all hours worked in excess of forty hours in the workweek.

(b) The following provisions shall be a condition of every contract of the character specified in section 102 of this act and of any obligation of the United Stated, any territory, or the District of Columbia in connection therewith:

(1) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of forty hours in such workweek except in accordance with the provisions of this subchapter; and

(2) In the event of violation of the provisions of paragraph (1), the contractor and any subcontractor responsible therefor shall be liable to such affected employee for his unpaid wages and shall, in addition, be liable to the United States (or, in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages as provided therein. Such liquidated damages shall be computed, with respect to each individual employed as a laborer or mechanic in violation of any provision of this subchapter, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this subchapter. The governmental agency for which the contract work is done or by which financial assistance for the work is provided may withhold, or cause to be withheld, subject to the provisions of section 104 of this act, from any moneys payable on account of work performed by a contractor or subcontractor, such sums as may administratively be

determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as herein provided. (40 U.S.C. 328)

Exceptions to Contracts and Workers Covered

Sec. 103. (a) The provisions of this subchapter shall apply, except as otherwise provided, to any contract which may require or involve the employment of laborers or mechanics upon a public work of the United States, of any territory, or of the District of Columbia, and to any other contract which may require or involve the employment of laborers or mechanics if such contract is one (1) to which the United States or any agency or instrumentality thereof, any territory, or the District of Columbia is a part, or (2) which is made for or on behalf of the United States, any agency or instrumentality thereof, any territory, or the District of Columbia, or (3) which is a contract for work financed in whole or in part by loans or grants from or loans insured or guaranteed by, the United States or any agency or instrumentality hereof under any statute of the United States providing wage standards for such work: *Provided*, That the provisions of section 102 of this act, shall not apply to work where the assistance from the United States or any agency or instrumentality as set forth above is only in that provided, the provisions of this subchapter shall apply to all laborers and mechanics, including watchmen and guards, employed by any contractor or subcontractor in the performance of any part of the work contemplated by any such contract, and for purposes of this subchapter, laborers and mechanics shall include workmen performing services in connection with dredging or rock excavation in any river or harbor of the United States or of any territory or of the District of Columbia, but shall not include any employee employed as a seaman.

(b) This subchapter shall not apply to contracts for transportation by land, air, or water, or for the transmission of intelligence, or for the purchase of supplies or materials or articles ordinarily available in the open market. This subchapter shall not apply with respect to any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act. (40 U.S.C. 329)

Report of Violations and Withholding of Funds

Sec. 104. (a) Reports of inspection.—Any officer or person designated as inspector of the work to be performed under any contract of the character specified in section 103 of this act, or to aid in the enforcement or fulfillment thereof shall, upon observation or investigation, forthwith report to the proper officer of the United States, of any territory or possession, or of the District of Columbia, all violations of the provisions of this subchapter occurring in the performance of such work, together with the name of each laborer or mechanic who was required or permitted to work in violation of such provisions and the day or days of such violation. The amount of unpaid wages and liquidated damages owing under the provisions of this subchapter shall be administratively determined and the officer or person whose duty it is to approve the payment of moneys by the United States, the territory, or the District of Columbia in connection with the performance of the contract work shall direct the

amount of such liquidated damages to be withheld for the use and benefit of the United States, said territory, or said District, and shall direct the amount of such unpaid wages to be withheld for the use and benefit of the laborers and mechanics who were not compensated as required under the provisions of this subchapter. The Comptroller General of the United States is authorized and directed to pay directly to such laborers and mechanics, from the sums withheld on account of underpayments of wages, the respective amounts administratively determined to be due, if the funds withheld are adequate, and, if not, an equitable proportion of such amounts.

(b) Rights of action and intervention against contractors and sureties.—If the accrued payments withheld under the terms of the contracts, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this subchapter, such laborers and mechanics shall, in the case of a department or agency of the Federal Government, have the rights of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(c) Right of contractors to appeal.—Any contractor or subcontractor aggrieved by the withholding of a sum as liquidated damages as provided in this subchapter shall have the right, within sixty days thereafter, to appeal to the head of the agency of the United States or of the territory for which the contract work is done or by which financial assistance for the work is provided, or to the Mayor of the District of Columbia in the case of liquidated damages withheld for the use and benefit of said District. Such agency head or Mayor, as the case may be, shall have authority to review the administrative determination of liquidated damages and to issue a final order affirming such determination; or, if it is found that the sum determined is incorrect or that the contractor or subcontractor violated the provisions of this subchapter inadvertently notwithstanding the exercise of due care on his part and that of his agents, recommendations may be made to the Secretary that an appropriate adjustment in liquidated damages be made, or that the contractor or subcontractor be relieved of liability for such liquidated damages. The Secretary shall review all pertinent facts in the matter and may conduct such investigations as he deems necessary, so as to affirm or reject the recommendation. The decision of the Secretary shall be final. In all such cases in which a contractor or subcontractor may be aggrieved by a final order for the withholding of liquidated damages as hereinbefore provided, such contractor or subcontractor may, within sixty days after such final order, file a claim in the United States Court of Federal Claims: Provided, however, That final orders of the agency head, the Mayor of the District of Columbia or the Secretary, as the case may be, shall be conclusive with respect to findings of fact if such findings are supported by substantial evidence.

(d) Applicability of other laws.—Reorganization Plan Number 14 of 1950 (64 Stat. 1267) shall be applicable with respect to the provisions of this subchapter, and section 276c of U.S.C. 40, shall be applicable with respect to those contractors and

subcontractors referred to therein who are engaged in the performance of contracts subject to the provisions of this subchapter. (40 U.S.C. 330)

Limitations, Variations, Tolerances, and Exemptions

Sec. 105. The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this subchapter as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. (40 U.S.C. 331)

Violations, Penalties

Sec. 106. Any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed in the performance of any work contemplated by any contract to which this subchapter applies, who shall intentionally violate any provision of this subchapter, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine of not to exceed $1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof. (40 U.S.C. 332)

Health and Safety Standards in Building Trades and Construction Industry

Sec. 107. (a) Condition of contracts.—It shall be a condition of each contract which is entered into under legislation subject to Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267), and is for construction, alternation, and/or repair, including painting and decorating, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to this health or safety, as determined under construction safety and health standards promulgated by the Secretary by regulation based on proceedings pursuant to section 553 of Title 5, U.S.C., provided that such proceedings include a hearing of the nature authorized by said section, In formulating such standards, the Secretary shall consult with the Advisory Committee created by subsection (e) of this section.

(b) Compliance with section and regulations.—The Secretary is authorized to make such inspections, hold such hearings, issue such orders, and make such decisions based on findings of fact, as are deemed necessary to gain compliance with this section and any health and safety standard promulgated by the Secretary under subsection (a) of this section, and for such purposes the Secretary and the United Stated district courts shall have the authority and jurisdiction provided by sections 38 and 39 of Title 41, U.S.C. In the event that the Secretary of Labor determines noncompliance under the provisions of this section after an opportunity for an adjudicatory hearing by the Secretary of any condition of a contract of a type described in clause (1) or (2) of section 103(a) of this act, the governmental agency for which the contract work is done shall have the right to cancel the contract, and to enter into other contracts for the completion of the contract work,

charging any additional cost to the original contractor. In the event of noncompliance, as determined by the Secretary after an opportunity for an adjudicatory hearing by the Secretary, of any condition of a contract of a type described in clause 3 of section 103(a) of this act, the governmental agency by which financial guarantee, assistance, or insurance for the contract work is provided shall have the right to withhold any such assistance attributable to the performance of the contract. Section 104 of this act shall not apply to the enforcement of this section.

(c) Jurisdiction; cause shown, enforcement of compliance.—The United States district courts shall have jurisdiction for cause shown, in any actions brought by the Secretary, to enforce compliance with the construction safety and health standard promulgated by the Secretary under subsection (a) of this section.

(d) Finding of ineffective protection against violations.—

(1) If the Secretary determines on the record after an opportunity for any agency hearing that, by repeated willful or grossly negligent violations of this subchapter, a contractor or subcontractor has demonstrated that the provisions of subsections (b) and (c) of this section are not effective to protect the safety and health of his employees, the Secretary shall make a finding to that effect and shall, not sooner than thirty days after giving notice of the findings to all interested persons, transmit the name of such contractor or subcontractor to the Comptroller General.

(2) The Comptroller General shall distribute each name so transmitted to him to all agencies of the Government. Unless the Secretary otherwise recommends, no contract subject to this section shall be awarded to such contractor or subcontractor or to any person in which such contractor or subcontractor has a substantial interest until three years have elapsed from the date the name is transmitted to the Comptroller General. If, before the end of such three-year period, the Secretary, after affording interested persons due notice and opportunity for hearings, is satisfied that a contractor or subcontractor whose name he has transmitted to the Comptroller General will thereafter comply responsibly with the requirements of this section, he shall terminate the application of the preceding sentence to such contractor or subcontractor (and to any person in which the contractor or subcontractor has a substantial interest); and when the Comptroller General is informed of the Secretary's action he shall inform all agencies of the Government thereof.

(3) Any person aggrieved by the Secretary's action under subsection (b) or (d) of this section may, within sixty days after receiving notice thereof, file with the appropriate United States court of appeals a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, who shall thereupon file in the court the record upon which he based his action, as provided in section 2112 of Title 28, U.S.C. The findings of fact by the Secretary, if supported by substantial evidence, shall be final. The court shall have power to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, the order of the Secretary or the appropriate Government agency. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as

provided in section 1254 of Title 28, U.S.C.

(e) Advisory Committee on Construction Safety and Health.—

(1) The Secretary shall establish in the Department of Labor an Advisory Committee on Construction Safety and Health (hereinafter referred to as the "Advisory Committee") consisting of nine members appointed, without regard to the civil service laws, by the Secretary. The Secretary shall appoint one such member as Chairman. Three members of the Advisory Committee shall be persons representative of contractors to whom this section applies, three members shall be persons representative of employees primarily in the building trades and construction industry engaged in carrying out contracts to which this section applies, and three public representatives who shall be selected on the basis of their professional and technical competence and experience in the construction health and safety field.

(2) The Advisory Committee shall advise the Secretary in the formulation of construction safety and health standards and other regulations, and with respect to policy matters arising in the administration of this section. The Secretary may appoint such special advisory and technical experts or consultants as may be necessary to carry out the functions of the Advisory Committee.

(3) Members of the Advisory Committee shall, while serving on the business of the Advisory Committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, U.S.C for persons in the Government service employed intermittently.

(f) Safety programs.—The Secretary shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employments covered by this subchapter, and to collect such reports and data and to consult with and advise employers as to the best means of preventing injuries. (40 U.S.C. 333)

Joint Surveys of Watershed Areas

- **Act of September 5, 1962 (P.L. 87-639, 76 Stat. 438; 16 U.S.C. 1009)**

The Secretary of the Army and the Secretary of Agriculture, when authorized to do so by resolutions adopted by the Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives, are hereby authorized and directed to make joint investigations and surveys in accordance with their existing authorities of watershed areas in the United States, Puerto Rico, and the Virgin Islands, and to prepare joint reports on such investigations and surveys setting forth their recommendations for the installation of the works of improvement needed for flood prevention or the conservation, development, utilization, and disposal of water, and for flood control and allied purposes. Such joint reports shall be submitted to the Congress through the President for adoption and authorization by the Congress of the recommended works of improvement; *Provided,* That the project authorization procedure established by Public Law 566, Eighty-third Congress, as amended, shall not be affected. (16 U.S.C. 1009)

Petrified Wood
(Exclusion From Deposits)

- **Act of September 28, 1962 (P.L. 87-713, 76 Stat. 652; 30 U.S.C. 611(note))**

Sec. 2. The Secretary of the Interior shall provide by regulations that limited quantities of petrified wood may be removed without charge from those public lands which he shall specify.

McIntire-Stennis Act

- **Act of October 10, 1962 (P.L. 87-788, 76 Stat. 806, as amended; 16 U.S.C. 582a, 582a-1 thru a–7)**

Sec. 1. It is hereby recognized that research in forestry is the driving force behind progress in developing and utilizing the resources of the Nation's forest and related rangelands. The production, protection, and utilization of the forest resources depend on strong technological advances and continuing development of the knowledge necessary to increase the efficiency of forestry practices and to extend the benefits that flow from forest and related rangelands. It is recognized that the total forestry research efforts of the several State colleges and universities and of the Federal Government are more fully effective if there is close coordination between such programs, and it is further recognized that forestry schools are especially vital in the training of research workers in forestry. It is also recognized that the provisions of this Act are essential to assist in providing the research background that undergirds the Forest and Rangeland Renewable Resources Planning Act of 1974, the Renewable Resources Extension Act of 1978, and the Soil and Water Resources Conservation Act of 1977. (16 U.S.C. 582a)

Cooperation with State Institutions

Sec. 2. In order to promote research in forestry, the Secretary of Agriculture is hereby authorized to cooperate with the several States for the purpose of encouraging and assisting them in carrying out programs of forestry research. Such assistance shall be in accordance with plans to be agreed upon in advance by the Secretary and (a) land-grant colleges or agricultural experiment stations established under the Morrill Act of July 2, 1862 (12 Stat. 503), as amended, and the Hatch Act of March 2, 1887 (24 Stat. 440), as amended, and (b) other State-supported colleges and universities offering graduate training in the sciences basic to forestry and having a forestry school; however, an appropriate State representative designated by the State's Governor shall, in any agreement drawn up with the Secretary of Agriculture for the purposes of this Act, certify those eligible institutions of the State which will qualify for assistance and shall determine the proportionate amounts of assistance to be extended these certified institutions. If more than one institution within a State are certified as qualifying for assistance, then it shall be the responsibility of such institutions, in agreement with the Secretary, to develop complementary programs of forestry research for the State. (16 U.S.C. 582a-1)

Funding of Research Assistance

Sec. 3. To enable the Secretary to carry out the provisions of this Act there are hereby authorized to be appropriated such sums as the Congress may from time to time determine to be necessary but not exceeding in any one fiscal year one-half the amount appropriated for Federal forestry research conducted directly by the Department of

Agriculture for the fiscal year preceding the year in which the budget is presented for such appropriation. Funds appropriated and made available to the States under this Act shall be in addition to allotments or grants that may be made under other authorizations. (16 U.S.C. 582a-2)

Matching Funds

Sec. 4. The amount paid by the Federal Government to any State-certified institutions eligible for assistance under this Act shall not exceed during any fiscal year the amount available to and budgeted for expenditure by such college or university during the same fiscal year for forestry research from non-Federal sources, except that for the fiscal years ending June 30, 1971, and June 30, 1972, the matching funds requirement hereof shall not be applicable to the Virgin Islands and Guam, and sums authorized for such years for the Virgin Islands and Guam may be used to pay the total cost of programs for forestry research. The Secretary is authorized to make such expenditures on the certificate of the appropriate official of the college or university having charge of the forestry research for which the expenditures as herein provided are to be made. If any or all of the colleges or universities certified for receipt of funds under this Act fails to make available and budget for expenditure for forestry research in any fiscal year sums at least as much as the amount for which it would be eligible for such year under this Act, the difference between the Federal funds available and the funds made available and budgeted for expenditure by the college or university shall be reapportioned by the Secretary to other eligible colleges or universities of the same State if there be any which qualify therefore and, if there be none, the Secretary shall reapportion such differences to the qualifying colleges and universities of other States participating in the forestry research program. (16 U.S.C. 582a-3)

Rules and Regulations

Sec. 5. (a) The Secretary shall prescribe such regulations as may be necessary to carry out this Act and to furnish such advice and assistance through a cooperative State forestry research unit in the Department as will best promote the purposes of this Act.

(b) The Secretary shall appoint a council of not fewer than sixteen members which shall be constituted to give representation to Federal and State agencies concerned with developing and utilizing the Nation's forest resources, the forest industries, the forestry schools of the State-certified eligible institutions, State agricultural experiment stations, and volunteer public groups concerned with forests and related natural resources. The council shall meet at least annually and shall submit a report to the Secretary on regional and national planning and coordination of forestry research within the Federal and State agencies, forestry schools, and the forest industries, and shall advise the Secretary on the apportionment of funds. The Secretary shall seek, at least once each year, the advice of the council to accomplish efficiently the purposes of this Act. (16 U.S.C. 582a-4)

Apportionments

Sec. 6. Apportionments among participating States shall be determined by the Secretary after

consultation with the council appointed under section 5. In making such apportionments, consideration shall be given to pertinent factors including non-Federal expenditures for forestry research by State-certified eligible institutions, areas of nonFederal commercial forest land, and the volume of timber cut annually. Three per centum of such funds as may be appropriated shall be made available to the Secretary for administration of this Act. These administrative funds may be used for transportation of scientists who are not officers or employees of the United States to research meetings convened for purposes of assessing research opportunities or research planning. (16 U.S.C. 582a-5)

Scope of Forestry Research

Sec. 7. The term "forestry research" as used in this Act shall include investigations relating to: (1) Reforestation and management of land for the production of crops of timber and other related products of the forest; (2) management of forest and related watershed lands to improve conditions of waterflow and to protect resources against floods and erosion; (3) management of forest and related rangeland for production of forage for domestic livestock and game and improvement of food and habitat for wildlife; (4) management of forest lands for outdoor recreation; (5) protection of forest land and resources against fire, insects, diseases, or other destructive agents; (6) utilization of wood and other forest products; (7) development of sound policies for the management of forest lands and the harvesting and marketing of forest products; and (8) such other studies as may be necessary to obtain the fullest and most effective use of forest resources. (16 U.S.C. 582a-6)

Definition of State

Sec. 8. The term "State" as used in this Act shall include Puerto Rico, the Virgin Islands and Guam. (16 U.S.C. 582a-7)

Mining Claim Occupancy Act

- **Act of October 23, 1962 (P.L. 87-851, 76 Stat. 1127; 30 U.S.C. 701-708)**

Sec. 1. The Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim of not more than (a) five acres or (b) the acreage actually occupied by him, whichever is less. The Secretary may make a like conveyance to any occupant of an unpatented mining claim who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Any conveyance authorized by this section, however, shall be made only to a qualified applicant, as that term is defined in section 2 of this Act, who applies therefor within the period ending June 30, 1971, and upon payment of an amount established in accordance with section 5 of this Act.

As used in this section, the term "qualified officer of the United States" means the Secretary of the Interior or an employee of the Department of the Interior so designated by him: *Provided,* That the Secretary may delegate his authority to designate qualified officers to the head of any other department or agency of the United States with respect to lands within the administrative jurisdiction of that department or agency. (30 U.S.C. 701)

Defining Qualified Applicant

Sec. 2. For the purposes of this Act, a qualified applicant is a residential occupant-owner, as of the date of enactment of this Act, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962. (30 U.S.C. 702)

Consent of Other Agencies

Sec. 3. Where the lands for which application is made under section 1 of this Act have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary. (30 U.S.C. 703)

Conveyance of Substituted Land

Sec. 4. (a) If the Secretary of the Interior determines that conveyance of an interest under section 1 of this Act is otherwise justified but the consent required by section 3 of this Act is not given, he may, in accordance with such procedural rules and regulations as he may prescribe,

grant the applicant a right to purchase, for residential use, an interest in another tract of land, five acres or less in area, from tracts made available by him for sale under this Act (1) from the unappropriated and unreserved lands of the United States, or (2) from lands subject to classification under section 7 of the Taylor Grazing Act (48 Stat. 1272), as amended (43 U.S.C. 315f). Said right shall not be granted until arrangements satisfactory to the Secretary have been made for termination of the applicant's occupancy of his unpatented mining claim and for settlement of any liability for the unauthorized use thereof which may have been incurred and shall expire five years from the date on which it was granted unless sooner exercised. The amount to be paid for the interest shall be determined in accordance with section 5 of this Act.

(b) Any conveyance of less than a fee made under this Act shall include provision for removal from the tract of any improvement or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter. (30 U.S.C. 704)

Fair Market Value Determination

Sec. 5. The Secretary of the Interior, prior to any conveyance under this Act, shall determine the fair market value of the interest to be conveyed, exclusive of the value of any improvements placed on the lands involved by the applicant or his predecessors in interest. Said value shall be determined as of the date of appraisal. In establishing the purchase price to be paid by the applicant for the interest, the Secretary shall take into consideration any equities of the applicant and his predecessors in interest, including conditions of prior use and occupancy. In any event the purchase price for any interest conveyed shall not exceed its fair market value nor be less than $5 per acre. The Secretary may, in his discretion, allow payment to be made in installments. (30 U.S.C. 705)

Rights of Occupancy

Sec. 6. (a) The execution of a conveyance as authorized by section 1 of this Act shall not relieve any occupant of the land conveyed of any liability, existing on the date of said conveyance, to the United States for unauthorized use of the land in and to which an interest is conveyed.

(b) Except where a mining claim embracing land applied for under this Act by a qualified applicant was located at a time when the land included therein was withdrawn or otherwise not subject to such location, no trespass charges shall be sought or collected by the United States from any qualified applicant who has filed an application for land in the mining claim whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary of the Interior or the voluntary relinquishment of the mining claim, whichever occurs earlier. Nothing contained in this Act shall be construed as creating any liability for trespass to the United States, which would not exist in the absence of this Act. Relief under this section shall be limited to persons who file application for conveyances pursuant to section 1 of this Act within the period ending June 30, 1971. (30 U.S.C. 706)

Mineral Interests Reserved

Sec. 7. In any conveyance under this Act the mineral interests of the United States in the land conveyed are hereby reserved for the term of the estate conveyed. Minerals locatable under the mining laws or disposable under the Act of July 31, 1947 (61 State. 681), as amended (30 U.S.C. 601-604), are hereby withdrawn from all forms of entry and appropriation for the term of the estate. The underlying oil, gas and other leasable minerals of the United States are hereby reserved for exploration and development purposes, but without the right of surface ingress and egress, and may be leased by the Secretary under the mineral leasing laws. (30 U.S.C. 707)

Permitting Assignments to Others

Sec. 8. Rights and privileges to qualify an applicant under this Act shall not be assignable, but may pass through devise or descent. (30 U.S.C. 708)

Disposition of Payments and Fees

Sec. 9. Payments of filing fees and survey costs, and the payments of the purchase price for patents in fee shall be disposed of by the Secretary of Interior as are such fees, costs, and purchase prices in the disposition of public lands. All payments and fees for occupancy in conveyances of less than the fee, or for permits for life or shorter periods, shall be disposed of by the administering department or agency as are other receipts for the use of the lands involved. (30 U.S.C. 709)

Forest Service Omnibus Act of 1962

- **Act of October 23, 1962 (P.L. 87-869, 76 Stat. 1157 as amended; 16 U.S.C. 551, 554d, 555a, 555b, 574, 579b; 7 U.S.C. 1011f, 2253)**

Land Acquisition by Exchange

Sec. 1. Where lands under the jurisdiction of the Forest Service have been acquired and are being administered under laws which contain no provision for their exchange, the Secretary of Agriculture may convey such lands and in exchange therefor may accept on behalf of the United State title to any lands which in his opinion are suitable for use in connection with activities of the Forest Service. The value of the lands so conveyed by the Secretary of Agriculture shall not exceed the value of the lands accepted by him. (16 U.S.C. 555a)

Amending Land Acquisition Authority

Sec. 2. The Act of July 8, 1943 (57 Stat. 388), as amended (5 U.S.C. 567 (now 7 U.S.C. 2253)) is further amended by striking out the words "within twenty years". (7 U.S.C. 2253)

Expense for Employees' Recreation Facilities

Sec. 3. Not to exceed $100,000 annually of funds available to the Forest Service may be expended for providing recreation facilities, equipment, and services for use by employees of the Service located at isolated situations and, where deemed to be in the public interest, by members of the immediate families of such employees. (16 U.S.C. 554d)

Repeal of Homesteaders Provision

Sec. 4. The Act of June 11, 1906 (34 Stat. 233), as amended and supplemented (16 U.S.C. 506-508, 509), is hereby repealed.

Repeal of Authorization to Sell Dead Timber to Homesteaders

Sec. 5. The provision of the Act of August 10, 1912 (37 Stat. 269, 287; 16 U.S.C. 489), which reads, "That the Secretary of Agriculture, under such rules and regulations as he shall establish, is hereby authorized and directed to sell at actual cost, to homestead settlers and farmers, for their domestic use, the mature, dead, and down timber in National Forests, but it is not the intent of this provision to restrict the authority of the Secretary of Agriculture to permit the free use of timber as provided in the Act of June fourth, eighteen hundred and ninety-seven," is repealed.

Amending Provisions for Fines

Sec. 6. The Act of June 4, 1897 (30 Stat. 11, 35; 16 U.S.C. 551) is amended by deleting from the second full paragraph on page 35 the portion thereof reading "as is provided for in the Act of June fourth, eighteen hundred and eighty-eight, amending section fifty-three hundred and eighty-eight of the Revised Statutes of the United States" and inserting in lieu thereof "by a fine of not more than $500 or imprisonment for not more than six months, or both". (16 U.S.C. 551)

Amending Trespass and Occupancy Regulating Authority

Sec. 7. Section 32f of the Act of July 22, 1937 (50 Stat. 526; 7 U.S.C. 1011f is amended to make the last sentence thereof read as follows: "Any violation of such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both". (7 U.S.C. 1011f)

Amending Reimbursement Limit for Damaged Property

Sec. 8. Section 2 of the Act of May 27, 1930 (46 Stat. 387; 16 U.S.C. 574) is amended by changing the amount in the provision from $500 to $2,500. (16 U.S.C. 574)

Expense for Sidewalks, Curbs and Street Paving

Sec. 9. Funds available to the Forest Service shall be available for expenses of, or payment of assessment for, construction of sidewalks, curbs, or street paving along the boundary of Government-owned residential or otherwise improved lots. (16 U.S.C. 555b)

Deletion of Capitalization Limit

Sec. 10. Section 13 of the Department of Agriculture Organic Act of 1956 (70 Stat. 1034; 16 U.S.C. 579b) is hereby amended by deleting from the second sentence thereof the comma after the word "assets" and the words "but such capitalization shall not exceed $25,000,000". (16 U.S.C. 579b)

Wilderness Act

- **Act of September 3, 1964 (P.L. 88-577, 78 Stat. 890 as amended; 16 U.S.C. 1131(note), 1131-1136)**

Sec. 1. This Act may be cited as the "Wilderness Act" (16 U.S.C. 1131(note))

Purpose

Sec. 2. (a) In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify, all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by Congress as "wilderness areas", and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as "wilderness areas" except as provided for in this Act or by a subsequent Act.

(b) The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress. No appropriation shall be available for the payment of expenses or salaries for the administration of the National Wilderness Preservation System as a separate unit nor shall any appropriations be available for additional personnel stated as being required solely for the purpose of managing or administering areas solely because they are included within the National Wilderness Preservation System.

(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition;

and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. (16 U.S.C. 1131)

Previously Classified Areas

Sec. 3. (a) All areas within the National Forests classified at least 30 days before the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "wilderness", "wild", or "canoe" are hereby designated as wilderness areas. The Secretary of Agriculture shall—

(1) Within one year after the effective date of this Act, file a map and legal description of each wilderness area with the Interior and Insular Affairs Committees of the United States Senate and the House of Representatives, and such descriptions shall have the same force and effect as if included in this Act: *Provided however,* That correction of clerical and typographical errors in such legal descriptions and maps may be made.

(2) Maintain, available to the public, records pertaining to said wilderness areas, including maps and legal descriptions, copies of regulations governing them, copies of public notices of, and reports submitted to Congress regarding pending additions, eliminations, or modifications. Maps, legal descriptions, and regulations pertaining to wilderness areas within their respective jurisdictions also shall be available to the public in the offices of regional foresters, national forest supervisors, and forest rangers.

(b) The Secretary of Agriculture shall, within ten years after the enactment of this Act, review, as to its suitability or nonsuitability for preservation as wilderness, each area in the National Forests classified on the effective date of this Act by the Secretary of Agriculture or the Chief of the Forest Service as "primitive" and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as "wilderness" or other reclassification of each area on which review has been completed, together with maps and a definition of boundaries. Such advice shall be given with respect to not less than one-third of all the areas now classified as "primitive" within three years after the enactment of this Act, not less than two-thirds within seven years after the enactment of this Act, and the remaining areas within ten years after the enactment of this Act. Each recommendation of the President for designation as "wilderness" shall become effective only if so provided by an Act of Congress. Areas classified as "primitive" on the effective date of this Act shall continue to be administered under the rules and regulations affecting such areas on the effective date of this Act until Congress has determined otherwise. Any such area may be increased in size by the President at the time he submits his recommendations to the Congress by not more than five thousand acres with no more than one thousand two hundred and eighty acres of such increase in any one compact unit; if it is proposed to increase the size of any area by more than five thousand acres or by more than one thousand two hundred and eighty acres in any one compact unit the increase in size shall not become effective until acted upon by Congress. Nothing herein contained shall limit the President in proposing, as part of his recommendations to Congress, the alteration of existing boundaries of primitive areas or recommending the

addition of any contiguous area of National Forest lands predominantly of wilderness value. Notwithstanding any other provisions of this Act, the Secretary of Agriculture may complete his review and delete such area as may be necessary, but not to exceed seven thousand acres, from the southern tip of the Gore Range-Eagles Nest Primitive Area, Colorado, if the Secretary determines that such action is in the public interest.

(c) Within ten years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in the national parks, monuments and other units of the national park system and every such area of, and every roadless island within, the national wildlife refuges and game ranges, under his jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island on which review has been completed, together with a map thereof and a definition of its boundaries. Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after enactment of this Act, not less than two-thirds within seven years of enactment of this Act, and the remainder within ten years of enactment of this Act. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress. Nothing contained herein shall, by implication or otherwise, be construed to lessen the present statutory authority of the Secretary of the Interior with respect to the maintenance of roadless areas within units of the national park system.

(d)(1) The Secretary of Agriculture and the Secretary of the Interior shall, prior to submitting any recommendations to the President with respect to the suitability of any area for preservation as wilderness—

(A) give such public notice of the proposed action as they deem appropriate, including publication in the Federal Register and in a newspaper having general circulation in the area or areas in the vicinity of the affected land;

(B) hold a public hearing or hearings at a location or locations convenient to the area affected. The hearings shall be announced through such means as the respective Secretaries involved deem appropriate, including notices in the Federal Register and in newspapers of general circulation in the area: *Provided,* That if the lands involved are located in more than one State, at least one hearing shall be held in each State in which a portion of the land lies;

(C) at least thirty days before the date of a hearing advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and Federal departments and agencies concerned, and invite such officials and Federal agencies to submit their views on the proposed action at the hearing or by no later than thirty days following the date of the hearing.

(2) Any views submitted to the appropriate Secretary under the provisions of (1) of this subsection with respect to any area shall be

included with any recommendations to the President and to Congress with respect to such area.

(e) Any modification or adjustment of boundaries of any wilderness area shall be recommended by the appropriate Secretary after public notice of such proposal and public hearing or hearings as provided in subsection (d) of this section. The proposed modification or adjustment shall then be recommended with map and description thereof to the President. The President shall advise the United States Senate and the House of Representatives of his recommendations with respect to such modification or adjustment and such recommendations shall become effective only in the same manner as provided for in subsections (b) and (c) of this section. (16 U.S.C. 1132)

Limitation of Use and Activities

Sec. 4. (a) The purposes of this Act are hereby declared to be within and supplemental to the purposes for which National Forests and units of the national park and national wildlife refuge systems are established and administered and—

(1) Nothing in this Act shall be deemed to be in interference with the purpose for which National Forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215).

(2) Nothing in this Act shall modify the restrictions and provisions of the Shipstead-Nolan Act (Public Law 539, Seventy-first Congress, July 10, 1930; 46 Stat. 1020), the Thye-Blatnick Act (Public Law 733, Eightieth Congress, June 22, 1948; 62 Stat. 568), and the Humphrey-Thye-Blatnick-Andresen Act (Public Law 607, Eighty-fourth Congress, June 22, 1956; 70 Stat. 326), as applying to the Superior National Forest or the regulations of the Secretary of Agriculture.

(3) Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any area of any park, monument, or other unit of the national park system as a wilderness area pursuant to this Act shall in no manner lower the standards evolved for the use and preservation of such park, monument, or other unit of the national park system in accordance with the Act of August 25, 1916, the statutory authority under which the area was created, or any other Act of Congress which might pertain to or affect such area, including, but not limited to, the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 432 et seq.); section 3(2) of the Federal Power Act (16 U.S.C. 796(2)); and the Act of August 21, 1935 (49 Stat. 666; 16 U.S.C. 461 et seq.).

(b) Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the

administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

(d) The following special provisions are hereby made:

(1) Within wilderness areas designated by this Act the use of aircraft or motorboats, where these uses have already become established, may be permitted to continue subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable.

(2) Nothing in this Act shall prevent within National Forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment. Furthermore, in accordance with such program as the Secretary of the Interior shall develop and conduct in consultation with the Secretary of Agriculture, such areas shall be surveyed on a planned, recurring basis consistent with the concept of wilderness preservation by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present; and the results of such surveys shall be made available to the public and submitted to the President and Congress.

(3) Notwithstanding any other provisions of this Act, until midnight December 31, 1983, the United States mining laws and all laws pertaining to mineral leasing shall, to the same extent as applicable prior to the effective date of this Act, extend to those National Forest lands designated by this Act as "wilderness area", subject, however to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including where essential the use of mechanized ground or air equipment and restoration as near as practicable of the surface of the land disturbed in performing prospecting, location, and in oil and gas leasing, discovery work, exploration, drilling and production, as soon as they have served their purpose. Mining locations lying within the boundaries of said wilderness areas shall be held and used solely for mining or processing operations and uses reasonably incident thereto; and hereafter, subject to valid existing rights, all patents issued under the mining laws of the United States affecting National Forest lands designated by this Act as wilderness areas shall convey title to the mineral deposits within the claim, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the National Forest rules and regulations, but each such patent shall reserve to

the United States all title in or to the surface of the lands and products thereof, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as otherwise expressly provided in this Act: *Provided,* That unless hereafter specifically authorized, no patent within wilderness areas designated by this Act shall issue after December 31, 1983, except for the valid claims existing on or before December 31, 1983. Mining claims located after the effective date of this Act within the boundaries of wilderness areas designated by this Act shall create no rights in excess of those rights which may be patented under the provisions of this subsection. Mineral leases, permits, and licenses covering lands within National Forest wilderness areas designated by this Act shall contain such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased, permitted, or licensed. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(4) Within wilderness areas in the National Forests designated by this Act, (1) the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial; and (2) the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.

Note—Section 4(d)(5) of the original Wilderness Act was repealed by P.L. 95-495 and remaining subsections under (d) renumbered as appear below.

(5) Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

(6) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(7) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several State with respect to wildlife and fish in the National Forests. (16 U.S.C. 1133)

Rights of Non-Forest Lands Ownership

Sec. 5. (a) In any case where State-owned or privately owned land is completely surrounded by National Forest lands within areas designated by this Act as wilderness, such State or private owner shall be

given such rights as may be necessary to assure adequate access to such State-owned or privately owned land by such State or private owner and their successors in interest, or the State-owned land or privately owned land shall be exchanged for federally owned land in the same State of approximately equal value under authorities available to the Secretary of Agriculture: *Provided, however,* That the United States shall not transfer to a State or private owner any mineral interests unless the State or private owner relinquishes or causes to be relinquished to the United States the mineral interest in the surrounded land.

(b) In any case where valid mining claims or other valid occupancies are wholly within a designated National Forest wilderness area, the Secretary of Agriculture shall, by reasonable regulations consistent with the preservation of the area for wilderness, permit ingress and egress to such surrounded areas by means which have been or are being customarily enjoyed with respect to other such areas similarly situated.

(c) Subject to the appropriation of funds by Congress, the Secretary of Agriculture is authorized to acquire privately owned land within the perimeter of any area designated by this Act as wilderness if (1) the owner concurs in such acquisition or (2) the acquisition is specifically authorized by Congress. (16 U.S.C. 1134)

Gifts and Donations

Sec. 6. (a) The Secretary of Agriculture may accept gifts or bequests of land within wilderness areas designated by this Act for preservation as wilderness. The Secretary of Agriculture may also accept gifts or bequests of land adjacent to wilderness areas designated by this Act for preservation as wilderness if he has given sixty days advance notice thereof to the President of the Senate and the Speaker of the House of Representatives. Land accepted by the Secretary of Agriculture under this section shall become part of the wilderness area involved. Regulations with regard to any such land may be in accordance with such agreements, consistent with the policy of this Act, as are made at the time of such gift, or such conditions, consistent with such policy, as may be included in, and accepted with, such bequest.

(b) The Secretary of Agriculture or the Secretary of the Interior is authorized to accept private contributions and gifts to be used to further the purposes of this Act. (16 U.S.C. 1135)

Report to Congress

Sec. 7. At the opening of each session of Congress, the Secretaries of Agriculture and Interior shall jointly report to the President for transmission to Congress on the status of the wilderness system, including a list and descriptions of the areas in the system, regulations in effect, and other pertinent information, together with any recommendations they may care to make. (16 U.S.C. 1136)

Land and Water Conservation Fund Act of 1965

- **Act of September 3, 1964 (P.L. 88-578, 78 Stat. 897 as amended; 16 U.S.C. 460*l*-4(note); 460*l*-4 thru 6a, 460*l*-7 thru 460*l*–10, 460*l*–10a–d, 460*l*-11)**

Citation

Sec. 1. (a) Effective Date.—This Act may be cited as the "Land and Water Conservation Fund Act of 1965" and shall become effective on January 1, 1965. (16 U.S.C. 460*l*-4 (note))

Purposes

(b) The purposes of this Act are to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America of present and future generations and visitors who are lawfully present within the boundaries of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the federal acquisition and development of certain lands and other areas. (16 U.S.C. 460*l*-4)

Separate Fund

Note—PL 100-203 extended the fund from Sept. 30, 1989 to Sept. 30, 2015.

Sec. 2. During the period ending September 30, 2015, there shall be covered into the land and water conservation fund in the Treasury of the United States, which fund is hereby established and is hereinafter referred to as the "fund", the following revenues and collections—

(a) Surplus Property Sales.—All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 485(b)(e), title 40, United States Code, or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation Act) hereafter received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended, notwithstanding any provision of law such proceeds shall be credited to miscellaneous receipts of the Treasury. Nothing in this Act shall affect existing laws or regulations concerning disposal of real or personal surplus property to schools, hospitals, and States and their political subdivisions.

(b) Motorboat Fuels Tax.—The amounts provided for in section 11 of this Act.

(c)(1) Other Revenues.—In addition to the sum of the revenues and collections estimated by the Secretary of the Interior to be covered into the fund pursuant to this section, as amended, there are authorized to be appropriated annually to

the fund out of any money in the Treasury not otherwise appropriated such amounts as are necessary to make the income of the fund not less than $300,000,000 for fiscal year 1977. $600,000,000 for fiscal year 1978, $750,000,000 for fiscal year 1979, and $900,000,000 for fiscal year 1980 and for each fiscal year thereafter through September 30, 1989.

(2) To the extent that any such sums so appropriated are not sufficient to make the total annual income of the fund equivalent to the amounts provided in clause (1), an amount sufficient to cover the remainder thereof shall be credited to the fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.): *Provided,* That notwithstanding the provisions of section 3 of this Act, moneys covered into the fund under this paragraph shall remain in the fund until appropriated by the Congress to carry out the purpose of this Act. (16 U.S.C. 460*l*-5)

Appropriations

Sec. 3. Moneys covered into the fund shall be available for expenditure for the purposes sections 4 to 11 of this Act only when appropriated therefor. Such appropriations may be made without fiscal-year limitation. Moneys covered into this fund not subsequently authorized by the Congress for expenditures within two fiscal years following the fiscal year in which such moneys had been credited to the fund, shall be transferred to miscellaneous receipts of the Treasury. (16 U.S.C. 460*l*-6)

Admission Fees

Sec. 4. (a) Entrance or admission fees shall be charged only at designated units of the National Park System administered by the Department of the Interior and National Recreation Areas administered by the Department of Agriculture. No admission fees of any kind shall be charged or imposed for entrance into any other federally owned areas which are operated and maintained by a federal agency and used for outdoor recreation purposes.

(1)(A) For admission into any such designated area, an annual admission permit (to be known as the Golden Eagle Passport) shall be available, for a fee of not more than $25. The permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse, children, and parents accompanying him where entry to the area is by any means other than private, noncommercial vehicle, shall be entitled to general admission into any area designated pursuant to this subsection. The annual permit shall be valid during the calendar year for which the annual fee is paid. The annual permit shall not authorize any uses for which additional fees are charged pursuant to subsections (b) and (c) of this section. The annual permit shall be nontransferable and the unlawful use thereof shall be punishable in accordance with regulations established pursuant to subsection (e). The annual permit shall be available for purchase at any such designated area.

* * * *

(2) Reasonable admission fees for a single visit at any designated

area shall be established by the administering Secretary for persons who choose not to purchase the annual permit. A "single visit" means a more or less continuous stay within a designated area. Payment of a single visit admission fee shall authorize exits from and reentries to a single designated area for a period of from one to fifteen days, such period to be defined from each designated area by the administering Secretary based upon a determination of the period of time reasonably and ordinarily necessary for such a single visit. The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than $5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than $3 per person. Except as otherwise provided in this subsection, the maximum fee amounts set forth in this paragraph shall apply to all designated areas.

(3) No admission fee shall be charged for travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the National Federal Aid System, as defined in section 101, title 23, United States Code, which is commonly used by the public as a means of travel between two places either or both of which are outside the area. Nor shall any fee be charged for travel by private, noncommercial vehicle over any road or highway to any land in which such person has any property right if such land is within any such designated area. . . .

(4) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit (to be known as the "Golden Age Passport") to any citizen of, or person domiciled in, the United States sixty-two years of age or older applying for such permit. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private, noncommercial vehicle, to general admission into any area designated pursuant to this subsection. No other free permits shall be issued to any person: *Provided,* That no fees of any kind shall be collected from any persons who have a right of access for hunting or fishing privileges under a specific provision of law or treaty or who are engaged in the conduct of official federal, State, or local government business *and Provided further,* That for no more than three years after the date of enactment of this Act, visitors to the United States will be granted entrance, without charge, to any designated admission fee area upon presentation of a valid passport.

(5) The Secretary of the Interior and the Secretary of Agriculture shall establish procedures providing for the issuance of a lifetime admission permit to any citizen of, or person domiciled in, the United States, if such citizen or person applied for such permit, and is blind or permanently disabled. Such procedures shall assure that such permit shall be issued only to persons who have been medically

determined to be blind or permanently disabled for purposes of receiving benefits under federal law as a result of said blindness or permanent disability as determined by the Secretaries. Such permit shall be nontransferable, shall be issued without charge, and shall entitle the permittee and any person accompanying him in a single, private, noncommercial vehicle, or alternatively, the permittee and his spouse and children accompanying him where entry to the area is by any means other than private noncommercial vehicle, to general admission into any area designated pursuant to this subsection.

* * * *

(b) Recreation Use Fees.—Each federal agency developing, administering, providing or furnishing at federal expense, specialized outdoor recreation sites, facilities, equipment, or services shall, in accordance with this subsection and subsection (d) of this section, provide for the collection of daily recreation use fees at the place of use or any reasonably convenient location: *Provided,* That in no event shall there be a charge by any such agency for the use, either singly or in any combination, of drinking water, wayside exhibits, roads, overlook sites, visitors' centers, scenic drives, toilet facilities, picnic tables, or boat ramps: *Provided, however,* That a fee shall be charged for boat launching facilities only where specialized facilities or services such as mechanical or hydraulic boat lifts or facilities are provided: *And provided further,* That in no event shall there be a charge for the use of any campground not having the following—tent or trailer spaces, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). At each lake or reservoir under the jurisdiction of the Corps of Engineers, United States Army, where camping is permitted, such agency shall provide at least one primitive campground containing designated campsites, sanitary facilities, and vehicular access, where no charge shall be imposed. Any Golden Age Passport permittee, or permittee under paragraph (5) of subsection (a) of this section, shall be entitled upon presentation of such permit to utilize such special recreation facilities at a rate of 50 per centum of the established use fee.

(c) Special recreation permits for uses such as group activities, recreation events, motorized recreation vehicles, and other specialized recreation uses may be issued in accordance with procedures and at fees established by the agency involved.

(d) All fees established pursuant to this section shall be fair and equitable, taking into consideration the direct and indirect cost to the government, the benefits to the recipient, the public policy or interests served, the comparable recreation fees charged by non-federal public agencies, the economic and administrative feasibility of fee collection and other pertinent factors. Clear notice that a fee has been established pursuant to this section shall be prominently posted at each area and at appropriate locations therein and shall be included in publications distributed at such areas. It is the intent of this Act that comparable fees should be charged by the several federal agencies for comparable services and facilities.

(e) In accordance with the provisions of this section, the heads of appropriate departments and agencies may prescribe rules and regulations for areas under their administration for the collection of any fee established pursuant to this section. Persons authorized by the heads of such federal agencies to enforce any such rules or regulations issued under this subsection may, within areas under the administration or authority of such agency head and with or, if the offense is committed in his presence, without a warrant, arrest any person who violates such rules and regulations. Any person so arrested may be tried and sentenced by the United States magistrate specifically designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided in title 18, United States Code, section 3401, subsections (b), (c), (d), and (e), as amended. Any violations of the rules and regulations issued under this subsection shall be punishable by a fine of not more than $100.

(f) Notwithstanding the provisions of Public Law 90-401, revenues from recreation fee collections by federal agencies shall hereafter be paid into the Land and Water Conservation Fund, to be available for appropriation for any or all purposes authorized by the Land and Water Conservation Fund Act of 1965, as amended, without regard to the source of such revenues.

Note—The second unnumbered paragraph under the subheading "Land and Water Conservation Fund," under the heading "FISH AND WILDLIFE AND PARKS, Heritage Conservation and Recreation Service," in Title 1 of the Act approved December 12, 1980 (94 Stat. 2960; 16 U.S.C. 460*l*-5a), P.L. 96-514, supersedes subsection (f) and is the language shown above.

(g) Nothing in this Act shall authorize federal hunting or fishing licenses or fees or charges for commercial or other activities not related to recreation, nor shall it affect any rights or authority of the States with respect to fish and wildlife, nor shall it repeal or modify any provision of law that permits States or political subdivisions to share in the revenues from federal lands or any provision of law that provides that any fees or charges collected at particular federal areas shall be used for or credited to specific purposes or special funds as authorized by that provision of law.

(h) Periodic reports indicating the number and location of fee collection areas, the number and location of potential fee collection areas, capacity and visitation information, the fees collected, and other pertinent data, shall be coordinated and compiled by the Bureau of Outdoor Recreation and transmitted to the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate. Such reports, which shall be transmitted no later than March 31 annually, shall include any recommendations which the Bureau may have with respect to improving this aspect of the Land and Water Conservation Fund program.

* * * *

(k) Selling of permits and collection of fees by volunteers at designated areas; collecting agency duties; surety bonds; selling of annual admission permits by public and private entities under arrangements with collecting agency head.

When authorized by the head of the collecting agency, volunteers at designated areas may sell permits and collect fees authorized or established pursuant to this section. The head of such agency shall ensure that such volunteers have adequate training regarding—

(1) the sale of permits and the collection of fees,

(2) the purposes and resources of the areas in which they are assigned, and

(3) the provision of assistance and information to visitors to the designated area.

The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost the United States) annual admission permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale. (16 U.S.C. 460*l*-6a)

* * * *

Allocation

Sec. 5. There shall be submitted with the annual budget of the United States a comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the fund. Not less that 40 per centum of such appropriations shall be available for federal purposes. (16 U.S.C. 460*l*-7)

General Authority

Sec. 6. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to provide financial assistance to the States from moneys available for State purposes. Payments may be made to the States by the Secretary as hereafter provided, subject to such terms and conditions as he considers appropriate and in the public interest to carry out the purposes of this Act, for outdoor recreation—

(1) planning,

(2) acquisition of land, waters, or interests in land or waters, or

(3) development.

(b) Sums appropriated and available for State purposes for each fiscal year shall be apportioned among the several States by the Secretary, whose determination shall be final, in accordance with the following formula:

(1) Forty per centum of the first $225,000,000; thirty per centum of the next $275,000,000; and twenty per centum of all additional appropriations shall be apportioned equally among the several States; and

(2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in his judgment will best accomplish the purposes of this Act. The determination of need shall include among other things a consideration of the proportion which the population of each State bears to the total population of the United States and of the use of outdoor recreation resources of individual States by persons from outside the State as well as a consideration of the federal resources and programs in the particular States.

(3) The total allocation to an individual State under paragraphs (1) and (2) of this subsection shall not exceed 10 per centum of the total amount allocated to the several States in any one year.

(4) The Secretary shall notify each State of its apportionments; and the amounts thereof shall be available thereafter for payment to such State for planning, acquisition, or development projects as hereafter prescribed. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter shall be reapportioned by the Secretary in accordance with paragraph (2) of this subsection, without regard to the 10 per centum limitation to an individual State specified in this subsection.

(5) For the purposes of paragraph (1) of this subsection, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (when such islands achieve Commonwealth status) shall be treated collectively as one State, and shall receive shares of such apportionment in proportion to their populations. The above listed areas shall be treated as States for all other purposes of this title.

(c) Payments to any State shall cover not more than 50 per centum of the cost of planning, acquisition, or development projects that are undertaken by the State. The remaining share of the cost shall be borne by the State in a manner and with such funds or services as shall be satisfactory to the Secretary. No payment may be made to any State for or on account of any cost or obligation incurred or any service rendered prior to September 3, 1964.

(d) A comprehensive statewide outdoor recreation plan shall be required prior to the consideration by the Secretary of financial assistance for acquisition or development projects. The plan shall be adequate if, in the judgment of the Secretary, it encompasses and will promote the purposes of this Act: *Provided,* That no plan shall be approved unless the governor of the respective State certifies that ample opportunity for public participation in plan development and revision has been accorded. The Secretary shall develop, in consultation with others, criteria for public participation, which criteria shall constitute the basis for the certification by the governor. The plan shall contain—

(1) the name of the State agency that will have authority to represent and act for the State in dealing with the Secretary for purposes of this Act;

(2) an evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;

(3) a program for the implementation of the plan; and

(4) other necessary information, as may be determined by the Secretary.

The plan shall take into account relevant federal resources and programs and shall be correlated so far as practicable with other State, regional, and local plans. Where there exists or is in preparation for any particular State a comprehensive plan financed in part with funds supplied by the Housing and Home Finance Agency, any statewide outdoor recreation plan prepared for purposes of this Act shall be based upon the same population, growth, and other pertinent factors as are

used in formulating and Housing and Home Finance Agency financed plans.

The Secretary may provide financial assistance to any State for projects for the preparation of a comprehensive statewide outdoor recreation plan when such plan is not otherwise available or for the maintenance of such plan.

(e) In addition to assistance for planning projects, the Secretary may provide financial assistance to any State for the following types of projects or combinations thereof if they are in accordance with the State comprehensive plan:

(1) Acquisition of Land and Waters.—For the acquisition of land, waters, or interests in land or waters (other than land, waters, or interests in land or waters acquired from the United States for less than fair market value), but not including incidental costs relating to acquisition.

Whenever a State provides that the owner of a single-family residence may, at his option, elect to retain a right of use and occupancy for not less than six months from the date of acquisition of such residence and such owner elects to retain such a right, such owner shall be deemed to have waived any benefits under sections 203, 204, 205, and 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894) and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 101(6) of the Act.

(2) Development.—For development of basic outdoor recreation facilities to serve the general public, including the development of federal lands under lease to States for terms of twenty-five years or more: *Provided,* That no assistance shall be available under this Act to enclose or shelter facilities normally used for outdoor recreation activities, but the Secretary may permit local funding, and after the September 28, 1976, not to exceed 10 per centum of the total amount allocated to a State in any one year to be used for sheltered facilities for swimming pools and ice skating rinks in areas where the Secretary determines that the severity of climatic conditions and the increased public use thereby made possible justifies the construction of such facilities.

(f)(1) Payments may be made to States by the Secretary only for those planning, acquisition, or development projects that are approved by him. No payment may be made by the Secretary for or on account of any project with respect to which financial assistance has been given or promised under any other federal program or activity, and no financial assistance may be given under any other federal program or activity for or on account of any project with respect to which such assistance has been given or promised under this Act. The Secretary may make payments from time to time in keeping with the rate of progress toward the satisfactory completion of individual projects: *Provided,* That the approval of all projects and all payments, or any commitments relating thereto, shall be withheld until the Secretary receives appropriate written assurance from the State that the State has the ability and intention to finance its share of the cost of the particular project, and to operate, and maintain by acceptable standards, at State expense, the particular properties or facilities acquired or developed for public outdoor recreation use.

(2) Payments for all projects shall be made by the Secretary to the Governor of the State or to a

State official or agency designated by the Governor or by State law having authority and responsibility to accept and to administer funds paid hereunder for approved projects. If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency.

(3) No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

(4) No payment shall be made to any State until the State has agreed to (1) provide such reports to the Secretary, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his duties under this Act, and (2) provide such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting for federal funds paid to the State under this Act.

(5) Each recipient of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(6) The Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this Act.

(7) Each State shall evaluate its grant programs annually under guidelines set forth by the Secretary and shall transmit such evaluation to the Secretary, together with a list of all projects funded during that fiscal year, including, but not limited to, a description of each project, the amount of federal funds employed in such project, the source of other funds, and the estimated cost of completion of the project. Such evaluation and the publication of same shall be eligible for funding on a 50-50 matching basis. The results of the evaluation shall be annually reported on a fiscal year basis to the Bureau of Outdoor Recreation, which agency shall forward a summary of such reports to the Committees on Interior and Insular Affairs of the United States Congress. Such report to the committees shall also include an analysis of the accomplishments of the fund for the period reported, and may also include recommendations as to future improvements for the operation of the Land and Water Conservation Fund program.

(8) With respect to property acquired or developed with assistance from the fund, discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited except to the extent that reasonable differences in admission and other fees may

be maintained on the basis of residence.

(g) In order to assure consistence in policies and actions under this Act, with other related federal programs and activities (including those conducted pursuant to title VII of the Housing Act of 1961 and section 701 of the Housing Act of 1954) and to assure coordination of the planning, acquisition, and development assistance to States under this section with other related federal programs and activities, the President may issue such regulations with respect thereto as he deems desirable and such assistance may be provided only in accordance with such regulations. (16 U.S.C. 460*l*-8)

Land Acquisition by Purchase

Sec. 7. (a) Moneys appropriated from the fund for federal purposes shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President to the following purposes and subpurposes:

(1) For the acquisition of land, waters, or interests in land or waters as follows:

National Park System; recreation areas.—Within the exterior boundaries of areas of the National Park System now or hereafter authorized or established and of areas now or hereafter authorized to be administered by the Secretary of the Interior for outdoor recreation purposes.

National Forest System.—In holdings within (a) wilderness areas of the National Forest System, and (b) other areas of National Forests as the boundaries of those Forests exist on the effective date of this Act, or purchase units approved by the National Forest Reservation Commission subsequent to the date of this Act, all of which other areas are primarily of value for outdoor recreation purposes: *Provided,* That lands outside of but adjacent to an existing National Forest boundary, not to exceed three thousand acres in the case of any one Forest, which would comprise an integral part of a forest recreational management area may also be acquired with moneys appropriated from this fund: *Provided further,* That except for areas specifically authorized by Act of Congress, not more that 15 per centum of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.

National Wildlife Refuge System.—Acquisition for (a) endangered species and threatened species authorized under section 5(a) of the Endangered Species Act of 1973; (b) areas authorized by section 2 of the Act of September 28, 1962, as amended (16 U.S.C. 460k-1); (c) national wildlife refuge areas under section 7(a)(5) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(5)) except migratory waterfowl areas which are authorized to be acquired by the Migratory Bird Conservation Act of 1929, as amended (16 U.S.C. 715-715s); (d) any areas authorized for the National Wildlife Refuge System by specific Acts.

(2) For payment into miscellaneous receipts of the Treasury as a partial offset for those capital costs, if any, of federal water development projects hereafter authorized to be constructed by or pursuant to an Act of Congress which are allocated to public recreation and the enhancement of fish and wildlife values and financed through appropriations to water resource agencies.

(3) Appropriations allotted for the acquisition of land, waters, or interests in land or waters as set forth under the headings "National

interests in land or waters as set forth under the headings "National Park System; recreation areas" and "National Forest System" in paragraph (1) of this subsection shall be available therefor notwithstanding any statutory ceiling on such appropriations contained in any other provision of law enacted prior to the convening of the Ninety-fifth Congress or, in the case of national recreation areas, prior to the convening of the Ninety-sixth Congress; except that for any such area expenditures may not exceed a statutory ceiling during any one fiscal year by 10 per centum of such ceiling or $1,000,000, whichever is greater. The Secretary of the Interior shall, prior to the expenditure of funds which would cause a statutory ceiling to be exceeded by $1,000,000 or more, and with respect to each expenditure of $1,000,000 or more, in excess of such a ceiling, provide written notice of such proposed expenditure not less than thirty calendar days in advance to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(b) Appropriations from the fund pursuant to this section shall not be used for acquisition unless such acquisition is otherwise authorized by law: *Provided, however,* That appropriations from the fund may be used for preacquisition work in instances where authorization is imminent and where substantial monetary savings could be realized.

(c) Whenever the Secretary of the Interior determines that to do so will contribute to, and is necessary for, the proper preservation, protection, interpretation, or management of an area of the national park system, he may, following timely notice in writing to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and National Resources of the Senate of his intention to do so, and by publication of a revised boundary map or other description in the Federal Register (i) make minor revisions of the boundary of the area, and moneys appropriated from the fund shall be available for acquisition of any lands, waters, and interests therein added to the area by such boundary revision subject to such statutory limitations, if any, on methods of acquisition and appropriations thereof as may be specifically applicable to such area; *Provided, however,* That such authority shall apply only to those boundaries established subsequent to January 1, 1965; and (ii) acquire by donation, purchase with donated funds, transfer from any other federal agency, or exchange, lands, waters, or interests therein adjacent to such area, except that in exercising his authority under this clause (ii) the Secretary may not alienate property administered as part of the National Park System in order to acquire lands by exchange, the Secretary may not acquire property without the consent of the owner, and the Secretary may acquire property owned by a State or political subdivision thereof only by donation. Prior to making a determination under this subsection, the Secretary shall consult with the duly elected governing body of the county, city, town, or other jurisdiction or jurisdictions having primary taxing authority over the land or interest to be acquired as to the impacts of such proposed action, and he shall also take such steps as he may deem political subdivision thereof only by donation. Prior to making a determination under this subsection, the Secretary shall consult with the duly elected governing

body of the county, city, town, or other jurisdiction or jurisdictions having primary taxing authority over the land or interest to be acquired as to the impacts of such proposed action, and he shall also take such steps as he may deem appropriate to advance local public awareness of the proposed action. Lands, waters, and interests therein acquired in accordance with this subsection shall be administered as part of the area to which they are added, subject to the laws and regulations applicable thereto. (16 U.S.C. 460*l*-9)

Restriction on Use of Funds

Sec. 8. Moneys derived from the sources listed in section 2 of this Act shall not be available for publicity purposes: *Provided, however,* That in each case where significant acquisition of development is initiated, appropriate standardized temporary signing shall be located on or near the affected site, to the extent feasible, so as to indicate the action taken is a product of funding made available through the Land and Water Conservation Fund. Such signing may indicate the per centum and dollar amounts financed by federal and non-federal funds, and that the source of the funding includes moneys derived from Outer Continental Shelf receipts. The Secretary shall prescribe standards and guidelines for the usage of such signing to assure consistency of design and application. (16 U.S.C. 460*l*-10)

Appropriation Authorization

Sec. 9. Not to exceed $30,000,000 of the money authorized to be appropriated from the fund by section 3 of this Act may be obligated by contract during each fiscal year for the acquisition of lands, waters, or interests herein within areas specified in section 7(a)(1) of this Act. Any such contract may be executed by the head of the department concerned, within limitations prescribed by the Secretary of the Interior. Any such contract so entered into shall be deemed a contractual obligation of the United States and shall be liquidated with money appropriated from the fund specifically for liquidation of such contract obligation. No contract may be entered into for the acquisition of property pursuant to this section unless such acquisition is otherwise authorized by federal law. (16 U.S.C. 460*l*-10a)

Option Contracts for Land Acquisition

Sec. 10. The Secretary of the Interior may enter into contracts for options to acquire lands, waters, or interests therein within the exterior boundaries of any area the acquisition of which is authorized by law for inclusion in the National Park System. The minimum period of such option shall be two years, and any sums expended for the purchase thereof shall be credited to the purchase price of said area. Not to exceed $500,000 of the sum authorized to be appropriated from the fund by section 4 of this Act may be expended by the Secretary in any on fiscal year for such options. (16 U.S.C. 460*l*-10b)

Repeal of Provisions Prohibiting Collection of Recreation Fees or User Charges

Sec. 11. All provisions of law that prohibit the collection of entrance, admission, or other recreation user fees or charges authorized by this Act or that restrict the expenditure of funds if such fees or

charges are collected are hereby repealed: *Provided,* That no provision of any law or treaty which extends to any person or class of persons a right of free access to the shoreline of any reservoir or other body of water, or to hunting and fishing along or on such shoreline, shall be affected by this repealer. (16 U.S.C. 460*l*-10c)

Review and Report

Sec. 12. Within one year of September 28, 1976, the Secretary is authorized and directed to submit to the Committees on Interior and Insular Affairs of the Senate and House of Representatives a comprehensive review and report on the needs, problems, and opportunities associated with urban recreation in highly populated regions including the resources potentially available for meeting such needs. The report shall include site specific analyses and alternatives, in a selection of geographic environments representative of the Nation as a whole, including, but not limited to, information on needs, local capabilities for action, major site opportunities, trends, and a full range of options and alternatives as to possible solutions and courses of action designed to preserve remaining open space, ameliorate recreational deficiency, and enhance recreational opportunity for urban populations, together with an analysis of the capability of the federal government to provide urban-oriented environmental education programs (including, but not limited to, cultural programs in the arts and crafts) within such options. The Secretary shall consult with, and request the views of, the affected cities, counties, and States on the alternatives and courses of action identified. (16 U.S.C. 460*l*-10d)

Transfer To and From Land and Water Conservation Fund

Sec. 201. (a) There shall be set aside in the land and water conservation fund in the Treasury of the United States provided for in Title I of this Act the amounts specified in section 209(f)(5) of the Highway Revenue Act of 1956 (relating to special motor fuels and gasoline used in motorboats).

(b) There shall be paid from time to time from the land and water conservation fund into the general fund of the Treasury amounts estimated by the Secretary of the Treasury as equivalent to—

(1) the amounts paid before October 1, 1989, under section 6421 of Title 26 (relating to amounts paid in respect to gasoline used for certain nonhighway purposes or by local transit systems) with respect to gasoline used after December 31, 1964, in motorboats, on the basis of claims filed for periods ending before October 1, 1988; and

(2) 80 percent of the floor stocks refunds made before October 1, 1989, under section 6412(a)(2) of Title 26 with respect to gasoline to be used in motorboats. (16 U.S.C. 460*l*-11)

National Forest Roads and Trails Act

- **Act of October 13, 1964 (P.L. 88-657, 78 Stat. 1089, as amended; 16 U.S.C. 532-538)**

Declaration and Purpose

Sec. 1. The Congress hereby finds and declares that the construction and maintenance of an adequate system of roads and trails within and near the National Forests and other lands administered by the Forest Service is essential if increasing demands for timber, recreation, and other uses of such lands are to be met; that the existence of such a system would have the effect, among other things, of increasing the value of timber and other resources tributary to such roads; and that such a system is essential to enable the Secretary of Agriculture (hereinafter called the Secretary) to provide for intensive use, protection, development, and management of these lands under principles of multiple use and sustained yield of products and services. (16 U.S.C. 532)

Rights-of-Way Authorization

Sec. 2. The Secretary is authorized, under such regulations as he may prescribe, subject to the provisions of this Act, to grant permanent or temporary easements for specified periods or otherwise for road rights-of-way (1) over National Forest lands administered by the Forest Service, and (2) over any other related lands with respect to which the Department of Agriculture has rights under the terms of the grant to it. (16 U.S.C. 533)

Easements

Sec. 3. An easement granted under this Act may be terminated by consent of the owner of the easement, by condemnation, or after a five year period of nonuse the Secretary may, if he finds the owner has abandoned the easement, make a determination to cancel it. Before the Secretary may cancel an easement for nonuse the owner of such easement must be notified of the determination to cancel and be given, upon his request made within sixty days after receipt of the notice, a hearing in accordance with such rules and regulations, as may be issued by the Secretary. (16 U.S.C. 534)

Road Construction

Sec. 4. The Secretary is authorized to provide for the acquisition, construction, and maintenance of forest development roads within and near the National Forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management thereof, and for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on

purchasers of National Forest timber and other products, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided,* That where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of the National Forest timber and other products shall not be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate. The Secretary is authorized, under such rules and regulations as he shall prescribe, to permit the transfer of unused effective purchaser credit for road construction earned after the date of enactment of this sentence, from one timber sale to a purchaser to another timber sale to the same purchaser within the same National Forest. (16 U.S.C. 535)

Record Keeping

Sec. 5. Copies of all instruments affecting permanent interests in land executed pursuant to this Act shall be recorded in each county where the lands are located. Copies of all instruments affecting interests in lands reserved from the public domain shall be furnished to the Secretary of the Interior (16 U.S.C. 536)

Deposits for Road Maintenance

Sec. 6. The Secretary may require the user or users of a road under the control of the Forest Service, including purchasers of Government timber and other products, to maintain such roads in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a road to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided,* That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further,* That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded. (16 U.S.C. 537)

Agreements

Sec. 7. Whenever the agreement under which the United States has obtained for the use of, or in connection with, the National Forests and other lands administered by the Forest Service a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor. (16 U.S.C. 538)

Federal Water Project Recreation Act

- **Act of July 9, 1965 (P.L. 89-72, 79 Stat. 213; 16 U.S.C. 460*l*-12, 460*l*-18(c))**

Flood Control

Sec. 1. It is the policy of the Congress and the intent of this Act that (a) in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multiple-purpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement and that, wherever any such project can reasonably serve either or both of these purposes consistently with the provisions of this Act, it shall be constructed, operated, and maintained accordingly; (b) planning with respect to the development of the recreation potential of any such project shall be based on the coordination of the recreational use of the project area with the use of existing and planned Federal, State, or local public recreation developments; and (c) project construction agencies shall encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes and operate, maintain, and replace facilities provided for those purposes unless such areas or facilities are included or proposed for inclusion within a national recreation area, or area appropriate for administration by a Federal agency as a part of the National Forest System, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife. (16 U.S.C. 460*l*-12)

* * * *

Transfer of Lands to National Forest

Sec. 7. (c) . . . The Secretary of the Interior is authorized to transfer jurisdiction over reservoir project lands within or adjacent to the exterior boundaries of National Forests and facilities thereon to the Secretary of Agriculture for recreation and other National Forest System purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a National Forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become National Forest lands: *Provided,* That the lands and waters within the flow lines of any reservoir or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. . . . (16 U.S.C. 460*l*-18 (c))

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Water Resources Planning Act

- **Act of July 22, 1965 (P.L. 89-80, 79 Stat. 244; 42 U.S.C. 1962, 1962a, 1962a-1 thru a–2, 1962b)**

Sec. 1. This Act may be cited as the "Water Resources Planning Act." (42 U.S.C. 1962 (note).

Statement of Policy

Sec. 2. In order to meet the rapidly expanding demands for water throughout the Nation, it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the Unites States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned. (42 U.S.C. 1962)

TITLE I—WATER RESOURCE COUNCIL

Sec. 101. There is hereby established a Water Resources Council (hereinafter referred to as the "Council") which shall be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the Chairman of the Federal Power Commission. The Chairman of the Council shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council. The Chairman of the Council shall be designated by the President (42 U.S.C. 1962a)

Sec. 102. The Council shall—

(a) maintain a continuing study and prepare an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and

(b) maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs. (42 U.S.C. 1962a-1)

Sec. 103.(a) The council shall establish, after such consultation with other interested entities, both Federal and non-Federal, as the Council may find appropriate, and with the approval of the President, principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects. Such procedures may

include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission.

(b) Economic evaluation; primary criterion.—The Council shall develop standards and criteria for economic evaluation of water resource projects. For the purpose of those standards and criteria, the primary direct navigation benefits of a water resource project are defined as the product of the savings to shippers using the waterway and the estimated traffic that would use the waterway. "Savings to shippers" means the difference between (1) the freight rates or charges prevailing at the time of the study for the movement by the alternative means, and (2) those which would be charged on the proposed waterway. Estimated traffic that would use the waterway will be based on those freight rates, taking into account projections of the economic growth of the area. (42 U.S.C. 1962a-2)

TITLE II—RIVER BASIN COMMISSION

Sec. 201.(a) The President is authorized to declare the establishment of a river basin water and related land resources commission upon request therefor by the Council, or request addressed to the Council by a State within which all or part of the basin or basins concerned are located if the request by the Council or by a State

(1) defines the area, river basin, or group of related river basins for which a commission is requested,

(2) is made in writing by the Governor or in such manner as State law may provide, or by the Council, and

(3) is concurred in by the Council and by not less than one-half of the States within which portions of the basin or basins concerned are located and, in the event the Upper Colorado River Basin is involved, by at least three of the four States of Colorado, New Mexico, Utah, and Wyoming or, in the event the Columbia River Basin is involved, by at least three of the four States of Idaho, Montana, Oregon, and Washington. Such concurrences shall be in writing.

(b) Each such commission for an area, river basin, or group of river basins shall, to the extent consistent with section 3 of this Act—

(1) serve as the principal agency for the coordination of Federal, State, interstate, local and governmental plans for the development of water and related land resources in its area, river basin, or group of river basins;

(2) prepare and keep up to date, to the extend practicable, a comprehensive, coordinated, joint plan for Federal, State, interstate, local and nongovernmental development of water and related resources: *Provided,* That the plan shall include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the basin or basins, and it may be prepared in stages, including recommendations with respect to individual projects;

(3) recommend long-range schedules of priorities for the collection and analysis of basic data and for investigation, planning, and construction of projects; and

(4) foster and undertake such studies of water and related land resources problems in its area, river basin, or group of river basins as are necessary in the preparation of the plan described in clause (2) of this subsection. (42 U.S.C. 1962b)

Solid Waste Disposal Act

- **Act of October 20, 1965 (P.L. 89-272, 79 Stat. 992, as amended; 42 U.S.C. 6905, 6961, 6964)**

Note—This Act was significantly amended by P.L. 94-580, the Resource Conservation and Recovery Act of 1976. Sections were moved from 42 U.S.C. 3251 et seq. to 42 U.S.C. 6901 et seq.

Note—Section numbers refer to U.S. Code sections.

* * * *

Integration with Other Acts

Sec. 6905. (c)(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulation applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977. If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III of this chapter relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977. (42 U.S.C. 6905)

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Subtitle F — Federal Responsibilities

Application of Federal, State, and Local Law to Federal Facilities

Sec. 6961. (a) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof,

shall be immune or exempt from any process or sanction of any State or federal court with respect to the enforcement of any such injunctive relief. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption. (42 U.S.C. 6961)

* * * *

Applicability of Solid Waste Disposal Guidelines to Executive Agencies

Sec. 6964. (a) Compliance.—

(1) If—

(A) an executive agency (as defined in section 105 of title 5, United States Code) or any unit of the legislative branch of the federal government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or

(B) such agency enters into a contract with any person for the operation by such person of any federal property or facility and the performance of such contract involves such person in solid waste management activities then such agency shall insure compliance with the guidelines recommended under section 1008 and the purposes of this Act in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each executive agency or any unit of the legislative branch of the federal government which conducts any activity—

(A) which generates solid waste, and

(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste shall insure compliance with such guidelines and the purposes of this Act in conducting such activity.

(3) Each executive agency which permits the use of federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this Act in the disposal of such waste.

(4) The President or the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the federal government, shall prescribe regulations to carry out this subsection.

(b) Licenses and Permits.—Each executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 1008 and the purpose of this Act. (42 U.S.C. 6964)

Service Contract Act of 1965

- **Act of October 22, 1965 (P.L. 89-286, 79 Stat. 1034; 41 U.S.C. 351-358)**

Note—Section numbers refer to U.S. Code sections

Required Contract Provisions; Minimum Wages

Sec. 351. (a) Every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500, except as provided in section 356 of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees, shall contain the following:

(1) A provision specifying the minimum monetary wages to be paid the various classes of service employees in the performance of the contract or any subcontract thereunder, as determined by the Secretary, or his authorized representative, in accordance with prevailing rates for such employees in the locality, or, where a collective-bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's-length negotiations. In no case shall such wages be lower than the minimum specified in subsection (b) of this section.

(2) A provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality, or, where a collective-bargaining agreement covers any such service employees, to be provided for in such agreement, including prospective fringe benefit increases provided for in such agreement as a result of arm's-length negotiations. Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accidence insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this subparagraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary.

(3) A provision that no part of the services covered by this chapter will be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services.

(4) A provision that on the date a service employee commences

work on a contract to which this chapter applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2) of this subsection, on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 or section 5332 of Title 5 were applicable to them. The Secretary shall give due consideration to such rates in making the wage and fringe benefit determinations specified in this section.

(b)(1) No contractor who enters into any contract with the Federal Government the principal purpose of which is to furnish services through the use of service employees and no subcontractor thereunder shall pay any of his employees engaged in performing work on such contracts less than the minimum wage specified under section 206(a)(1) of Title 29.

(2) The provisions of sections 352 to 354 of this title shall be applicable to violations of this subsection.

Violations

Sec. 352. (a) Liability of responsible party; withholding payments due on contract; payment of underpaid employees from withheld payments.—Any violation of any of the contract stipulations required by section 351(a)(1) or (2) or of section 351(b) of this title shall render the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of such contract. So much of the accrued payment due on the contract or any other contract between same contractor and the Federal Government may be withheld as is necessary to pay such employees. Such withheld sums shall be held in a deposit fund. On order of the Secretary, any compensation which the head of the Federal agency or the Secretary has found to be due pursuant to this chapter shall be paid directly to the underpaid employees from any accrued payments withheld under this chapter.

(b) Enforcement of section.—In accordance with regulations prescribed pursuant to section 353 of this title, the Federal agency head or the Secretary is hereby authorized to carry out the provisions of this section.

(c) Cancellation of contract; contracts for completion of original contract; liability of original contractor for additional cost.—In addition, when a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency. Whereupon, the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

Law Governing Authority of Secretary

Sec. 353. (a) Enforcement of chapter.—Sections 38 and 39 of this title shall govern the Secretary's authority to enforce this chapter, make rules, regulations, issue orders, hold hearings, and make decisions based upon findings of fact, and take other appropriate action hereunder.

(b) Limitations and regulations allowing variations, tolerances, and exemptions.—The Secretary may provide such reasonable limitations

and may make such rules and regulations allowing reasonable variations, tolerance, and exemptions to and from any or all provisions of this chapter (other than section 358 of this title), but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this chapter to protect prevailing labor standards.

(c) Predecessor contracts; employees wages and fringe benefits.—No contractor or subcontractor under a contract, which succeeds a contract subject to this chapter and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract; *Provided,* That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

(d) Duration of contract.—Subject to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which this chapter applies may, if authorized by the Secretary, be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 351 of this title no less often than once every two years during the term of the contract, covering the various classes of service employees.

List of Violators, Prohibition of Contract Award to Firms Appearing On List; Actions To Recover Underpayments; Payment of Sums Recovered

Sec. 354. (a) The Comptroller General is directed to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found to have violated this chapter. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms. Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not later than ninety days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this chapter.

(b) If the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent

jurisdiction to recover the remaining amount of underpayments. Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee or employees. Any sum not paid to an employee because of inability to do so within three years shall be covered in the Treasury of the United States as miscellaneous receipts.

Exclusion of Fringe Benefit Payments in Determining Overtime Pay

Sec. 355. In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of pay of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act (29 U.S.C. 201 et seq.) by provisions of section 7(d) thereof (29 U.S.C. 207(d)).

Exemptions

Sec. 356. This chapter shall not apply to—

(1) any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.);

(3) any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.);

(5) any contract for public utility services, including electric light and power, water, steam, and gas;

(6) any employment contract providing for direct services to a Federal agency by an individual or individuals; and

(7) any contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.

Definitions

Sec. 357. For the purposes of this chapter—

(a) "Secretary" means Secretary of Labor.

(b) The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 356 of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(c) The term "compensation" means any of the payments or fringe benefits described in section 351 of this title.

(d) The term "United States" when used in a geographical sense shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as

defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

Wage and Fringe Benefit Determinations of Secretary

Sec. 358. It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 351[1] of this title should be made with respect to all contracts subject to this chapter, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this chapter which are entered into during the applicable fiscal year;

(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

(2) For the fiscal year ending June 30, 1974, all contracts, under which more than twenty service employees are to be employed.

(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

(5) On or after July 1, 1976, all contracts under which more than five service employees are to be employed.

[1]So in original. Probably should be in "section 351(a)".

- **Act of June 24, 1966 (P.L. 89-470, 80 Stat. 220; 43 U.S.C. 852a-b)**

Sec. 3. The Secretary of Interior may issue regulations governing applications for unsurveyed lands. If he establishes any minimum acreage requirements, they shall provide for selection of tracts of reasonable size, taking into consideration location, terrain, and adjacent land ownership and uses. (43 U.S.C. 852a)

Sec. 4. Prior to issuance of an instrument of transfer, lands must be surveyed. The Secretary of the Interior shall within five years, subject to the availability of funds, survey the exterior boundaries of lands approved as suitable for transfer to the State. (43 U.S.C. 852b)

Statute of Limitations for Certain Actions Brought by the Government

- **Act of July 18, 1966 (P.L. 89-505, 80 Stat. 304; 28 U.S.C. 2415-2416)**

Title 28 of the United States Code is amended by adding thereto the following two new sections:

Sec. 2415. (a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or any officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided,* That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment: *Provided further,* That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further,* That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed sixty days after the date of publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided,* That for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) year after the Secretary of the Interior has published in the Federal Registrar a notice rejecting such claim or (2) three years after the date the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided,* That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians,

including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in accordance with subsection (g) may be brought on or before sixty days after the date of the publication of the list required by section 4(c) of the Indian Claims Limitation Act of 1982: *Provided,* That, for those claims that are on either of the two lists published pursuant to the Indian Claims Limitation Act of 1982, any right of action shall be barred unless the complaint is filed within (1) one year after the Secretary of the Interior has published in the Federal Register a notice rejecting such claim or (2) three years after the Secretary of the Interior has submitted legislation or legislative report to Congress to resolve such claim.

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee for any agency of the United States or to or on behalf of any member of dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: *Provided,* That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.

(i) The provisions of this section shall not prevent the United States

or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31. (28 U.S.C. 2415)

Time for Commencing Actions Brought by the United States—Exclusions

Sec. 2416. For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which—

(a) the defendant or the residence is outside the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico; or

(b) the defendant is exempt from legal process because of infancy, mental incompetence, diplomatic immunity, or for any other reason; or

(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances; or

(d) the United States is in a state of war declared pursuant to article I, section 8, of the Constitution of the United States. (28 U.S.C. 2416)

Government Organization and Employees
Chapter 5, Subchapter II

- **Act of September 6, 1966 (P.L. 89-554; Title 5, 80 Stat. 381; 5 U.S.C. 551, 553-559, 5911–5912)**

Note—Section numbers refer to U.S. Code numbers.

That the laws relating to the organization of Government of the United States and to its civilian officers and employees, generally, are revised, codified, and enacted as title 5 of the United States Code, entitled "Government Organization and Employees", and may be cited as "5 U.S.C., Section 551", as follows:

Note—The original Administrative Procedure Act, the Act of June 11, 1946, was repealed by P.L. 89-554 and the provisions of that Act were incorporated into 5 U.S.C. 551-559. The Freedom of Information Act is codified in 5 U.S.C. 552, the Privacy Act is codified in 5 U.S.C. 552a, and the Government in the Sunshine Act in 5 U.S.C. 552b. Collectively, these acts are commonly referred to as the Administrative Procedures Act. Sections listed below refer to sections of the U.S.C.

CHAPTER 5, SUBCHAPTER II—ADMINISTRATIVE PROCEDURES

Definitions

Sec. 551. For the purpose of this subchapter—

(1) "agency" means each authority of the government of the United States, whether or not it is within or subject to review by another agency, but does not include-

(A) the Congress;

(B) the courts of the United States;

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

(D) the government of the District of Columbia; or except as to the requirements of section 552 of this title—

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

(F) courts martial and military commissions;

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

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1892-1902, and former section 1641(b) (2), of title 50, appendix;

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

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

(4) "rule" means the whole or a part of an agency statement of general or particular applicability

and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganization thereof, prices, facilities, appliances, services, or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

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

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

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

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

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

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

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

(B) withholding of relief;

(C) imposition of penalty or fine;

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

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

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

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency-

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

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

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

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

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

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

Note—Section 552 has been included as the Freedom of Information Act, P.L. 93-502.

Note—Section 552a has been included in the Privacy Act of 1974, P.L. 93-579.

Note—Section 552b has been included in the Government in the Sunshine Act, P.L. 94-409.

Rule Making

Sec. 553. (a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice of hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedures, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

Adjudications

Sec. 554. (a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a administrative law judge appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agency for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted. When private persons are the moving parties, other parties to the proceedings shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such as employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

Ancillary matters

Sec. 555. (a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interest person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall

proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in cases on contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

Hearings; Presiding Employees; Powers and Duties; Burden of Proof; Evidence; Record as Basis of Decision

Sec. 556. (a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matters as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpoenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternate means of dispute resolution as provided in subchapter IV of this chapter;

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held in pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with section 557 of this title; and

(11) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits of applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

Initial Decision; Conclusiveness; Review by Agency; Submissions by Parties; Contents of Decisions; Record

Sec. 557. (a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to

be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining application for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions-

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefore, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1). In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding—

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of this acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

Imposition of Sanctions; Determination of Applications for Licenses; Suspension, Revocation, and Expiration of Licenses

Sec. 558. (a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given-

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements. When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

Effect on Other Laws; Effect of Subsequent Statutes

Sec. 559. This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the

requirements of this subchapter through the issuance of rules or otherwise. Subsequent statutes may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

Quarters and Facilities; Employees in the United States

Sec. 5911. (a) For the purpose of this section—

(1) "Government" means the Government of the United States:

(2) "agency"means an Executive agency, but does not include the Tennessee Valley Authority;

(3) "employee" means an employee of an agency;

(4) "United States" means the several States, the District of Columbia, and the territories and possessions of the United States including the Commonwealth of Puerto Rico;

(5) "quarters" means household furniture and equipment, garage space, utilities, subsistence, and laundry service.

(b) The head of an agency may provide, directly or by contract, an employee stationed in the United States with quarters and facilities, when conditions of employment or of availability of quarters warrant the action.

(c) Rental rates for quarters provided for an employee under subsection (b) of this section or occupied on a rental basis by an employee or member of a uniformed service under any other provision of statute, and charges for facilities made available in connection with the occupancy of the quarters, shall be based on the reasonable value of the quarters and facilities to the employee or member concerned, in the circumstances under which the quarters and facilities are provided, occupied, or made available. The amounts of the rates and charges shall be paid by, or deducted from the pay of, the employee or member of a uniformed service, or otherwise charged against him in accordance with law. The amounts of payroll deductions for the rates and charges shall remain in the applicable appropriation fund. When payment of the rates and charges is made by other than payroll deductions, the amounts of payment shall be credited to the Government as provided by law.

(d) When, as an incidental service in support of a program of the Government, quarters and facilities are provided by appropriate authority of the Government to an individual other than an employee or member of a uniformed service, the rates and charges therefor shall be determined in accordance with this section. The amounts of payment of the rates and charges shall be credited to the Government as provided by law.

(e) The head of an agency may not require an employee or member of a uniformed service to occupy quarters on a rental basis, unless the agency head determines that necessary service cannot be rendered, or that property of the Government cannot adequately be protected, otherwise.

(f) The President may prescribe regulations governing the provision, occupancy, and availability of quarters and facilities, the determination of rates and charges therefor, and other related matters, necessary and appropriate to carry out this section. The head of each agency may prescribe regulations, not inconsistent with the regulations of the President, necessary and appropriate to carry out the functions of the agency head under this section.

(g) Subsection (c) of this section does not repeal or modify any provision of statute authorizing the provision of quarters or facilities, either without charge or at rates or charges specifically fixed by statute.

Employees in Foreign Countries

Under regulations prescribed by the head of the agency concerned and approved by the President, an employee who is a citizen of the United States permanently stationed in a foreign country may be furnished, without cost to him, living quarters, including heat, fuel, and light, in a Government owned or rented building. The rented quarters may be furnished only within the limits of appropriations made therefor. (5 U.S.C. 5912)

Government Organization and Employees
Chapter 57, Subchapter I

- **Act of September 6, 1966 (P.L. 89-554; Title 5, 80 Stat. 498; 5 U.S.C. 5701–5705, 5706, 5706(a), 5707–5708)**

CHAPTER 57, SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

Definitions

Sec. 5701. Except as otherwise provided in section 5707(d), for the purpose of this subchapter—

(1) "agency" means—

(A) an Executive agency;

(B) a military department;

(C) an office, agency, or other establishment in the legislative branch;

(D) an office, agency, or other establishment in the judicial branch; and

(E) the government of the District of Columbia; but does not include—

(i) a Government controlled corporation;

(ii) a Member of Congress; or

(iii) an office or committee of either House of Congress or of the two Houses;

(2) "employee" means an individual employed in or under an agency including an individual employed intermittently in the Government service as an expert or consultant and paid on a daily when–actually–employed basis and an individual serving without pay or at $1 a year;

(3) "subsistence" means lodging, meals, and other necessary expenses for the personal sustenance and comfort of the traveler;

(4) "per diem allowance" means a daily payment instead of actual expenses for subsistence and fees or tips to porters and stewards;

(5) "Government" means the Government of the United States and the government of the District of Columbia; and

(6) "continental United States" means the several States and the District of Columbia, but does not include Alaska or Hawaii.

Per Diem; Employees Traveling on Official Business

Sec. 5702. (a)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business (if the employee is described in section 5703 of this title), is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his

designee for travel outside the continental United States; or

(C) a combination of payments described in subparagraphs (A) and (B) of this paragraph.

(2) Any per diem allowance or maximum amount of reimbursement shall be established, to the extent feasible, by locality.

(3) For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe.

(b)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who abandons the travel assignment prior to its completion—

(A) because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and to payments pursuant to subsection (a) of this section until that location is reached; or

(B) because of a personal emergency situation (such as serious illness, injury, or death of a member of the employee's family, or an emergency situation such as fire, flood, or act of God), may be allowed, with the approval of an appropriate offical of the agency concerned, reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and payments pursuant to subsection (a) of this section until that location is reached.

(2)(A) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who, with the approval of an appropriate official of the agency concerned, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (A) or (B) of paragraph (1) of this subsection, may allowed (subject to the limitation provided in subparagraph (B) of this paragraph)—

(i) reimbursement for expenses of transportation to the location where necessary medical services are provided or the emergency situation exists.

(ii) payments pursuant to subsection (a) of this section until that location is reached, and

(iii) such reimbursement and payments for return to such assignment.

(B) The reimbursement which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be the employee's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the costs of transportation which the employee would have incurred had such travel begun and ended at the employee's designated post of duty, or home or regular place of business, as the case may be. The payments which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the employee's transportation as a consequence of the transportation's having begun and ended at a location on the travel assignment (rather than at the employee's designated post of duty, or home or regular place of business, as the case may be).

(3) Subject to the limitations contained in regulations prescribed pursuant to section 5707 of this title, an employee who is described in

subsection (a) of this section and who interrupts the travel assignment prior to its completion because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to payments pursuant to subsection (a) of this section at the location where the interruption occurred.

(c) This section does not apply to a justice or judge, except to the extent provided by section 456 of title 28.

Per Diem, Travel, and Transportation Expenses; Experts and Consultants; Individuals Serving Without Pay

Sec. 5703. An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when–actually–employed basis, or serving without pay or at $1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service.

Mileage and Related Allowances

Sec. 5704. (a) Under regulations prescribed under section 5707 of this title, an employee who is engaged on official business for the Government is entitled to not in excess of—

(1) 20 cents a mile for the use of a privately owned motorcycle;

(2) 25 cents a mile for the use of a privately owned automobile; or

(3) 45 cents a mile for the use of a privately owned airplane;

instead of actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. A determination of such advantage is not required when payment on a mileage basis is limited to the cost of travel by common carrier including per diem. Notwithstanding the preceding provisions of this subsection, in any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle.

(b) In addition to the mileage allowance under subsection (a) of this section, the employee may be reimbursed for—

(1) parking fees;

(2) ferry fees;

(3) bridge, road, and tunnel costs; and

(4) airplane landing and tie–down fees.

Advancements and Deductions

Sec. 5705. An agency may advance, through the proper disbursing official, to an employee entitled to per diem or mileage allowances under this subchapter, a sum considered advisable with regard to the character and probable duration of the travel to be performed. A sum advanced and not used for allowable travel expenses is recoverable from the employee or his estate by—

(1) setoff against accrued pay, retirement credit, or other amount due the employee;

(2) deduction from an amount due from the United States; and

(3) such other method as is provided by law.

Allowable Travel Expenses

Sec. 5706. Except as otherwise permitted by this subchapter or by statutes relating to members of the uniformed services, only actual and necessary travel expenses may be allowed to an individual holding

employment or appointment under the United States.

Subsistence and Travel Expenses for Threatened Law Enforcement Personnel

Sec. 5706a. (a) Under regulations prescribed pursuant to section 5707 of this title, when the life of an employee who services in a law enforcement, investigative, or similar capacity, or members of such employee's immediately family, is threatened as a result of the employee's assigned duties, the head of the agency concerned may approve appropriate subsistence payments for the employee or members of the employee's family (or both) while occupying temporary living accommodations at or away from the employee's designated post of duty.

(b) When a situation described in subsection (a) of this section requires the employee or members of the employee's family (or both) to be temporarily relocated away from the employee's designated post of duty, the head of the agency concerned may approve transportation expenses to and from such alternative location.

Regulations and Reports

Sec. 5707. (a)(1) The Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter, except that the Director of the Administrative Office of the United States Courts shall prescribe such regulations with respect to official travel by employees of the judicial branch of the Government.

(2) Regulations promulgated to implement section 5702 or 5706a of this title shall be transmitted to the appropriate committees of the Congress and shall not take effect until 30 days after such transmittal.

(b)(1) The Administrator of General Services, is consultation with the Comptroller General of the United States, the Secretary of Transportation, the Secretary of Defense, and representatives of organizations of employees of the Government, shall conduct periodic investigations of the cost of travel and the operation of privately owned vehicles to employees while engaged on official business, and shall report the results of such investigations to Congress at least once a year. In conducting the investigations, the Administrator shall review and analyze among other factors—

(A) depreciation of original vehicle cost;

(B) gasoline and oil (excluding taxes);

(C) maintenance, accessories, parts, and tires;

(D) insurance; and

(E) State and Federal taxes.

(2) The Administrator shall issue regulations under this section which shall prescribe mileage allowances which shall not exceed the amounts set forth in section 5704(a) of this title and which reflect the current costs, as determined by the Administrator, of operating privately owned motorcycles, automobiles, and airplanes. At least once each year after the issuance of the regulations described in the preceding sentence, the Administrator shall determine, based upon the results of his investigation, specific figures, each rounded to the nearest once–half cent, of the average, actual cost a mile during the period for the use of a privately owned motorcycle, automobile, and airplane. The Administrator shall report such figures to Congress not later than five working days after he

makes his determination. Each such report shall be printed in the Federal Register. The mileage allowances contained in regulations prescribed under this section shall be adjusted within thirty days following the submission of that report to the figures so determined and reported by the Administrator.

(c)(1) The Administrator of General Services shall periodically, but at least every 2 years, submit to the Director of the Office of Management and Budget an analysis of estimated total agency payments for such items as travel and transportation of people, average costs and duration of trips, and purposes of official travel; and of estimated total agency payments for employee relocation. This analysis shall be based on a sampling survey of agencies each of which spent more than $5,000,000 during the previous fiscal year on travel and transportation payments, including payments for employee relocation. Agencies shall provide to the Administrator the necessary information in a format prescribed by the Administrator and approved by the Director.

(2) The requirements of paragraph (1) of this subsection shall expire upon the Administrator's submission of the analysis that includes the fiscal year that ends September 30, 1991.

(d)(1) Each agency shall ensure that its approved accommodations percentage for a fiscal year shall be not less than—

(A) 65 percent, for the first fiscal year that begins 4 years after the date of enactment of this subsection;

(B) 75 percent, for the fiscal year that begins 5 years after the date of enactment of this subsection; and

(C) 90 percent, for the fiscal year that begins 6 years after the date of enactment of this subsection and for each subsequent fiscal year.

(2) In this subsection, an agency's "approved accommodations percentage" for a fiscal year is the percentage determined by multiplying 100 by the quotient of—

(A) the total number of nights sent by civilian employees of the agency (as described in section 5702(a)) for which payment was made under this chapter for lodging expenses incurred in any State or at any approved hotel, motel, or other place of public accommodation not owned by the Federal Government; divided by

(B) the total number of nights spent by such employees for which payment was made under this chapter for lodging expenses incurred in any State at any hotel, motel, or other place of public accommodation not owned by the Federal Government.

(3) For purposes of this subsection, a hotel, motel, or other place of public accommodation is approved if it meets the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974.

(4) For purposes of this subsection—

(A) the term "agency" does not include the government of the District of Columbia; and

(B) the term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands, the Canal Zone, Guam, American Samoa, or any other territory or possession.

Effect on Other Statutes

Sec. 5708. This subchapter does not modify or repeal—

(1) any statute providing for the traveling expenses of the President;

(2) any statute providing for mileage allowances for Members of Congress;

(3) any statute fixing or permitting rates higher than the maximum rates established under this subchapter; or (4) any appropriation statute item for examination of estimates in the field.

Highway Safety Act

- **Act of September 9, 1966 (P.L. 89-564, 80 Stat. 731, 23 U.S.C. 401-403)**

TITLE I—HIGHWAY SAFETY

Sec. 101. Title 23, United States Code, is hereby amended by adding at the end thereof a new chapter:

Chapter 4.—Highway Safety

Sec.
401. Authority of the Secretary.
402. Highway safety programs.
403. Highway safety research and development.
404. National Highway Safety Advisory Committee.

Authority of the Secretary

Sec. 401. The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. (23 U.S.C. 401)

Highway Safety Programs

Sec. 402. (a) Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform guidelines promulgated by the Secretary. Such uniform guidelines shall be expressed in terms of performance criteria. In addition, such uniform guidelines shall include programs (1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits, (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags, (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance, (4) to reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles, (5) to reduce injuries and deaths resulting from accidents involving school buses, and (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. If the Secretary does not designate as priority programs those programs described in the preceding sentence, the Secretary shall submit to Congress a report describing the reasons for not prioritizing such programs. The Secretary shall establish a highway safety program for the collection and reporting of data on traffic-related deaths and injuries by the States. Under such program, the States shall collect and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations to Congress concerning legislation necessary to implement such programs. The program shall include information obtained by the

Secretary under section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991 and provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents. Such uniform guidelines shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve pedestrian performance and bicycle safety. In addition such uniform guidelines shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probably cause of accidents, injuries, and deaths, vehicle registration, operations, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, and emergency services. Such guidelines as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

(b)(1) The Secretary shall not approve any State highway safety program under this section which does not—

(A) provide that the Governor of the State shall be responsible for the administration of the program through a State highway safety agency which shall have adequate powers, and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program.

(B) authorize political subdivisions of such State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the uniform guidelines of the Secretary promulgated under this section.

(C) provide that at least 40 per centum of all Federal funds apportioned under this section to such State for any fiscal year will be expended by the political subdivisions of such State in carrying out local highway safety programs authorized in accordance with subparagraph (B) of this paragraph.

(D) provide adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State.

(E) provide for programs (which may include financial incentives and disincentives) to encourage the use of safety belts by drivers of, and passengers in, motor vehicles.

(2) The Secretary is authorized to waive the requirement of subparagraph (C) of paragraph (1) of this subsection, in whole or in part,

for a fiscal year for any State whenever he determines that there is an insufficient number of local highway safety programs to justify the expenditure in such State of such percentage of Federal funds during such fiscal year.

(3) Administrative requirements.—The Secretary may not approve a State highway safety program under this section which does not—

(A) provide that the Governor of the State shall be responsible for the administration of the program through a State highway safety agency which shall have adequate powers and be suitably equipped and organized to carry out, to the satisfaction of the Secretary, such program;

(B) authorize political subdivisions of the State to carry out local highway safety programs within their jurisdictions as a part of the State highway safety program if such local highway safety programs are approved by the Governor and are in accordance with the minimum standards established by the Secretary under this section;

(C) except as provided in paragraph (5), provide that at least 40 percent of all Federal funds apportioned under this section to the State for any fiscal year will be expended by the political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs authorized in accordance with subparagraph (B); and

(D) provide adequate and reasonable access for the safe and convenient movement of individuals with disabilities, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State.

(4) Waiver.—The Secretary may waive the requirement of paragraph (3)(C), in whole or in part, for a fiscal year for any State whenever the Secretary determines that there is an insufficient number of local highway safety programs to justify the expenditure in the State of such percentage of Federal funds during the fiscal year.

(5) Use of technology for traffic enforcement.—The Secretary may encourage States to use technologically advanced traffic enforcement devices (including the use of automatic speed detection devices such as photo-radar) by law enforcement officers.

(c) Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), including development and implementation of manpower training programs, and of demonstration programs that the Secretary determines will contribute directly to the reduction of accidents, and deaths and injuries resulting therefrom. Such funds shall be subject to a deduction not to exceed 5 per centum for the necessary costs of administering the provisions of this section, and the remainder shall be apportioned among the several States. Such funds shall be apportioned 75 per centum in the ration which the population of each State bears to the total population of all the States, as shown by the latest available federal census, and 25 per centum in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purposes of this subsection, a "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year preceding the year in which the funds are

apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary. The annual apportionment to each State shall not be less than one-half of 1 per centum of the total apportionment except that the apportionments to the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall not be less than one-quarter of 1 per centum of the total apportionment. The Secretary shall not apportion any funds under the subsection to any State which is not implementing a highway safety program approved by the Secretary in accordance with the section. For the purpose of the seventh sentence of this subsection, a highway safety program approved by the Secretary shall not include any requirement that a State implement such a program by adopting or enforcing any law, rule, or regulation based on a guideline promulgated by the Secretary under this section requiring any motorcycle operator eighteen years of age or older or passenger eighteen years of age or older to wear a safety helmet when operating or riding a motorcycle on the streets and highways of that State. Implementation of a highway safety program under this section shall not be construed to require compliance with every uniform guideline, or with every element of every uniform guideline, in every State. Funds apportioned under this section to any State, that does not have a highway safety program approved by the Secretary or that is not implementing an approved program, shall be reduced by amounts equal to not less than 50 per centum of the amount that would otherwise be apportioned to the State under this section, until such time as the Secretary approves such program or determines that the State is implementing an approved program, as appropriate. The Secretary shall consider the gravity of the State's failure to have or implement an approved program in determining the amount of the reduction. The Secretary shall promptly apportion to the State the funds withheld from its apportionment if he approves the State's highway safety program or determines that the State has begun implementing an approved program, as appropriate, prior to the end of the fiscal year for which the funds were withheld. If the Secretary determines that the State did not correct its failure within such period, the Secretary shall reapportion the withheld. If the Secretary determines that the State did not correct its failure within such period, the Secretary shall reapportion the withheld funds to the other States in accordance with the formula specified in this subsection no later than 30 days after such determination.

(d) All provisions of chapter 1 of this title that are applicable to National Highway System highway funds other than provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the highway safety funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section, and except that the aggregate of all expenditures made during any fiscal year by a State and its political subdivisions (exclusive of Federal funds) for carrying out the State highway safety program (other then planning and administration) shall be available for the purpose of crediting such State during such fiscal year for the non-Federal share of the cost of any project under this section (other than one for planning or administration) without regard to whether such expenditures were actually made in connection with

such project and except that, in the case of a local highway safety program carried out by an Indian tribe, if the Secretary is satisfied that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of such program, he may increase the Federal share of the cost thereof payable under this Act to the extent necessary. In applying such provisions of chapter 1 in carrying out this section the term "State highway department" as used in such provisions shall mean the Governor of a State for the purposes of this section.

(e) Uniform guidelines promulgated by the Secretary to carry out this section shall be developed in cooperation with the States, their political subdivisions, appropriate Federal departments and agencies, and such other public and private organizations as the Secretary deems appropriate.

(f) The Secretary may make arrangements with other Federal departments and agencies for assistance in the preparation of uniform guidelines for the highway safety programs contemplated by subsection (a) and in the administration of such programs. Such departments and agencies are directed to cooperate in such preparation and administration, on a reimbursable basis.

(g) Nothing in this section authorizes the appropriation or expenditure of funds for

(1) highway construction, maintenance, or design (other than design of safety features of highways to be incorporated into guidelines) or

(2) any purpose for which funds are authorized by section 403 of this title.

(h) Repealed. P.L. 97-35, Title XI, Sec. 1107(c), Aug. 13, 1981, 95 Stat. 626.

(i) For the purpose of the application of this section on Indian reservations, "State" and "Governor of a State" includes the Secretary of the Interior and "political subdivision of a State" includes an Indian tribe: *Provided,* That, notwithstanding the provisions of subparagraph (C) of subsection(b)(1) hereof, 95 per centum of the funds apportioned to the Secretary of the Interior after date of enactment, shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions: *And provided further,* That the provisions of subparagraph (E) of subsection (b)(1) hereof shall be applicable except in those tribal jurisdictions in which the Secretary determines such programs would not be practicable.

(j) Rulemaking process.—The Secretary shall, not later than September 1, 1987, begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths. Not later than April 1, 1988, the Secretary shall promulgate a final rule establishing those programs determined to be most effective in reducing accidents, injuries, and deaths. If such a rule is promulgated by April 1, 1988, then it shall take effect October 1, 1988. If such rule is not promulgated by April 1, 1988, it shall take effect October 1, 1989. After a rule is promulgated in accordance with this subsection, the Secretary may from time to time thereafter revise such rule under a rulemaking process described in the first sentence of this subsection. Any rule under this subsection shall be promulgated taking into account consideration of the States having a major role in establishing programs described in the first sentence of this subsection. When a rule promulgated in accordance with this subsection takes effect, only those programs established by such rule as most effective in reducing accidents, injuries, and deaths shall be eligible to receive

Federal financial assistance under this section.

(k)(1) Subject to the provisions of this subsection, the Secretary shall make a grant to any State which includes, as part of its highway safety program under section 402 of this title, the use of a comprehensive computerized safety recordkeeping system designed to correlate data regarding traffic accidents, drivers, motor vehicles, and roadways. Any such grant may only be used by such State to establish and maintain a comprehensive computerized traffic safety recordkeeping system or to obtain and operate components to support highway safety priority programs identified by the Secretary under this section. Notwithstanding any other provision of law, if a report, list, schedule, or survey is prepared by or for a State or political subdivision therefor under this subsection, such report, list, schedule, or survey shall not be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report, list, schedule, or survey.

(2) No State may receive a grant under this subsection in more than two fiscal years.

(3) The amount of the grant to any state under this subsection for the first fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1985 under this section. The amount of a grant to any State under this subsection for the second fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1986 under this section.

(4) A State is eligible for a grant under this subsection if—

(A) it certifies to the Secretary that it has in operation a computerized traffic safety recordkeeping system and identifies proposed means of upgrading the system acceptable to the Secretary; or

(B) it provides to the Secretary a plan acceptable to the Secretary for establishing and maintaining a computerized traffic safety recordkeeping system.

(5) The Secretary, after making the deduction authorized by the second sentence of subsection (c) of this section for fiscal years 1985 and 1986, shall set aside 10 per centum of the remaining funds authorized to be appropriated to carry out this section for the purpose of making grants under this subsection. Funds set aside under this subsection shall remain available for the fiscal year authorized and for the succeeding fiscal year and any amounts remaining unexpended at the end of such period shall be apportioned in accordance with the provisions of subsection (c) of this section (23 U.S.C. 402)

Highway Safety Research and Development

Sec. 403. (a) Authority of Secretary.—

(1) In general.—The Secretary is authorized to use funds appropriated to carry out this section to engage in research on all phases of highway safety and traffic conditions. In addition, the Secretary may use the funds appropriated to carry out this section, either independently or in cooperation with other Federal departments or agencies, for—

(A) training or education of highway safety personnel,

(B) research fellowships in highway safety,

(C) development of improved accident investigation procedures,

(D) emergency service plans,

(E) demonstration projects, and

(F) related research and development activities which the Secretary deems will promote the purposes of this section.

(3) Safety defined.—As used in this section, the term "safety" includes highway safety and highway safety-related research and development, including research and development related to highway and driver characteristics, crash investigations, communications, emergency medical care, and transportation of the injured.

(b) Drugs and driver behavior.—In addition to the research authorized by subsection (a) of this section, the Secretary, in consultation with such other Government and private agencies as may be necessary, is authorized to carry out safety research on the following—

(1) The relationship between the consumption and use of drugs and their effect upon highway safety and drivers of motor vehicles.

(2) Driver behavior research, including the characteristics of driver performance, the relationships of mental and physical abilities or disabilities to the driving task, and the relationship of frequency of driver accident involvement to highway safety.

(c) The research authorized by subsections (a) and (b) of this section may be conducted by the Secretary through grants and contracts with public and private agencies, institutions, and individuals.

(d) The Secretary may, where he deems it to be in furtherance of the purposes of section 402 of this title, vest in State or local agencies, on such terms and conditions as he deems appropriate, title to equipment purchased for demonstration projects with funds authorized by this section.

(e) In addition to the research authorized by subsection (a) of this section, the Secretary shall, either independently or in cooperation with other Federal departments or agencies, conduct research into, and make grants to or contracts with State or local agencies, institutions, and individuals for projects to demonstrate the administrative adjudication of traffic infractions. Such administrative adjudication demonstration projects shall be designed to improve highway safety by developing fair, efficient, and effective processes and procedures of traffic infraction adjudication, utilizing appropriate punishment, training, and rehabilitative measures for traffic offenders. The Secretary shall report to Congress by July 1, 1975, and each year thereafter during the continuance of the program, on the research and demonstration projects authorized by this subsection, and shall include in such report a comparison of the fairness, efficiency, and effectiveness of administrative adjudication of traffic infractions with other methods of handling such infractions.

(f) Collaborative research and development.—

(1) In general.—For the purpose of encouraging innovative solutions to highway safety problems, stimulating voluntary improvements in highway safety, and stimulating the marketing of new highway safety-related technology by private industry, the Secretary is authorized to undertake, on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local governments, colleges, and universities and corporations, partnerships,

sole proprietorships, and trade associations that are incorporated or established under the laws of any State or the United States. This collaborative research may include crash data collection and analysis; driver and pedestrian behavior; and demonstrations of technology.

(2) Cooperative agreements.—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements, as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a); except that in entering into such agreements, the Secretary may agree to provide not more than 50 percent of the cost of any research or development project selected by the Secretary under this subsection.

(3) Project selection.—In selecting projects to be conducted under this subsection, the Secretary shall establish a procedure to consider the views of experts and the public concerning the project areas.

(4) Applicability of Stevenson-Wydler Technology Innovation Act.—The research, development, or utilization of any technology pursuant to an agreement under the provisions of this subsection, including the terms under which technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980. (23 U.S.C. 403)

National Historic Preservation Act

- **Act of October 15, 1966 (P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470, 470-1, 470a, 470f, 470h, 470h-1, 470h-2, 470i, 470j, 470v, 470w-3)**

Declaration of Policy

Sec. 1. (a) This Act may be cited as the "National Historic Preservation Act."

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense or orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered; often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations of genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the federal government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities. (16 U.S.C. 470)

Sec. 2. It shall be the policy of the federal government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United

States and of the international community of nations;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservations by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities. (16 U.S.C. 470-1)

TITLE I

National Register

Sec. 101. (a)(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this subchapter. All historic properties listed in the Federal Register of February 6, 1979, as National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this subchapter and section 461 to 467 of this title; except that in cases of National Historic Landmark district for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

(2) The Secretary in consultation with national historical and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

* * * *

(a)(7) The Secretary shall promulgate, or revise, regulations—

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act, the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records within the Library of Congress. (16 U.S.C. 470a)

* * * *

(b)(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program—

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program . . .

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register. (16 U.S.C. 470a)

* * * *

Consultation with Advisory Council

Sec. 106. The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under title II of this Act a reasonable opportunity to comment with regard to such undertaking. (16 U.S.C. 470f)

* * * *

Historic Preservation Fund

Sec. 108. To carry out the provisions of this subchapter, there is hereby established the Historic Preservation Fund in the Treasury of the United States. (16 U.S.C. 470h)

* * * *

Acceptance of Privately Donated Funds by Secretary

Sec. 109. (a) Authorization; use of funds.—In furtherance of the purposes of this subchapter, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 470a of this title, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) Consideration of factors respecting expenditure of funds—In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 470b of this title, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 470h of this title.

(c) Transfer of unobligated funds.—The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for the purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this subchapter. (16 U.S.C. 470h-1)

Historic Properties Owned or Controlled by Federal Agencies

Sec. 110. (a)(1) The heads of all federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(f), any preservation, as may be necessary to carry out this section.

(2) Each Federal agency shall establish (unless exempted pursuant to section 470v of this title), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure—

(A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 470f of this title and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 470f of this title—

(i) are consistent with regulations issued by the Council pursuant to section 470s of this title;

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3002(c) of Title 25.

(b) Each federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) The head of each federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(g).

(d) Consistent with the agency's missions and mandates, all federal agencies shall carry out agency programs and projects (including those under which any federal assistance is provided or any federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Prior to the approval of any federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Each federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a federal agency to any State to be used in carrying out such preservation responsibilities of the federal agency under this Act, and reasonable costs

may be charged to federal licensees and permittees as a condition to the issuance of such license or permit.

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts of not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contribution to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this subchapter shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this subchapter shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act. (16 U.S.C. 470h-2)

* * * *

TITLE II

Advisory Council on Historic Preservation

Sec. 201. (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation. . . . (16 U.S.C. 470i)

* * * *

Functions of Council

Sec. 202. (a) The Council shall—

(1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation; and

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation.

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of these policies and programs with the policies and programs carried out under this subchapter; and

(7) inform and educate Federal agencies, States, and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to

time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other action as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act. (16 U.S.C. 470j)

Exemption for Federal Programs or Undertakings

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Sec. 214. The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties. (16 U.S.C. 470v)

* * * *

TITLE III

* * * *

Withholding Public Disclosure

Sec. 304. The head of any federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located. (16 U.S.C. 470w-3)

Sisk Act
(Land Exchanges with States and Local Governments)

- **Act of December 4, 1967 (P.L. 90-171, 81 Stat. 531, as amended; 16 U.S.C. 484a)**

Whenever an exchange of land is proposed by a state, county, or municipal government or public school district or other public school authority under the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485, 486), or other authority under which the Secretary of Agriculture is authorized to exchange National Forest lands or other lands administered by the Forest Service, if the State, county, or municipal government or public school authority proposing the exchange has insufficient land to offer, the exchange may be completed upon deposit with the Secretary of Agriculture of a portion or all of the value of the selected land. Any amount so deposited shall be covered into a special fund in the Treasure which when appropriated shall be available until expended by the Secretary of Agriculture for the acquisition of lands in the same State as the selected lands and which are determined by him to be suitable for the same purposes as the selected lands. Lands so acquired shall have the same status and shall be subject to the same laws, regulations, and rules as the selected lands.

The provisions of this Act shall not be applicable to the conveyance in exchange of more than eighty acres to any one State, county, or municipal government or public school district or other public school authority. Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands to conveyed may be used only for the purposes for which they were being used prior to conveyance. (16 U.S.C. 484a)

Architectural Barriers Act of 1968

- **Act of August 12, 1968 (P.L. 90-480, 82 Stat. 718, 51 U.S.C. 4151-4154, 4154a, 4155–4157)**

Note—Section numbers refer to U.S. Code sections.

Definitions

Sec. 4151. As used in this chapter, the term "building" means any building or facility (other than (A) a privately owned residential structure not leased by the Government for subsidized housing programs and (B) any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) the intended use for which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is—

(1) to be constructed or altered by or on behalf of the United States;

(2) to be leased in whole or in part by the United States after August 12, 1968;

(3) to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or

(4) to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or title III of the Washington Metropolitan Area Transit Regulation Compact.

Sec. 4152. Standards for design, construction, and alteration of buildings; Secretary of Health, Education, and Welfare.—The Administrator of General Services, in consultation with the Secretary of Health, Education, and Welfare, shall prescribe standards for the design, construction, and alteration of buildings (other than residential structures subject to this chapter and buildings, structures, and facilities of the Department of Defense and of the United States Postal Service subject to this chapter) to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

Standards for Design, Construction, and Alteration of Buildings; Secretary of Housing and Urban Development

Sec. 4153. The Secretary of Housing and Urban Development, in consultation with the Secretary of Health, Education, and Welfare, shall prescribe standards for the design, construction, and alteration of buildings which are residential structures subject to this chapter to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

Standards for Design, Construction, and Alteration of Buildings; Secretary of Defense

Sec. 4154. The Secretary of Defense, in consultation with the Secretary of Health, Education, and Welfare, shall prescribe standards for the design, construction, and

alteration of buildings, structures, and facilities of the Department of Defense subject to this chapter to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

Standards for Design, Construction and Alteration of Buildings; United States Postal Service

Sec. 4154a. The United States Postal Service, in consultation with the Secretary of Health, Education, and Welfare, shall prescribe such standards for the design, construction, and alteration of its buildings to insure whenever possible that physically handicapped persons will have ready access to, and use of, such buildings.

Effective date of standards

Sec. 4155. Every building designed, constructed, or altered after the effective date of a standard issued under this chapter which is applicable to such building, shall be designed, constructed, or altered in accordance with such standard.

Waiver and modification of standards

Sec. 4156. The Administrator of General Services, with respect to standards issued under section 4152 of this title, and the United States Postal Service with respect to standards issued under section 4154a of this title, and the Secretary of Housing and Urban Development, with respect to standards issued under section 4153 of this title, and the Secretary of Defense with respect to standards issued under section 4154 of this title,—

(1) is authorized to modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency, or instrumentality of the United States concerned, and upon a determination by the Administrator or Secretary, as the case may be, that such modification or waiver is clearly necessary, and

(2) shall establish a system of continuing surveys and investigations to insure compliance with such standards.

Reports to Congress and Congressional Committees

Sec. 4157. (a) The Administrator of General Services shall report to Congress during the first week of January of each year on his activities and those of other departments, agencies, and instrumentalities of the Federal Government under this chapter during the preceding fiscal year including, but not limited to, standards issued, revised, amended, or repealed under this chapter and all case-by-case modifications, and waivers of such standards during such year.

(b) The Architectural and Transportation Barriers Compliance Board established by section 792 of Title 29 shall report to the Public Works and Transportation Committee of the House of Representatives and the Public Works committee of the Senate during the first week of January of each year on its activities and actions to insure compliance with the standards prescribed under this chapter.

Wild and Scenic Rivers Act

- **Act of October 2, 1968 (P.L. 90-542, 82 Stat. 906, as amended; 16 U.S.C. 1271(note), 1271-1287)**

Note—Laws amending or related to the Wild and Scenic Rivers Act include P.L. 92-560, 93-621, 94-199, 94-486, 95-87, 95-625, 96-87, 96-312, 96-487, 99-590, 99-663, 100-33, 100-150, 100-412, 100-552, 100-534, 100-557, 100-605, 100-633, 100-667, 101-175, 101-612, 101-628, 102–249, 102–271, 102–275, 102–301, 102–432.

Footnotes found within the text of this Act are defined at the end of the Act.

An Act to provide a National Wild and Scenic Rivers System, and for other purposes.

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

Declaration and Purpose

Sec. 1. (a) This Act may be cited as the "Wild and Scenic Rivers Act".

(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components with that system and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time. (16 U.S.C. 1272)

Rivers Eligible for Designation as Wild and Scenic

Sec. 2. (a) The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this Act

and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line. Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water conservation Act of 1965 or any other provision of law shall not be treated as an expense of the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in Section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (16 U.S.C. 1273)

Designation of Wild and Scenic River Components

Sec. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(1) Clearwater, Middle Fork, Idaho.—The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

(2) Eleven Point, Missouri.—The segment of the river extending downstream from Thomasville, to State Highway 142;

to be administered by the Secretary of Agriculture.

(3) Feather, California.—The entire Middle Fork downstream from the confluence of its tributary streams one kilometer south the Beckwourth, California; to be administered by the Secretary of Agriculture.

(4) Rio Grande, New Mexico.—The segment extending from the Colorado State line downstream to the State Highway 96 crossing, and the lower four miles of the Red River; to be administered by the Secretary of the Interior.

(5) Rogue, Oregon.—The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

(6) Saint Croix, Minnesota and Wisconsin.—The segment between the dam near Taylors Falls, Minnesota, and the dam near Gordon, Wisconsin, and its tributary, the Namekagon, from Lake Namekagon downstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior; *Provided,* That except as may be required in connection with items (a) and (b) of this paragraph, no funds available to carry out the provisions of this Act may be expanded for the acquisition or development of lands in connection with, or for administration under this Act of, that portion of the Saint Croix River between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, until sixty days after the date on which the Secretary has transmitted to the President of the Senate and Speaker of the House of Representatives a proposed cooperative agreement between the Northern States Power Company and the United States (a) whereby the company agrees to convey to the United States, without charge, appropriate interests in certain of its lands between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, including the company's right, title, and interest to approximately one hundred acres per mile, and (b) providing for the use and development of other lands and interests in land retained by the company between said points adjacent to the river in a manner which shall complement and not be inconsistent with the purposes for which the lands and interests in land donated by the company are administered under this Act. Said agreement may also include provision for State or local governmental participation as authorized under subsection (e) of section 10 of this Act. A one-thousand-three-hundred-and eighty-acre portion of the area commonly known as the Velie Estate, located adjacent to the Saint Croix River in Douglas County, Wisconsin, as depicted on the map entitled "Boundary Map/Velie Estate—Saint Croix National Scenic Riverway", dated September 1980, and numbered 630-90,001, may be acquired by the Secretary without regard to any acreage limitation set forth in subsection (b) of this section or subsection (a) or (b) of section 6 of this Act.

(7) Salmon, Middle Fork, Idaho.—From its origin to its confluence with the main Salmon River; to be administered by the Secretary of Agriculture.

(8) Wolf, Wisconsin.—From the Langlade-Menominee County line downstream to Keshena Falls; to be administered by the Secretary of the Interior.

(9) Lower Saint Croix, Minnesota and Wisconsin.—The segment

between the dam near Taylors Falls and its confluence with the Mississippi River: *Provided,* (i) That the upper twenty-seven miles of this river segment shall be administered by the Secretary of the Interior; and (ii) That the lower twenty-five miles shall be designated by the Secretary upon his approval of an application for such designation made by the Governors of the States of Minnesota and Wisconsin.[1]

(10) CHATTOOGA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA.—The Segment from 0.8 mile below Cashiers Lake in North Carolina to Tugaloo Reservoir, and the West Fork Chattooga River from its junction with Chattooga upstream 7.3 miles, as generally depicted on the boundary map entitled "Proposed Wild and Scenic Chattooga River and Corridor Boundary," dated August 1973; to be administered by the Secretary of Agriculture: *Provided,* That the Secretary of Agriculture shall take such action as is provided for under subsection (b) of this section within one year from the date of enactment of this paragraph (10); *Provided further,* That for the purposes of this river, there are authorized to be appropriated not more than $5,200,000 for the acquisition of lands and interests in lands and not more than $809,000 for development.

(11) RAPID RIVER, IDAHO[2].—The segment from the headwaters of the main stem to the national forest boundary and the segment of the West Fork from the wilderness boundary downstream to the confluence with the main stem, as a wild river.

(12) SNAKE, IDAHO AND OREGON[2].—The segment from Hells Canyon Dam downstream to Pittsburgh Landing, as a wild river; and the segment from Pittsburgh Landing downstream to an eastward extension of the north boundary of Section 1, township 5 north, range 47 east, Willamette meridian, as a scenic river.

(13) FLATHEAD, MONTANA.—The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence to the South Fork; and the South Fork from its origin to the Hungry Horse Reservoir, as generally depicted on the map entitled "Proposed Flathead Wild and Scenic River Boundary Location" dated February 1976; to be administered by agencies of the Departments of the Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) of this section shall be taken within one year from the date of enactment of this paragraph. For the purposes of this river, there are authorized to be appropriated not more than $6,719,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(14) MISSOURI, MONTANA[3].—The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as generally depicted on the boundary map entitled "Missouri Breaks Freeflowing River Proposal", dated October 1975, to be administered by the Secretary of the Interior. For the purposes of this river, there are authorized to be appropriated not more than $1,800,000 for the acquisition of lands and interest in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(15) OBED, TENNESSEE.—The segment from the

western edge of the Catoosa Wildlife Management Area to the confluence with the Emory River; Clear Creek from the Morgan County line to the confluence with the Obed River, Daddys Creek from the Morgan County line to the confluence with the Obed River; and the Emory River from the confluence with the Obed River to the Nemo bridge as generally depicted and classified on the stream classification map dated December 1973. The Secretary of the Interior shall take such action, with the participation of the State of Tennessee as is provided for under subsection (b) within one year following the date of enactment of this paragraph. The development plan required by such subsection (b) shall include cooperative agreements between the State of Tennessee acting through the Wildlife Resources Agency and the Secretary of the Interior. Lands within the Wild and Scenic River boundaries that are currently part of the Catoosa Wildlife Management Area shall continue to be owned and managed by the Tennessee Wildlife Resources Agency in such a way as to protect the wildlife resources and primitive character of the area, and without further development of roads, campsites, or associated recreational facilities unless deemed necessary by that agency for wildlife management practices. The Obed Wild and Scenic River shall be managed by the Secretary of the Interior. For the purposes of carrying out the provisions of this Act with respect to this river, there are authorized to be appropriated such sums as may be necessary, but not to exceed $2,000,000 for the acquisition of lands or interests in lands and not to exceed $400,000 for development. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(16) PERE MARQUETTE, MICHIGAN.—The segment downstream from the junction of the Middle and Little South Branches to its junction with United States Highway 31 as generally depicted on the boundary map entitled "Proposed Boundary Location, Pere Marquette Wild and Scenic River,"; to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is provided for under subsection (b) with respect to the segment referred to in this paragraph within one year from the date of enactment of this paragraph. Any development or management plan prepared pursuant to subsection (b) shall include (a) provisions for the dissemination of information to river users and (b) such regulations relating to the recreational and other uses of the river as may be necessary in order to protect the area comprising such river (including lands contiguous or adjacent thereto) from damage or destruction by reason of overuse and to protect its scenic, historic, aesthetic and scientific values. Such regulations shall further contain procedures and means which shall be utilized in the enforcement of such development and management plan. For the purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $8,125,000 for the acquisition of lands or interests in lands and $402,000 for development. Notwithstanding any other provision of this Act, the installation and operation of facilities or other activities within or outside the boundaries of the Pere Marquette Wild and Scenic River for the control of the lamprey eel shall be permitted subject to such restrictions and conditions as the Secretary of

Agriculture may prescribe for the protection of water quality and other values of the river, including the wild and scenic characteristics of the river.

(17) RIO GRANDE, TEXAS.—The segment on the United States side of the river from river mile 842.3 above Mariscal Canyon downstream to river mile 651.1 at the Terrell-Val Verde County line; to be administered by the Secretary of the Interior. The Secretary shall, within two years after the date of enactment of this paragraph, take such action with respect to the segment referred to in this paragraph as is provided for under subsection (b). The action required by such subsection (b) shall be undertaken by the Secretary, after consultation with the United States Commissioner, International Boundary and Water Commission, United States and Mexico, and appropriate officials of the State of Texas and its political subdivisions. The development plan required by subsection (b) shall be construed to be a general management plan only for the United States side of the river and such plan shall include, but not be limited to, the establishment of a detailed boundary which shall include an average of not more than 160 acres per mile. Nothing in this Act shall be construed to be in conflict with—

(A) the commitments or agreements of the United States made by or in pursuance of the treaty between the United States and Mexico regarding the utilization of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington, February 1944 (59 Stat. 1219), or

(B) the treaty between the United States and Mexico regarding maintenance of the Rio Grande and Colorado River as the international boundary between the United States and Mexico, signed November 23, 1970. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary, but not more than $1,650,000 for the acquisition of lands and interests in lands and not more than $1,800,000 for development.

(18) SKAGIT, WASHINGTON.—The segment from the pipeline crossing at Sedro-Woolley upstream to and including the mouth of Bacon Creek; the Cascade River from its mouth to the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the boundary of the Glacier Peak Wilderness Area at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the boundary of the Glacier Peak Wilderness Area; as generally depicted on the boundary map entitled "Skagit River—River Area Boundary"; all segments to be administered by the Secretary of Agriculture. Riprapping related to natural channels with natural rock along the shorelines of the Skagit segment to preserve and protect agricultural land shall not be considered inconsistent with the values for which such segment is designated. After consultation with affected Federal agencies, State and local government and the interested public, the Secretary shall take such action as is provided for under subsection (b) with respect to the segments referred to in this paragraph within one year from the date of enactment of this paragraph; as part of such action, the Secretary of Agriculture shall investigate that portion of the North Fork of the Cascade River from its confluence with the South

Fork to the boundary of the North Cascades National Park and if such portion is found to qualify for inclusion, it shall be treated as a component of the wild and Scenic Rivers System designated under this section upon publication by the secretary of notification to that effect in the Federal Register. For the purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated not more than $11,734,000 for the acquisition of lands or interest in lands and not more than $332,000 for development.

(19) UPPER DELAWARE RIVER, NEW YORK AND PENNSYLVANIA[4].—The segment of the Upper Delaware River from the confluence of the East and West branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York, as depicted on the boundary map entitled "The Upper Delaware Scenic and Recreational River", dated April 1978; to be administered by the Secretary of the Interior. Subsection (b) of this section shall not apply, and the boundaries and classifications of the river shall be as specified on the map referred to in the preceding sentence, except to the extent that such boundaries or classifications are modified pursuant to section 704(c)[5] of the National Parks and Recreation Act of 1978. Such boundaries and classifications shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated such sums as may be necessary.

(20) DELAWARE, NEW YORK, PENNSYLVANIA, AND NEW JERSEY.—The segment from the point where the river crosses the northern boundary of the Delaware Water Gap National Recreation Area to the point where the river crosses the southern boundary of such recreation area; to be administered by the Secretary of the Interior. For purposes of carrying out this Act with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary. Action required to be taken under subsection (b) of this section with respect to such segment shall be taken within one year from the date of enactment of this paragraph, except that, with respect to such segment, in lieu of the boundaries provided for in such subsection (b), the boundaries shall be the banks of the river. Any visitors facilities established for purposes of use and enjoyment of the river under the authority of the Act establishing the Delaware Water Gap National Recreation Area shall be compatible with the purposes of this Act and shall be located at an appropriate distance from the river.

(21) AMERICAN, CALIFORNIA.—The North Fork from a point 0.3 mile above Heath Springs downstream to a point approximately 1,000 feet upstream of the Colfax--Iowa Hill Bridge, including the Gold Run Addition Area, as generally depicted on the map entitled "Proposed Boundary Maps" contained in Appendix I of the document dated January 1978 and entitled "A Proposal: North Fork American Wild and Scenic River" published by the United States Forest Service, Department of Agriculture; to be designated as a wild river

and to be administered by agencies of the Departments of Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) shall be taken within one year after the date of the enactment of this paragraph; in applying such subsection (b) in the case of the Gold Run Addition Area, the acreage limitation specified therein shall not apply and in applying section 6(g)(3), January 1 of the calendar year preceding the calendar year in which this paragraph is enacted shall be substituted for January 1, 1967. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $850,000 for the acquisition of lands and interests in land and not more than $765,000 for development.

(22) MISSOURI RIVER, NEBRASKA, SOUTH DAKOTA.—The segment from Gavins Point Dam, South Dakota, fifty-nine miles downstream to Ponca State Park, Nebraska, as generally depicted in the document entitled "Review Report for Water Resources Development, South Dakota, Nebraska, North Dakota, Montana," prepared by the Division Engineer, Missouri River Division, Corps of Engineers, dated August 1977 (hereinafter in this paragraph referred to as the "August 1977 Report"). Such segment shall be administered as a recreational river by the Secretary. The Secretary shall enter into a written cooperative agreement with the Secretary of the Army (acting through the Chief of Engineers) for construction and maintenance of bank stabilization work and appropriate recreational development. After public notice and consultation with the State and local governments, other interested organizations and associations, and the interested public, the Secretary shall take such action, as is required pursuant to subsection (b) within one year from the date of enactment of this section. In administering such river, the Secretary shall, to the extent, and in a manner consistent with this section—

(A) provide (i) for the construction by the United States of such recreation river features and streambank stabilization structures as the Secretary of the Army (acting through the Chief of Engineers) deems necessary and advisable in connection with the segment designated by this paragraph, and (ii) for the operation and maintenance of all streambank stabilization structures constructed in connection with such segment (including both structures constructed before the date of enactment of this paragraph and structures constructed after such date, and including both structures constructed under the authority of this section and structures constructed under the authority of any other Act); and

(B) permit access for such pumping and associated pipelines as may be necessary to assure an adequate supply of water for owners of land adjacent to such segment and for fish, wildlife, and recreational uses outside the river corridor established pursuant to this paragraph. The streambank structures to be constructed and maintained under subparagraph (A) shall include, but not be limited to, structures at such sites as are specified with respect to such segment on pages 62 and 63 of the August 1977 Report, except that sites for such structures may be relocated to the extent deemed necessary by the Secretary of the Army (acting through the Chief of Engineers) by reason of physical changes in the river or river area. The Secretary of the Army (acting

through the Chief of Engineers) shall condition the construction or maintenance of any streambank stabilization structure or of any recreational river feature at any site under subparagraph (A)(i) upon the availability to the United States of such land and interests in land in such ownership as he deems necessary to carry out such construction or maintenance and to protect and enhance the river in accordance with the purposes of this Act. Administration of the river segment designated by this paragraph shall be in coordination with, and pursuant to the advice of a Recreational River Advisory Group which shall be established by the Secretary. Such Group may include in its membership, representatives of the affected States and political subdivisions thereof, affected Federal agencies, and such organized private groups as the Secretary deems desirable. Notwithstanding the authority to the contrary contained in subsection 6(a) of this Act, no land or interests in land may be acquired without the consent of the owner: *Provided,* That not to exceed 5 per centum of the acreage within the designated river boundaries may be acquired in less than fee title without the consent of the owner, in such instance of the Secretary's determination that activities are occurring, or threatening to occur thereon which constitute serious damage or threat to the integrity of the river corridor, in accordance with the values for which this river was designated. For purposes of carrying out the provisions of the Act with respect to the river designated by this paragraph, there are authorized to be appropriate not to exceed $21,000,000, for acquisition of lands and interests in lands and for development.

(23) SAINT JOE, IDAHO.—The segment above the confluence of the North Fork of the Saint Joe River to Spruce Tree Campground, as a recreational river; the segment above Spruce Tree Campground to Saint Joe Lake, as a wild river, as generally depicted on the map entitled "Saint Joe River Corridor Map" on file with the Chief of the Forest Service and dated September 1978; to be administered by the Secretary of Agriculture. Notwithstanding any other provision of law, the classification of the Saint Joe River under this paragraph and the subsequent development plan for the river prepared by the Secretary of Agriculture shall at no time interfere with or restrict the maintenance, use, or access to existing or future roads within the adjacent lands nor interfere with or restrict present use of or future construction of bridges across that portion of the Saint Joe designated as a "recreational river" under this paragraph. Dredge or placer mining shall be prohibited within the banks or beds of the main stem of the Saint Joe and its tributary streams in their entirety above the confluence of the main stem with the North Fork of the river. Nothing in this Act shall be deemed to prohibit the removal of sand and gravel above high water mark of the Saint Joe River and its tributaries within the river corridor by or under the authority of any public body or its agents for the purposes of construction or maintenance of roads. The Secretary shall take such action as is required under subsection (b) of this section within one year from the date of enactment of this paragraph. For the purposes of this river, there are authorized to be appropriated not more than $1,000,000 for the acquisition of lands or interest in lands.

(24) SALMON, IDAHO.—(A) The segment of the main river from the mouth of the North Fork of the

Salmon River downstream to Long Tom Bar in the following classes:

(i) the forty-six-mile segment from the mouth of the North Fork of the Salmon River to Corn Creek as a recreational river; and

(ii) the seventy-nine mile segment from Corn Creek to Long Tom Bar as a wild river; all as generally depicted on a map entitled "Salmon River" dated November 1979, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture.

(B) This segment shall be administered by the Secretary of Agriculture: *Provided,* That after consultation with State and local governments and the interested public, the Secretary shall take such action as is required by subsection (b) of this section within one year from the date of enactment of this paragraph.

(C) The use of motorboats (including motorized jetboats) within this segment of the Salmon River shall be permitted to continue at a level not less that the level of use which occurred during calendar year 1978.

(D) Subject to existing rights of the State of Idaho, including the right of access, with respect to the beds of navigable streams, tributaries or rivers, dredge and placer mining in any form including any use of machinery for the removal of sand and gravel for mining purposes shall be prohibited within the segment of the Salmon River designated as a component of the Wild and Scenic Rivers System by this paragraph; within the fifty-three mile segment of the Salmon River from Hammer Creek downstream to the confluence of the Snake River; and within the Middle Fork of the Salmon River; and its tributary streams in their entirety: *Provided,* That nothing in this paragraph shall be deemed to prohibit the removal of sand and gravel, outside the boundaries of the River of No Return Wilderness or the Gospel-Hump Wilderness, above the high water mark of the Salmon River or the Middle Fork and its tributaries for the purposes of construction or maintenance of public roads: *Provided further,* That this paragraph shall not apply to any written mineral leases approved by the Board of Land Commissioners of the State of Idaho prior to January 1, 1980.

(E) The provisions of section 7(a) of this Act with respect to the licensing of dams, water conduits, reservoirs, powerhouses, transmission lines or other project works, shall apply to the fifty-three-mile segment of the Salmon River from Hammer Creek downstream to the confluence of the Snake River.

(F) For the purposes of the segment of the Salmon River designated as a component of the Wild and Scenic Rivers System by this paragraph, there is hereby authorized to be appropriated from the Land and Water Conservation Fund, after October 1, 1980, not more than $6,200,000 for the acquisition of lands and interests in lands.[6]

(25) ALAGNAK, ALASKA[7].—That segment of the main stem and the major tributary to the Alagnak, the Nonvianuk River, within Katmai National Preserve; to be administered by the Secretary of the Interior.

(26) ALATNA, ALASKA.—The main stem within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(27) ANIAKCHAK, ALASKA.—That portion of the river, including its major tributaries, Hidden Creek, Mystery Creek, Albert Johnson Creek, and North Fork

Aniakchak River, within the Aniakchak National Monument and National Preserve; to be administered by the Secretary of the Interior.

(28) CHARLEY, ALASKA.—The entire river, including its major tributaries, Copper Creek, Bonanza Creek, Hosford Creek, Derwent Creek, Flat-Orthmer Creek, Crescent Creek, and Moraine Creek, within the Yukon-Charley Rivers National Preserve; to be administered by the Secretary of the Interior.

(29) CHILIKADROTNA, ALASKA.—That portion of the river within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior.

(30) JOHN, ALASKA.—That portion of the river within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(31) KOBUK, ALASKA.—That portion within the Gates of the Arctic National Park and Preserve; to be administered by the Secretary of the Interior.

(32) MULCHATNA, ALASKA.—That portion within the Lake Clark National Park and Preserve; to be administered by the Secretary of the Interior.

(33) NOATAK, ALASKA.—The river from its source in the Gates of the Arctic National Park to its confluence with the Kelly River in the Noatak National Preserve; to be administered by the Secretary of the Interior.

(34) NORTH FORK OF THE KOYUKUK, ALASKA.—That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(35) SALMON, ALASKA.—That portion within the Kobuk Valley National Park; to be administered by the Secretary of the Interior.

(36) TINAYGUK, ALASKA.—That portion within the Gates of the Arctic National Park; to be administered by the Secretary of the Interior.

(37) TLIKAKILA, ALASKA.—That portion within the Lake Clark National Park; to be administered by the Secretary of the Interior.

(38) ANDREAFSKY, ALASKA.—That portion from its source, including all headwaters, and the East Fork, within the boundary of the Yukon Delta National Wildlife Refuge; to be administered by the Secretary of the Interior.

(39) IVISHAK, ALASKA.—That portion from its source, including all headwaters and an unnamed tributary from Porcupine Lake within the boundary of the Arctic National Wildlife Range; to be administered by the Secretary of the Interior.

(40) NOWITNA, ALASKA.—That portion from the point where the river crosses the west limit of township 18 south, range 22 east, Kateel River meridian, to its confluence with the Yukon River within the boundaries of the Nowitna National Wildlife Refuge; to be administered by the Secretary of the Interior.

(41) SELAWIK, ALASKA.—That portion from a fork of the headwaters in township 12 north, range 10 east, Kateel River meridian to the confluence of the Kugarak River, within the Selawik National Wildlife Refuge; to be administered by the Secretary of the Interior.

(42) SHEENJEK, ALASKA.—The segment within the Arctic National Wildlife Refuge; to be administered by the Secretary of the Interior.

(43) WIND, ALASKA.—That portion from its source, including all headwaters and one unnamed tributary in township 13 south, within the boundaries of the Arctic National Wildlife Refuge; to be administered by the Secretary of the Interior.

(44) ALAGNAK, ALASKA.—Those segments or portions of the main stem and Nonvianuk tributary lying outside and westward of the Katmai National Park/Preserve and running to the west boundary of township 13 south, range 43 west; to be administered by the Secretary of the Interior.

(45) BEAVER CREEK, ALASKA.—The segment of the main stem from the vicinity of the confluence of the Bear and Champion Creeks downstream to its exit from the northeast corner of township 12 north, range 6 east, Fairbanks meridian within the White Mountains National Recreation Area, and the Yukon Flats National Wildlife Refuge, to be administered by the Secretary of the Interior.

(46) BIRCH CREEK, ALASKA.—The segment of the main stem from the south side of Steese Highway in township 7 north, range 10 east, Fairbanks meridian, downstream to the south side of the Steese Highway in township 10 north, range 16 east; to be administered by the Secretary of the Interior.

(47) DELTA, ALASKA.—The segment from and including all of the Tangle Lakes to a point one-half mile north of Black Rapids; to be administered by the Secretary of the Interior.

(48) FORTYMILE, ALASKA.—The main stem within the State of Alaska; O'Brien Creek; South Fork; Napoleon Creek, Franklin Creek, Uhler Creek, Walker Fork downstream from the confluence of Liberty Creek; Wade Creek; Mosquito Fork downstream from the vicinity of Kechumstuk; West Fork Dennison Fork downstream from the confluence of Logging Cabin Creek; Dennison Fork downstream from the confluence of West Fork Dennison Fork; Logging Cabin Creek; North Fork; Hutchison Creek; Champion Creek; the Middle Fork downstream from the confluence of Joseph Creek; and Joseph Creek; to be administered by the Secretary of the Interior.

(49) GULKANA, ALASKA.—The main stem from the outlet of Paxson Lake in township 12 north, range 2 west, Copper River meridian to the confluence with Sourdough Creek; the south branch of the west fork from the outlet of an unnamed lake in sections 10 and 15, township 10 north, range 7 west, Copper River meridian to the confluence with the west fork; the north branch from the outlet of two unnamed lakes, one in sections 24 and 25, the second in sections 9 and 10, township 11 north, range 8 west, Copper River meridian to the confluence with the west fork; the west fork from its confluence with the north and south branches downstream to its confluence with the main stem; the middle fork from the outlet of Dickey Lake in township 13 north, range 5 west, Copper River meridian to the confluence with the main stem; to be classified as a wild river area and to be administered by the Secretary of the Interior.

(50) UNALAKLEET, ALASKA.—The segment of the main stem from the headwaters in township 12 south, range 3 west, Kateel River meridian extending downstream approximately 65 miles to the western boundary of township 18 south, range 8 west; to be administered by the Secretary of the Interior.

(51) VERDE, ARIZONA.—The segment from the boundary between national forest and private land in sections 26 and 27, township 13 north, range 5 east, Gila Salt River meridian, downstream to the confluence with Red Creek, as generally depicted on a map entitled "Verde River—Wild and Scenic River", dated March 1984, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture; to be administered by the Secretary of Agriculture. This designation shall not prevent water users receiving Central Arizona Project water allocations from diverting that water through an exchange agreement with downstream water users in accordance with Arizona water law. After consultation with State and local governments and the interested public and within two years after the date of enactment of this paragraph, the Secretary shall take such action as is required under subsection (b) of this section.

(52) AU SABLE, MICHIGAN.—The segment of the main stem from the project boundary of the Mio Pond project downstream to the project boundary at Alcona Pond project as generally depicted on a map entitled "Au Sable River" which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture; to be administered by the Secretary of Agriculture.

(53) TUOLUMNE, CALIFORNIA.—The main river from its sources on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir consisting of approximately 83 miles as generally depicted on the proposed boundary map entitled "Alternative A" contained in the Draft Tuolumne Wild and Scenic River Study and Environmental Impact Statement published by the United States Department of the Interior and Department of Agriculture in May 1979; to be administered by the Secretary of the Interior and the Secretary of Agriculture. After consultation with State and local governments and the interested public and within two years from the date of enactment of this paragraph, the Secretary shall take such action as is required under subsection (b) of this section. Nothing is this Act shall preclude the licensing, development, operation, or maintenance of water resources facilities on those portions of the North Fork, Middle Fork or South Fork of the Tuolumne or Clavey Rivers that are outside the boundary of the wild and scenic river area as designated in this section. Nothing in this section is intended or shall be construed to affect any rights, obligations, privileges, or benefits granted under any prior authority of law including chapter 4 of the Act of December 13, 1913, commonly referred to as the Raker Act (38 Stat. 242) and including any agreement or administrative ruling entered into or made effective before the enactment of this paragraph. For fiscal years commencing after September 30, 1985 there are authorized to be appropriated such sums as may be necessary to implement the provisions of this subsection.

(54) ILLINOIS, OREGON.—The segment from the boundary of the Siskiyou National Forest downstream to its confluence with the Rogue River as generally depicted on a map entitled "Illinois River Study" and is also part of a report entitled "A Proposal: Illinois Wild and Scenic River," to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is required under

subsection (b) of this section within one year from the date of enactment of this paragraph. For the purposes of this Act with respect to the river designated by this paragraph, effective October 1, 1984, there are authorized to be appropriated such sums as necessary for the acquisition of lands or interests in lands, and such sums as necessary for development.

(55) OWYHEE, OREGON.—The South Fork from the Idaho-Oregon State line downstream to Three Forks; the Owyhee River from Three Forks downstream to China Gulch; and the Owyhee River downstream from Crooked Creek to the Owyhee Reservoir as generally depicted on a map entitled "Owyhee, Oregon" dated April 1984; all three segments to be administered as a wild river by the Secretary of the Interior. After consultation with State and local governments and the interested public, the Secretary shall take such appropriate action as is required under subsection (b) of this section within one year from the date of enactment of this paragraph. For the purposes of this Act with respect to the river designated by this paragraph, effective October 1, 1984, there are authorized to be appropriated such sums as necessary for the acquisition of lands or interests and such sums as necessary for development.

(56) HORSEPASTURE, NORTH CAROLINA.—The Segment from Bohaynee Road (N.C. 281) downstream approximately 4.25 miles to where the segment ends at Lake Jocassee, to be administered by the Secretary of Agriculture. Notwithstanding any limitation of section 6 of this Act, the Secretary is authorized to utilize the authority of this Act and those pertaining to the National Forests to acquire by purchase with donated or appropriate funds, donation, or exchange or otherwise, such non–Federal lands or interests in lands within, near, or adjacent to the designated segments of the river which the Secretary determines will protect or enhance the scenic and natural values of the river.

(57) CACHE LA POUDRE, COLORADO[8].—The following segments as generally depicted on the proposed boundary map numbered FS-56 and dated March 1986, published by the United States Department of Agriculture, each to be administered by the Secretary of Agriculture; except that those portions of the segments so designated which are within the boundary of Rocky Mountain National Park shall continue to be administered by the Secretary of the Interior:

(A) Beginning at Poudre Lake downstream to the confluence of Joe Wright Creek, as a wild river. This segment to be designated the "Peter H. Dominick Wild River Area".

(B) Downstream from the confluence of Joe Wright Creek to a point where the river intersects the easterly north-south line of the west half southwest quarter of section 1, township 8 north, range 71 west of the sixth principal meridian, as a recreational river.

(C) South Fork of the Cache la Poudre River from its source to the Commanche Peak Wilderness Boundary, approximately four miles, as a wild river.

(D) Beginning at the Commanche Peak Wilderness Boundary to a point on the South Fork of the Cache la Poudre River in section 1, township 7 north, range 73 west of the sixth principle meridian, at elevation 8050 mean sea level, as a recreational river.

(E) South Fork of the Cache la Poudre River from its intersection with the easterly section line of section 30, township 8 north, range

72 west of the sixth principle meridian, to confluence of the main stem of the Cache la Poudre River, as a wild river.

With respect to the portions of the river segments designated by this paragraph which are within the boundaries of Rocky Mountain National Park, the requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the general management plan for the park, and the boundaries, classification, and development plans for such portions need not be published in the Federal Register. Such revisions to the general management plan for the park shall assure that no development or use of parklands shall be undertaken that is inconsistent with the designation of such river segments as a wild river. For the purposes of the segments designated by this paragraph, there are authorized to be appropriated $500,000 for development and $2,500,000 for land acquisition.

(58)[9] SALINE BAYOU, LOUISIANA.—The segment from Saline Lake upstream to the Kisatchie National Forest, as generally depicted on the Proposed Boundary Map, numbered FS-57, and dated March 1986; to be administered by the Secretary of Agriculture. For the purposes of the segment designated by this paragraph, there are authorized to be appropriated for fiscal year commencing after September 30, 1986, not to exceed $1,000,000 for the acquisition of lands and interests in lands and for development".

(59)[10] BLACK CREEK, MISSISSIPPI.—The segment from Fairley Bridge Landing upstream to Moody's Landing as generally depicted on a map entitled "Black Creek Wild and Scenic River", numbered FS-58 and dated March 1986, to be administered by the Secretary of Agriculture as a scenic river area under section 2(b)(2). For the purposes of the segment designated by this paragraph, there are authorized to be appropriated up to $300,000 for the acquisition of lands and interests in lands and for development.

(60) KLICKITAT, WASHINGTON.—The segment from its confluence with Wheeler Creek, Washington, near the town of Pitt, Washington, to its confluence with the Columbia River; to be classified as a recreation river and to be administered by the Secretary of Agriculture.

(61) WHITE SALMON, WASHINGTON.—The segment from its confluence with Gilmer Creek, Washington, near the town of B Z Corner, Washington to its confluence with Buck Creek, Washington; to be classified as a scenic river and to be administered by the Secretary of Agriculture.[11]

(62) MERCED, CALIFORNIA.—The main stem from its sources (including Red Peak Fork, Merced Peak Fork, Triple Peak Fork, and Lyle Fork) on the south side of Mount Lyell in Yosemite National Park to a point 300 feet upstream of the confluence with Bear Creek, consisting of approximately 71 miles, and the South Fork of the river from its source near Triple Divide Peak in Yosemite National Park to the confluence with the main stem, consisting of approximately 43 miles, both as generally depicted on the map entitled "Merced River Wild and Scenic Rivers—Proposed," dated June 1987, to be administered by the Secretary of Agriculture and the Secretary of the Interior. With respect to the portions of the river designated by this paragraph which are within the boundaries of Yosemite National Park, and the El Portal

Administrative unit, the requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the general management plan for the park, and the boundaries, classification, and development plans for such portions need not be published in the Federal Register. Such revisions to the general management plan for the park shall assure that no development or use of park lands shall be undertaken that is inconsistent with the designation of such river segments. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this paragraph, except that no more than $235,000 may be appropriated to the Secretary of Agriculture for the acquisition of lands and interests in lands.

(63) KINGS, CALIFORNIA.—The Middle Fork of the Kings River from its headwaters at Lake Helen between Muir Pass and Black Giant Mountain to its confluence with the main stem; the South Fork, Kings River from its headwaters at Lake 11599 to its confluence with the main stem; and the main stem of the Kings River from the confluence of the Middle Fork and the South Fork to the point at elevation 1595 feet above mean sea level. The segments within the Kings Canyon National Park shall be administered by the Secretary of the Interior. The remaining segments shall be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public and within one year after the enactment of this paragraph, the respective Secretaries shall take such action as is required under subsection (b) of this section. In the case of the segments of the river administered by the Secretary of the Interior, the requirements of subsection (b) shall be fulfilled through appropriate revisions to the general management plan for Kings Canyon National Park, and the boundaries, classification, and development plans for such segments need not be published in the Federal Register. Such revisions to the general management plan for the park shall assure that no development or use of park lands shall be undertaken that is inconsistent with the designation of the river under this paragraph. For the purposes of the segments designated by this paragraph, there are authorized to be appropriated such sums as may be necessary, but not to exceed $250,000, to the Secretary of Agriculture for development and land acquisition to carry out the purposes of this paragraph.

(64)(A) NORTH FORK KERN RIVER, CALIFORNIA.—The segment of the main stem from the Tulare-Kern County line to its headwaters in Sequoia National Park, as generally depicted on a map entitled "Kern River Wild and Scenic River—Proposed" and dated June, 1987; to be administered by the Secretary of Agriculture; except that portion of the river within the boundaries of the Sequoia National Park shall be administered by the Secretary of the Interior. With respect to the portion of the river segment designated by this paragraph which is within the boundaries of Sequoia National Park, the requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the general management plan for the park, and the boundaries, classification, and development plans for such portion need not be published in the Federal Register. Such revision to the general management plan for the park shall assure that no developments or use of park lands shall be undertaken that is

inconsistent with the designation of such river segment.

(B) SOUTH FORK KERN RIVER, CALIFORNIA.—The segment from its headwaters in the Inyo National Forest to the southern boundary of the Domelands Wilderness in the Sequoia National Forest, as generally depicted on a map entitled "Kern River Wild and Scenic River—Proposed" and dated June 1987; to be administered by the Secretary of Agriculture.

(C) Nothing in this Act shall affect the continued operation and maintenance of the existing diversion project, owned by Southern California Edison on the North Fork of the Kern River, including reconstruction or replacement of facilities to the same extent as existed on the date of enactment of this paragraph.

(D) For the purposes of the segments designated by this paragraph, there are authorized to be appropriated such sums as may be necessary, but not to exceed $100,000, to the Secretary of Agriculture for development and land acquisition.

(65) BLUESTONE, WEST VIRGINIA. The segment in Mercer and Summers Counties, West Virginia, from a point approximately two miles upstream of the Summers and Mercer County line down to the maximum summer pool elevation (one thousand four hundred and ten feet above mean sea level) of Bluestone Lake as depicted on the boundary map entitled "Bluestone Wild and Scenic River," numbered WSR-BLU/20,000, and dated January 1987; to be administered by the Secretary of the Interior as a scenic river. In carrying out the requirements of subsection (b) of this section, the Secretary shall consult with State and local governments and the interested public. The Secretary shall not be required to establish detailed boundaries of the river as provided under subsection (b) of this section. Nothing in this Act shall preclude the improvement of any existing road or right-of-way within the boundaries of the segment designated under this paragraph. Jurisdiction over all lands and improvements on such lands owned by the United States within the boundaries of the segment designated under this paragraph is hereby transferred without reimbursement to the administrative jurisdiction of the Secretary of the Interior, subject to leases in effect on the date of enactment of this paragraph (or renewed thereafter) between the United States and the State of West Virginia with respect to the Bluestone State Park and the Bluestone Public Hunting and Fishing Area. Nothing in this Act shall affect the management by the State of hunting and fishing within the segment designated under this paragraph. Nothing in this Act shall affect or impair the management by the State of West Virginia of other wildlife activities in the Bluestone Public Hunting and Fishing Area to the extent permitted in the lease agreement as in effect on the enactment of this paragraph, and such management may be continued pursuant to renewal of such lease agreement. If requested to do so by the State of West Virginia, the Secretary may terminate such leases and assume administrative authority over the areas concerned. Nothing in the designation of the segment referred to in this paragraph shall affect or impair the management of the Bluestone project or the authority of any department, agency, or instrumentality of the United States to carry out the project purposes of that project as of the date of enactment of this paragraph. Nothing in this Act shall be construed to affect the continuation of studies relating to such projects

which were commenced before the enactment of this paragraph.

(66) SIPSEY FORK OF THE WEST FORK, ALABAMA. (A) Segments of the Sipsey Fork and several tributaries; to be administered by the Secretary of Agriculture in the classifications indicated, as follows: (1) Sipsey Fork from the confluence of Sandy Creek upstream to Forest Highway 26, as a scenic river; and (2) Sipsey Fork from Forest Highway 26 upstream to its origin at the confluence of Thompson Creek and Hubbard Creek, as a wild river; and (3) Hubbard Creek from its confluence with Thompson Creek upstream to Forest Road 210, as a wild river; and (4) Thompson Creek from its confluence with Hubbard Creek upstream to its origin in section 4, township 8 south, range 9 west, as a wild river; and (5) Tedford Creek from its confluence with Thompson Creek upstream to section 17, township 8 south, range 9 west, as a wild river; and (6) Mattox Creek from its confluence with Thompson Creek upstream to section 36 of township 7 south, range 9 west, as a wild river; and (7) Borden Creek from its confluence with the Sipsey Fork upstream to Forest Road 208, as a wild river; and (8) Borden Creek from Forest Road 208 upstream to its confluence with Montgomery Creek, as a scenic river; and (9) Montgomery Creek from its confluence with Borden Creek upstream to the southwest quarter of the southwest quarter of section 36, township 7 south, range 8 west, as a scenic river; and (10) Flannigan Creek from its confluence with Borden Creek upstream to Forest Road 208, as a wild river; and (11) Flannigan Creek from Forest Road 208 upstream to section 4, township 8 south, range 8 west, as a scenic river; and (12) Braziel Creek from its confluence with Borden Creek upstream to section 12, township 8 south, range 9 west, as a wild river, and (13) Hogood Creek from its confluence with Braziel Creek upstream to the confluence with an unnamed tributary in section 7, township 8 south, range 8 west, as a wild river.

(B) A map entitled "Sipsey Fork of the West Fork Wild and Scenic River" generally depicting the Sipsey Fork and the tributaries, shall be on file and remain available for public inspections in the office of the Chief of the Forest Service, Department of Agriculture.

(67) WILDCAT RIVER, NEW HAMPSHIRE. (A) A 14.51 mile segment including the following tributaries: Wildcat Brook, Bog Brook, and Great Brook (all as generally depicted on a map entitled 'Wildcat River', dated October 1987) to be administered as follows: those segments of the Wildcat River and its tributaries located within the boundary of the White Mountain National Forest (hereinafter in this paragraph referred to as 'the forest') shall be administered by the Secretary of Agriculture (hereinafter in this paragraph referred to as the 'Secretary'); those segments located outside the boundary of the forest shall be administered by the Secretary through a cooperative agreement with the Board of Selectmen of the town of Jackson and the State of New Hampshire pursuant to section 10(e) of this Act. Such agreement shall provide for the long-term protection, preservation, and enhancement of the river segments located outside the boundary of the forest and shall be consistent with the comprehensive management plan to be prepared by the Secretary pursuant to section 3(d) of this Act and with the July 1987 River Conservation Plan prepared by the Wildcat Brook Advisory

Committee in conjunction with the National Park Service.

(B)(i) To assist in the implementation of this paragraph, the Secretary shall establish, within 3 months after the date of enactment of this subparagraph, a Wildcat River Advisory Commission (hereinafter in this paragraph referred to as the 'Commission').

(ii) The Commission shall be composed of 7 members appointed by the Secretary as follows: one member from recommendations submitted by the Governor of the State of New Hampshire; 4 members from recommendations submitted by the Jackson Board of Selectmen, of which at least 2 members shall be riparian property owners, and at least one member shall be on the Board of Selectmen; one member from recommendations submitted by the Jackson Conservation Commission; and one member selected by the Secretary. Members of the Commission shall be appointed for terms of 3 years. A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Any member of the Commission appointed for a definite term may serve after the expiration of his term until his successor is appointed. The Commission shall designate one of its members as Chairman.

(iii) The Commission shall meet on a regular basis. Notice of meetings and agenda shall be published in local newspapers which have a distribution which generally covers the area affected by the designation of the segments described in this paragraph. Commission meetings shall be held at locations and in such a manner as to ensure adequate public involvement.

(iv) Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this paragraph on vouchers signed by the Chairman.

(v) Four members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(vi) The Commission shall cease to exist on the date 10 years after the enactment of this paragraph.

(vii) The provisions of section 14(b) of the Federal Advisory Committee Act (Act of October 6, 1972; 86 Stat. 776), are hereby waived with respect to the Commission.

(C) The authority of the Secretary to acquire lands outside the boundary of the White Mountain National Forest for purposes of this paragraph shall be limited to acquisition by donation or acquisition with the consent of the owner thereof. The Secretary may also acquire scenic easements for purposes of this paragraph as provided in section 6 of this Act.

(D) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this paragraph.

(68) BIG MARSH CREEK, OREGON.[12] The 15-mile segment from the northeast quarter of section 15, township 26 south, range 6 east, to its confluence with Crescent Creek in the northeast quarter of section 20, township 24 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture: *Provided,* That nothing in this Act shall prohibit the Secretary from undertaking construction activities to enhance and restore

wetland resources associated with Big Marsh Creek.

(69) CHETCO, OREGON.—The 44.5-mile segment from its headwaters to the Siskiyou National Forest boundary, to be administered by the Secretary of Agriculture in the following classes:

(A) The 25.5-mile segment from its headwaters to Boulder Creek at the Kalmiopsis Wilderness boundary as a wild river;

(B) the 8-mile segment from Boulder Creek to Steel Bridge as a scenic river; and

(C) the 11-mile segment from Steel Bridge to the Siskiyou National Forest boundary, one mile below Wilson Creek, as a recreational river.

(70) CLACKAMAS, OREGON.—The 47-mile segment from Big Springs to Big Cliff; to be administered by the Secretary of Agriculture in the following classes:

(A) the 4-mile segment from Big Springs to the Forest Service Road 4690 bridge as a scenic river;

(B) the 3.5-mile segment from the Forest Service Road 4690 bridge to the junction with Oregon State Highway 224 as a recreational river;

(C) the 10.5-mile segment from Oregon State Highway 224 to the June Creek Bridge as a scenic river;

(D) the 9-mile segment from June Creek Bridge to Tar Creek as a recreational river;

(E) the 5.5-mile segment from Tar Creek to just south of Indian Henry Campground as a scenic river; and

(F) the 14.5-mile segment just south of Indian Henry Campground to Big Cliff as a recreational river.

(71) CRESCENT CREEK, OREGON.—The 10-mile segment from the southwest quarter of section 11, township 24 south, range 6 east, to the west section line of section 13, township 24 south, range 7 east, as a recreational river, to be administered by the Secretary of Agriculture.

(72) CROOKED, OREGON.—The 15-mile segment from the National Grassland boundary to Dry Creek; to be administered by the Secretary of the Interior in the following classes:

(A) The 7-mile segment from the National Grassland boundary to River Mile 8 south of Opal Spring as a recreational river; and

(B) the 8-mile segment from Bowman Dam to Dry Creek as a recreational river.

(73) DESCHUTES, OREGON.—Those portions as follows:

(A) The 40.4-mile segment from Wickiup Dam to northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east as a recreational river; to be administered by the Secretary of Agriculture;

(B) the 11-mile segment from the northern boundary of Sunriver at the southwest quarter of section 20, township 19 south, range 11 east, to Lava Island Camp as a scenic river, to be administered by the Secretary of Agriculture;

(C) the 3-mile segment from Lava Island Camp to the Bend Urban Growth Boundary at the southwest corner of section 13, township 18 south, range 11 east, as a recreational river; to be administered by the Secretary of Agriculture;

(D) the 19-mile segment from Oden Falls to the Upper End of Lake Billy Chinook as a scenic river; to be administered by the Secretary of the Interior;

(E) the 100-mile segment from the Pelton Reregulating Dam to its confluence with the Columbia River as a recreational river; to be administered by the Secretary of the

Interior through a cooperative management agreement between the Confederated Tribes of the Warm Springs Reservation, and the State of Oregon as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988.

(74) DONNER UND BLITZEN, OREGON.—Those segments, including its major tributaries, as a wild river; to be administered by the Secretary of the Interior as follows:

(A) The 16.75-mile segment of the Donner und Blitzen from its confluence with the South Fork Blitzen and Little Blitzen;

(B) the 12.5-mile segment of the Little Blitzen from its headwaters to its confluence with the South Fork Blitzen;

(C) the 16.5-mile segment of the South Fork Blitzen from its headwaters to its confluence with the South Fork Blitzen;

(D) the 10-mile segment of Big Indian Creek from its headwaters to its confluence with the South Fork Blitzen;

(E) the 3.7-mile segment of Little Indian Creek from its headwaters to its confluence with Big Indian Creek; and

(F) the 13.25-mile segment of Fish Creek from its headwaters to its confluence with the Donner und Blitzen.

(75) EAGLE CREEK, OREGON.—The 27-mile segment from its headwaters below Eagle Lake to the Wallowa-Whitman National Forest boundary at Skull Creek; to be administered by the Secretary of Agriculture in the following classes:

(A) The 4-mile segment from its headwaters below Eagle Lake to the Eagle Cap Wilderness boundary at Hummingbird Mountain as a wild river;

(B) the 15.5-mile segment from the Eagle Cap Wilderness boundary at Hummingbird Mountain to Paddy Creek as a recreational river;

(C) the 6-mile segment from Paddy Creek to Little Eagle Creek as a scenic river; and

(D) the 1.5-mile segment from Little Eagle Creek to the Wallowa-Whitman National Forest boundary as a recreational river.

(76) ELK, OREGON.—The 19-mile segment to be administered by the Secretary of Agriculture in the following classes:

(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river, and

(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.

(77) GRANDE RONDE, OREGON.—The 43.8-mile segment from its confluence with the Wallowa River to the Oregon-Washington State line in the following classes:

(A) The 1.5-mile segment from its confluence with the Wallowa River to the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, as a recreational river; to be administered by the Secretary of Agriculture;

(B) the 17.4-mile segment from the Umatilla National Forest boundary in section 11, township 3 north, range 40 east, to the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman Creek as a wild river; to be administered by the Secretary of Agriculture;

(C) the 9-mile segment from the Wallowa-Whitman National Forest boundary approximately one-half mile east of Grossman

Creek to Wildcat Creek as a wild river; to be administered by the Secretary of the Interior; and

(D) the 15.9-mile segment from Wildcat Creek to the Oregon-Washington State line as a recreational river; to be administered by the Secretary of the Interior.

(78) IMNAHA, OREGON.—Those segments, including the South Fork Imnaha; to be administered by the Secretary of Agriculture in the following classes:

(A) The 6-mile segment from its confluence with the North and South Forks of the Imnaha River to Indian Crossing as a wild river;

(B) the 58-mile segment from Indian Crossing to Cow Creek as a recreational river;

(C) the 4-mile segment from Cow Creek to its mouth as a scenic river; and

(D) the 9-mile segment of the South fork Imnaha from its headwaters to its confluence with the Imnaha River as a wild river.

(79) JOHN DAY, OREGON.—The 147.5-mile segment from Service Creek to Tumwater Falls as a recreational river; to be administered through a cooperative management agreement between the State of Oregon and the Secretary of the Interior as provided in section 10(e) of this Act.

(80) JOSEPH CREEK, OREGON.—The 8.6-mile segment from Joseph Creek Ranch, one mile downstream from Cougar Creek, to the Wallowa-Whitman National Forest boundary as a wild river; to be administered by the Secretary of Agriculture.

(81) LITTLE DESCHUTES, OREGON.—The 12-mile segment from its source in the northwest quarter of section 15, township 26 south, range 6 1/2 east to the north section line of section 12, township 26 south, range 7 east, as a recreational river; to be administered by the Secretary of Agriculture.

(82) LOSTINE, OREGON.—The 16-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

(A) The 5-mile segment from its headwaters to the Eagle Cap Wilderness boundary as a wild river; and

(B) the 11-mile segment from the Eagle Cap Wilderness boundary to the Wallowa-Whitman National Forest boundary at Silver Creek as a recreational river.

(83) MALHEUR, OREGON.—The 13.7-mile segment from Bosonberg Creek to the Malheur National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

(A) The 7-mile segment from Bosonberg Creek to Malheur Ford as a scenic river; and

(B) the 6.7-mile segment from Malheur Ford to the Malheur National Forest boundary as a wild river.

(84) MCKENZIE, OREGON.—The 12.7-mile segment from Clear Lake to Scott Creek; to be administered by the Secretary of Agriculture in the following classes:

(A) The 1.8-mile segment from Clear Lake to the head of maximum pool at Carmen Reservoir as a recreational river;

(B) the 4.3-mile segment from a point 100 feet downstream from Carmen Dam to the maximum pool at Trail Bridge Reservoir as a recreational river; and

(C) the 6.6-mile segment from the developments at the base of the Trail Bridge Reservoir Dam to Scott Creek as a recreational river.

(85) METOLIUS, OREGON.—The 28.6-mile segment from the south Deschutes National Forest boundary to Lake Billy Chinook in the following classes:

(A) The 11.5-mile segment from the south Deschutes National Forest boundary (approximately 2.055.5 feet from Metolius Springs) to Bridge 99 as a recreational river; to be administered by the Secretary of Agriculture;

(B) the 17.1-mile segment from Bridge 99 to Lake Billy Chinook as a scenic river, by the Secretary of Agriculture, through a cooperative management agreement between the Secretary of the Interior and the Confederated Tribes of the Warm Springs Reservation, as provided in section 10(e) of this Act and section 105 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988: *Provided,* That the river and its adjacent land area will be managed to provide a primitive recreational experience as defined in the ROS User's Guide.

(86) MINAM, OREGON.—The 39-mile segment from its headwaters at the south end of Minam Lake to the Eagle Cap Wilderness boundary, one-half mile downstream from Cougar Creek, as a wild river; to be administered by the Secretary of Agriculture.

(87) NORTH FORK CROOKED, OREGON.—The 32.3-mile segment from its source at Williams Prairie to one mile from its confluence with the Crooked River in the following classes:

(A) The 3-mile segment from its source at Williams Prairie to the Upper End of Big Summit Prairie as a recreational river; to be administered by the Secretary of Agriculture;

(B) the 3.7-mile segment from the Lower End of Big Summit Prairie to the bridge across from the Deep Creek Campground as a recreational river; to be administered by the Secretary of Agriculture;

(C) the 8-mile segment from the bridge across from the Deep Creek Campground to the Ochoco National Forest boundary, one-half mile from Lame Dog Creek as a scenic river; to be administered by the Secretary of Agriculture;

(D) the 1.5-mile segment from the Ochoco National Forest boundary to Upper Falls as a scenic river; to be administered by the Secretary of the Interior;

(E) the 11.1-mile segment from Upper Falls to Committee Creek as a wild river; to be administered by the Secretary of the Interior; and

(F) the 5-mile segment from Committee Creek to one mile from its confluence with the Crooked River as a recreational river; to be administered by the Secretary of the Interior.

(88) NORTH FORK JOHN DAY, OREGON.—The 54.1-mile segment from its headwaters in the North Fork of the John Day Wilderness Area at section 13, township 8 south, range 36 east, to its confluence with Camas Creek in the following classes:

(A) The 3.5-mile segment from its headwaters in the North Fork of the John Day Wilderness at section 13, township 8 south, range 36 east, to the North Fork of the John Day Wilderness boundary as a wild river; to be administered by the Secretary of Agriculture;

(B) the 7.5-mile segment from the North Fork of the John Day Wilderness boundary to Trail Creek as a recreational river; to be administered by the Secretary of Agriculture;

(C) the 24.3-mile segment from Trail Creek to Big Creek as a wild river; to be administered by the Secretary of Agriculture;

(D) the 10.5-mile segment from Big Creek to Texas Bar Creek as a scenic river; to be administered by the Secretary of Agriculture; and

(E) the 8.3-mile segment from Texas Bar Creek to its confluence with Camas Creek as a recreational river; to be administered by the Secretary of Agriculture.

(89) NORTH FORK MALHEUR, OREGON.—The 25.5-mile segment from its headwaters to the Malheur National Forest boundary as a scenic river; to be administered by the Secretary of Agriculture.

(90) NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE, OREGON.—The 42.3-mile segment from Waldo Lake to the Willamette National Forest boundary, to be administered by the Secretary of Agriculture in the following classes:

(A) The 8.8-mile segment from Waldo Lake to the south section line of section 36, township 19 south, range 5 1/2 east as a wild river;

(B) the 6.5-mile segment from the south section line of section 36, township 19 south, range 5 1/2 east to Fisher Creek as a scenic river; and

(C) the 27-mile segment from Fisher Creek to the Willamette National Forest boundary as a recreational river.

(91) NORTH FORK OWYHEE, OREGON.—The 8-mile segment from the Oregon-Idaho State line to its confluence with the Owyhee River as a wild river; to be administered by the Secretary of the Interior.

(92) NORTH FORK SMITH, OREGON.—The 13-mile segment from its headwaters to the Oregon-California State line; to be administered by the Secretary of Agriculture in the following classes:

(A) The 6.5-mile segment from its headwaters to Horse Creek as a wild river;

(B) the 4.5-mile segment from Horse Creek to Baldface Creek as a scenic river; and

(C) the 2-mile segment from Baldface Creek to the Oregon-California State line as a wild river.

(93) NORTH FORK SPRAGUE, OREGON.—The 15-mile segment from the head of River Spring in the southwest quarter of section 15, township 35 south, range 16 east, to the northwest quarter of the southwest quarter of section 11, township 35 south, range 15 east, as a scenic river; to be administered by the Secretary of Agriculture.

(94) NORTH POWDER, OREGON.—The 6-mile segment from its headwaters to the Wallowa-Whitman National Forest boundary at River Mile 20 as a scenic river; to be administered by the Secretary of Agriculture.

(95) NORTH UMPQUA, OREGON.—The 33.8-mile segment from the Soda Springs Powerhouse to Rock Creek in the following classes:

(A) The 25.4-mile segment from the Soda Springs Powerhouse to the Umpqua National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture; and

(B) the 8.4-mile segment from the Umpqua National Forest boundary to its confluence with Rock Creek as a recreational river; to be administered by the Secretary of the Interior.

(96) POWDER, OREGON.—The 11.7-mile segment from Thief Valley Dam to the Highway 203 bridge as a scenic river; to be administered by the Secretary of the Interior.

(97) QUARTZVILLE CREEK, OREGON.—The 12-mile segment from the Willamette National Forest boundary to slack water in Green Peter Reservoir as a recreational river; to be administered by the Secretary of the Interior.

(98) ROARING, OREGON.—The 13.7-mile segment from its headwaters to its confluence with the Clackamas River; to be administered by the Secretary of Agriculture in the following classes:

(A) The 13.5-mile segment from its headwaters to one-quarter mile upstream of the mouth as a wild river; and

(B) the 0.2-mile segment from one-quarter mile upstream of the mouth to its confluence with the Clackamas River as a recreational river.

(99) SALMON, OREGON.—The 33.5-mile segment from its headwaters to its confluence with the Sandy River in the following classes:

(A) The 7-mile segment from its headwaters to the south boundary line of section 6, township 4 south, range 9 east as a recreational river; to be administered by the Secretary of Agriculture: *Provided that* designation and classification shall not preclude the Secretary from exercising discretion to approve the construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Timberline Lodge Winter Sports Area insofar as such construction does not involve water resources projects;

(B) the 15-mile segment from the south boundary line at section 6, township 4 south, range 9 east to the junction with the South Fork of the Salmon River as a wild river; be administered by the Secretary of Agriculture;

(C) the 3.5-mile segment from the junction with the south fork of the Salmon River to the Mt. Hood National Forest boundary as a recreational river; to be administered by the Secretary of Agriculture;

(D) the 3.2-mile segment from the Mt. Hood National Forest boundary to Lymp Creek as a recreational river; to be administered by the Secretary of the Interior; and

(E) the 4.8-mile segment from Lymp Creek to its confluence with the Sandy River as a scenic river; to be administered by the Secretary of the Interior.

(100) SANDY, OREGON.—Those portions as follows:

(A) The 4.5-mile segment from its headwaters to the section line between sections 15 and 22, township 2 south, range 8 east as a wild river; to be administered by the Secretary of Agriculture;

(B) the 7.9-mile segment from the section line between sections 15 and 22, township 2 south, range 8 east to the Mt. Hood National Forest boundary at the west section line of section 26, township 2 south, range 7 east as a recreational river; to be administered by the Secretary of Agriculture; and

(C) the 12.5-mile segment from the east boundary of sections 25 and 36, township 1 south, range 4 east in Clackamas County near Dodge Park, downstream to the west line of the east half of the northeast quarter of section 6, township 1 south, range 4 east in Multnomah County at Dabney State Park, the upper 3.8 miles as a scenic river and the lower 8.7 miles as a recreational river; both to be administered through a cooperative management agreement between the State of Oregon, the Secretary of the Interior and the Counties of Multnomah and Clackamas in accordance with section 10(e) of this Act.

(101) SOUTH FORK JOHN DAY, OREGON.—The 47-mile segment from the Malheur National

Forest to Smokey Creek as a recreational river; to be administered by the Secretary of the Interior.

(102) SQUAW CREEK, OREGON.—The 15.4-mile segment from its source to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch, including the Soap Fork Squaw Creek, the North Fork, the South Fork, the East and West Forks of Park Creek, and Park Creek Fork; to be administered by the Secretary of Agriculture as follows:

(A) The 6.6-mile segment and its tributaries from the source to the Three Sisters Wilderness boundary as a wild river; and

(B) the 8.8-mile segment from the boundary of the Three Sisters Wilderness Area to the hydrologic Gaging Station 800 feet upstream from the intake of the McAllister Ditch as a scenic river, *Provided,* That nothing in this Act shall prohibit the construction of facilities necessary for emergency protection for the town of Sisters relative to a rapid discharge of Carver Lake if no other reasonable flood warning or control alternative exists.

(103) SYCAN, OREGON.—The 59-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to Coyote Bucket at the Fremont National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

(A) The 26.4-mile segment from the northeast quarter of section 5, township 34 south, range 17 east to the west section line of section 22, township 32 south, range 14 1/2 east, as a scenic river;

(B) the 8.6-mile segment from the west section line of section 22, township 32 south, range 14 east, to the Fremont National Forest boundary in the southeast quarter of section 10, township 33 south, range 13 east, as a recreational river; and

(C) the 24-mile segment from the Fremont National Forest boundary in the southwest quarter of section 10, township 33 south, range 13 east, to Coyote Bucket at the Fremont National Forest boundary, as a scenic river.

(104) UPPER ROGUE, OREGON.—The 40.3-mile segment from the Crater Lake National Park boundary to the Rogue River National Forest boundary; to be administered by the Secretary of Agriculture in the following classes:

(A) The 0.5-mile segment from the Crater Lake National Park boundary to approximately 0.1-mile downstream from the forest road 6530760 (West Lake Road) crossing as a scenic river;

(B) the 6.1-mile segment from approximately 0.1-mile downstream from the forest road 6530760 (West Lake Road) crossing to Minehaha Creek as a wild river; and

(C) the 33.7-mile segment from Minehaha Creek to the Rogue River National Forest boundary as a scenic river.

(105) WENAHA, OREGON.—The 21.55-mile segment from the confluence of the North Fork and the South Fork to its confluence with the Grande Ronde River; to be administered by the Secretary of Agriculture in the following classes:

(A) The 18.7-mile segment from the confluence of the North Fork and South Fork to the Umatilla National Forest as a wild river;

(B) the 2.7-mile segment from the Umatilla National Forest boundary to the eastern most boundary of the Wenaha State Wildlife Area as a scenic area; and

(C) the 0.15-mile segment from the eastern most boundary of the Wenaha State Wildlife Area to

the confluence with the Grande Ronde River as a recreational river.

(106) WEST LITTLE OWYHEE, OREGON.—The 51-mile segment from its headwaters to its confluence with Owyhee River as a wild river; to be administered by the Secretary of the Interior.

(107) WHITE, OREGON[12].—The 46.5-mile segment from its headwaters to its confluence with the Deschutes River in the following classes:

(A) The 2-mile segment from its headwaters to the section line between sections 9 and 16, township 3 south, range 9 east, as a recreational river; to be administered by the Secretary of Agriculture; *Provided,* That designation and classification shall not preclude the Secretary from exercising discretion to approve construction, operation, and maintenance of ski lifts, ski runs, and associated facilities for the land comprising the Mt. Hood Winter Sports Area insofar as such construction does not involve water resource projects and is consistent with protecting the values for which the river was designated.

(B) the 13.6-mile segment from the section line between sections 9 and 16, township 3 south, range 9 east, to Deep Creek as a recreation river; to be administered by the Secretary of Agriculture;

(C) the 6.5-mile segment from Deep Creek to the Mt. Hood National Forest boundary as a scenic river, to be administered by the Secretary of Agriculture;

(D) the 17.5-mile segment from the Mt. Hood National Forest boundary to Three Mile Creek as a scenic river; to be administered by the Secretary of the Interior;

(E) the 5.3-mile segment from Three Mile Creek to River Mile 2.2 as a recreational river; to be administered by the Secretary of the Interior; and

(F) the 1.6-mile segment from River Mile 1.6 to its confluence with the Deschutes River as a recreational river; to be administered by the Secretary of the Interior.

(108) RIO CHAMA, NEW MEXICO[13].—The segment extending from El Vado Ranch launch site (immediately south of El Vado Dam) downstream approximately 24.6 miles to elevation 6,353 feet above mean sea level; to be administered by the Secretary of Agriculture and the Secretary of the Interior. For purposes of compliance with the planning requirements of subsection (d), the Cooperative Management Plan for the river prepared by the Secretary of Agriculture and the Secretary of the Interior may be revised and amended to the extent necessary to conform to the provisions of this Act. The segment of the Rio Chama beginning at the El Vado Ranch launch site downstream to the beginning of Forest Service Road 151 shall be administered as a wild river and the segment downstream from the beginning of Forest Service Road 151 to elevation 6,353 feet shall be administered as a scenic river.

(109) EAST FORK OF JEMEZ, NEW MEXICO.—The 11-mile segment from the Santa Fe National Forest boundary to its confluence with the Rio San Antonio; to be administered by the Secretary of Agriculture in the following classifications:

(A) the 2-mile segment from the Santa Fe National Forest boundary to the second crossing of State Highway 4, near Las Conchas Trailhead, as a recreational river; and

(B) the 4-mile segment from the second crossing of State Highway 4, near Las Conchas trailhead, to the third crossing of State Highway 4 approximately one and

one-quarter miles upstream from Jemez Falls, as a wild river; and

(C) the 5-mile segment from the third crossing of State Highway 4, approximately one and one-quarter mils upstream from Jemez Falls, to its confluence with the Rio San Antonio, as a scenic river.

After the enactment of this paragraph, Federal lands within the boundaries of the segments designated under this paragraph or which constitute the bed or bank or are situated within one-quarter mile of the ordinary highwater mark on each side of such segments are withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws of the United States, and no patent may be issued for the surface estate with respect to any mining claim located on such lands. Nothing in this paragraph shall be construed as precluding mining operations on any valid existing claim, subject to applicable regulations under section 9.

(110) PECOS RIVER, NEW MEXICO.—The 20.5 mile segment from its headwaters to the townsite of Terrero; to be administered by the Secretary of Agriculture in the following classifications:

(A) the 13.5 mile segment from its headwaters to the Pecos Wilderness boundary, as a wild river; and

(B) the 7-mile segment from the Pecos Wilderness boundary to the townsite of Terrero, as a recreational river.

After the enactment of this paragraph, Federal lands within the boundaries of the segments or are situated within one-quarter mile of the ordinary highwater mark on each side of such segments are withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws of the United States, and no patent may be issued from the surface estate with respect to any mining claim located on such lands. Nothing in this paragraph shall be construed as precluding mining operations on any valid existing claim, subject to applicable regulations under section 9.

(111) SMITH RIVER, CALIFORNIA.—The segment from the confluence of the Middle Fork Smith River and the North Fork Smith River to the Six Rivers National Forest boundary, including the following segments of the mainstream and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

(A) The segment from the confluence of the Middle Fork Smith River and the South Fork Smith River to the National Forest, as a recreational river.

(B) Rowdy Creek from the California-Oregon State line to the National Forest boundary, as a recreational river.

(112) MIDDLE FORK SMITH RIVER, CALIFORNIA.—The segment from the headwaters to its confluence with the North Fork Smith River, including the following segments of the mainstream and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

(A) The segment from its headwaters about 3 miles south of Sanger Lake, as depicted on the 1958 USGS 15' Preston Peak topographic map, to the center of section 7, T. 17 N., R. 5 E., as a wild river.

(B) The segment from the center of section 7, T. 17 N., R. 5 E., to the center of section 6, T. 17 N., R. 5 E., as a scenic river.

(C) The segment from the center of section 6, T. 17 N., R. 5 E., to one-half mile upstream from

its confluence with Knopki Creek, as a wild river.

(D) The segment from one-half mile upstream of its confluence with Knopki Creek to its confluence with the South Fork River, as a recreational river.

(E) Myrtle Creek from its headwaters in section 9, T. 17 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to the middle of section 28, T. 17 N., R. 1 E., as a scenic river.

(F) Myrtle Creek from the middle of section 28, T. 17 N., R. 1 E., to its confluence with the Middle Fork Smith River, as a wild river.

(G) Shelly Creek from its headwaters in section 1, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Patrick Creek, as a recreational river.

(H) Kelly Creek from its headwaters in section 32, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the Middle Fork Smith River, as a scenic river.

(I) Packsaddle Creek from its headwaters about 0.8 miles southwest of Broken Rib Mountain, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a scenic river.

(J) East Fork Patrick Creek from its headwaters in section 10, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographical map, to its confluence with the West Fork of Patrick Creek, as a recreational river.

(K) West Fork Patrick Creek from its headwaters in section 18, T. 18 N., R. 3 E., as depicted on the 1951 15' Gasquet topographic map to its confluence with the East Fork Patrick Creek, as a recreational river.

(L) Little Jones Creek from its headwaters in section 34, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map to its confluence with the Middle Fork Smith River, as a recreational river.

(M) Griffin Creek from its headwaters about 0.2 miles southwest of Hazel View Summit, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Smith River, as a recreational river.

(N) Knopki Creek from its headwaters about 0.4 mile west of Sanger Peak, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

(O) Monkey Creek from its headwaters in the northeast quadrant of section 12, T. 18 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

(P) Patrick Creek from the junction of East and West Forks of Patrick Creek to its confluence with Middle Fork Smith River, as a recreational river.

(Q) Hardscrabble Creek from its headwaters in the northeast quarter of section 2, T. 17 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to its confluence with the Middle Fork Smith River, as a recreational river.

(113) NORTH FORK SMITH RIVER, CALIFORNIA.—The segment from the California-Oregon State line to it confluence with the Middle Fork Smith River, including the following segments of the mainstream and certain tributaries, to be administered by the Secretary of Agriculture in the following classes:

(A) The segment from the California-Oregon State line to its confluence with an unnamed tributary in the northeast quarter of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, as a wild river.

(B) The segment from its confluence with an unnamed tributary in the northeast quarter section 5, T. 18 N., R. 2 E., as depicted on the 1951 15' Gasquet topographic map, as a scenic river.

(C) The segment from its southern-most intersection with the eastern section line of section 5, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Stony Creek, as a wild river.

(D) The segment from its confluence with Stony Creek to its confluence with the Middle Fork Smith River, as a recreational river.

(E) Diamond Creek from California-Oregon State line to its confluence with Bear Creek, as a recreational river.

(F) Diamond Creek from its confluence with Bear Creek to its confluence with the North Fork Smith River, as a scenic river.

(G) Bear Creek from its headwaters in section 24, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Diamond Creek, as a scenic river.

(H) Still Creek from its headwaters in section 11, T. 18 N., R. 1 E., as depicted on the 1952 USGS 15' Crescent City topographic map, to its confluence with the North Fork Smith River, as a scenic river.

(I) North Fork Diamond Creek from the California-Oregon State line to its confluence with Diamond Creek, as a recreational river.

(J) High Plateau Creek from its headwaters in section 26, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with Diamond Creek, as a scenic river.

(K) Stony Creek from its headwaters in section 25, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the North Fork Smith River, as a scenic river.

(L) Peridotite Creek from its headwaters in section 34, T. 18 N., R. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the North Fork Smith River, as a wild river.

(114) SISKIYOU FORK SMITH RIVER, CALIFORNIA.—The segment from its headwaters to its confluence with the Middle Fork Smith River, and the following tributaries, to be administered by the Secretary of Agriculture in the following classes:

(A) The segment from its headwaters about 0.7 miles southeast of Broken Rib Mountain, as depicted on the 1956 USGS 15' Preston Peak Topographic map, to its confluence with the South Siskiyou Fork Smith River, as a wild river.

(B) The segment from its confluence with the South Siskiyou Fork Smith River to its confluence with the Middle Fork Smith River, as a recreational river.

(C) South Siskiyou Fork Smith River from its headwaters about 0.6 miles southwest of Buck Lake, as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the Siskiyou Fork Smith River, as a wild river.

(115) SOUTH FORK SMITH RIVER, CALIFORNIA.—The segment from its headwaters to its confluence with the main stem of the Smith River, and the following

tributaries, to be administered by the Secretary of Agriculture in the following classes:

(A) The segment from its headwaters about 0.5 miles southeast of Bear Mountain, as depicted on the 1956 USGS 15' Preston Peak Topographic map, to Blackhawk Bar, as a wild river.

(B) The segment from Blackhawk Bar to its confluence with the main stem of the Smith River, as a recreational river.

(C) Williams Creek from its headwaters in section 31, T. 14 N., R. 4 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Eight Mile Creek, as a wild river.

(D) Eightmile Creek from its headwaters in section 29, T. 14 N., R, 4 E., as depicted on the 1955 USGS 15' Dillon Mountain topographic map, to its confluence with the South Fork Smith River, as a wild river.

(E) Harrington Creek from its source to its confluence with the South Fork Smith River, as a wild river.

(F) Prescott Fork of the Smith River from its headwaters about 0.5 miles southeast of Island Lake, as depicted on the 1955 USGS 15' Dillon Mountain topographic map, to its confluence with the South Fork Smith River, as a wild river.

(G) Quartz Creek from its headwaters in section 31, T. 16 N., R. 4 E., as depicted on the 1952 15' USGS Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(H) Jones Creek from its headwaters in section 36, T. 16 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(I) Hurdygurdy Creek from its headwaters about 0.4 miles southwest of Bear Basin Butte as depicted on the 1956 USGS 15' Preston Peak topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(J) Gordon Creek from its headwaters in section 18, T. 16 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(K) Coon Creek from the junction of its two headwaters tributaries in the southeast quadrant of section 31, T. 17 N., R. 3 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(L) Craigs Creek from its headwaters in section 36, T. 17 N., R 2. 2 E., as depicted on the 1951 USGS 15' Gasquet topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(M) Goose Creek from its headwaters in section 13, T. 13 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(N) East Fork Goose creek from its headwaters in section 18, T. 13 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Goose Creek, as a recreational river.

(O) Buck Creek from its headwaters at Cedar Camp Spring, as depicted on the 1952 USGS 15' Ship Mountain topographic map, to the northeast corner of section 8, T. 14 N., R. 3 E., as a scenic river.

(P) Buck Creek from the northeast corner of section 8, T. 14 N., R. 3 E., to its confluence with

the South Fork Smith River, as a wild river.

(Q) Muzzleloader Creek from its headwaters in section 2, T. 15 N., R. 3 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with Jones Creek, as a recreational river.

(R) Canthook Creek from its headwaters in section 2, T. 15 N., R. 3 E., as depicted in the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(S) Rock Creek from the national forest boundary in section 6, T. 15 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(T) Blackhawk Creek from its headwaters in section 21, T. 15 N., R. 2 E., as depicted on the 1952 USGS 15' Ship Mountain topographic map, to its confluence with the South Fork Smith River, as a recreational river.

(116) CLARKS FORK, WYOMING.—(A) The twenty and five-tenths-mile segment from the west boundary of section 3, township 56 north, range 106 west at the Crandall Creek Bridge downstream to the north boundary of section 13, township 56 north, range 104 west at Clarks Fork Canyon; to be administered by the Secretary of Agriculture as a wild river. Notwithstanding subsection (b), the boundary of the segment shall include all land within four hundred and forty yards from the ordinary high water mark on both sides of the river. No land or interest in land may be acquired with respect to the segment without the consent of the owner thereof. For the purposes of carrying out this paragraph, there is authorized to be appropriated $500,000 for development and $750,000 for the acquisition of land and interests therein.

(B) Designation of a segment of the Clarks Fork by this paragraph as a component of the Wild and Scenic Rivers System shall not be utilized in any Federal proceeding, whether concerning a license, permit, right-of-way, or any Federal action, as a reason or basis to prohibit the development or operation of any water impoundment, diversion facility, or hydroelectric power and transmission facility located entirely downstream from the segment of the river designated by this paragraph. Congress finds that development of water impoundments, diversion facilities, and hydroelectric power and transmission facilities located entirely downstream from the segment of the river is not incompatible with its designation as a component of the Wild and Scenic Rivers System.

(C) The Secretary of Agriculture is directed to apply for the quantification of the water right reserved by the inclusion of a portion of the Clarks Fork in the Wild and Scenic Rivers System in accordance with the procedural requirements of the laws of the State of Wyoming: *Provided,* That notwithstanding any provision of the laws of the State of Wyoming otherwise applicable to the granting and exercise of water rights, the purposes for which the Clarks Fork is designated, as set forth in this Act and this paragraph, are declared to be beneficial uses and the priority date of such right shall be the date of enactment of this paragraph.

(D) The comprehensive management plan developed under subsection (d) for the segment designated by this paragraph shall provide for all such measures as may be necessary in the control of fire, insects, and diseases to fully protect

the values for which the segment is designated as a wild river.

( ) BEAR CREEK, MICHIGAN.—The 6.5–mile segment from Coates Highway to the Manistee River, to be administered by the Secretary of Agriculture as a scenic river.

( ) BLACK, MICHIGAN.—The 14–mile segment from the Ottawa National Forest boundary to Lake Superior, to be administered by the Secretary of Agriculture as a scenic river.

( ) CARP, MICHIGAN.— The 27.8–mile segment from the west section line of section 30, township 43 north, range 5 west, to Lake Huron, to be administered by the Secretary of Agriculture in the following classes:

(A) The 2.3–mile segment from the west section line of section 30, township 43 north, range 5 west, to Forest Development Road 3458 in section 32, township 43 north, range 5 west, as a scenic river.

(B) The 6.5–mile segment from the Forest Development Road 3458 in section 32, township 43 north, range 5 west, to Michigan State Highway 123, as a scenic river.

(C) The 7.5–mile segment from Michigan State Highway 123 to one quarter of a mile upstream from Forest Development Road 3119, as a wild river.

(D) The 0.5–mile segment from one quarter of a mile upstream of Forest Development Road 3119 to one quarter mile downstream of Forest Development Road 3119, as a scenic river.

(E) The 4.9–mile segment from one quarter of a mile downstream of Forest Development Road 3119 to McDonald Rapids, as a wild river.

(F) The 6.1–mile segment from McDonald Rapids to Lake Huron, as a recreational river.

( ) INDIAN, MICHIGAN.—The 51–mile segment from Hovey Lake to Indian Lake to be administered by the Secretary of Agriculture in the following classes:

(A) The 12–mile segment from Hovey Lake to Fish Lake, as a scenic river.

(B) The 39–mile segment from Fish Lake to Indian Lake, as a recreational river.

( ) MANISTEE, MICHIGAN.—The 26–mile segment from the Michigan DNR boat ramp below Tippy Dam to the Michigan State Highway 55 bridge, to be administered by the Secretary of Agriculture as a recreational river.

( ) ONTONAGON, MICHIGAN.—Segments of certain tributaries, totaling 157.4 miles, to be administered by the Secretary of Agriculture as follows—

(A) The 46–mile segment of the East Branch Ontonagon from its origin at Spring Lake to the Ottawa National Forest boundary in the following classes:

(i) The 20.5–mile segment from its origin at Spring Lake to its confluence with an unnamed stream in section 30, township 48 north, range 37 west, as a recreational river.

(ii) The 25.5–mile segment from its confluence with an unnamed stream in section 30, township 48 north, range 37 west, to the Ottawa National Forest boundary, as a wild river.

(B) The 59.4–mile segment of the Middle Branch Ontonagon, from its origin at Crooked Lake to the northern boundary of the Ottawa National Forest in the following classes—

(i) The 20–mile segment from its origin at Crooked Lake to Burned Dam, as a recreational river.

(ii) The 8–mile segment from Burned Dam to Bond Falls Flowage, as a scenic river.

(iii) The 8–mile segment from Bond Falls to Agate Falls, as a recreational river.

(iv) The 6–mile segment from Agate Falls to Trout Creek, as a scenic river.

(v) The 17.4–mile segment from Trout Creek to the northern boundary of the Ottawa National Forest, as a wild river.

(C) The 37–mile segment of the Cisco Branch Ontonagon from its origin at Cisco Lake Dam to its confluence with Ten–Mile Creek south of Ewen in the following classes—

(i) The 10–mile segment from the origin of Cisco Branch Ontonagon at Cisco Lake Dam to the County Road 527 crossing, as a recreational river.

(ii) The 27–mile segment from the Forest Development Road 527 crossing to the confluence of the Cisco Branch and Ten–Mile Creek, as a scenic river.

(D) The 15–mile segment of the West Branch Ontonagon from its confluence with Cascade Falls to Victoria Reservoir, in the following classes—

(i) The 10.5–mile segment from its confluence with Cascade Falls to its confluence with the South Branch Ontonagon, as a recreational river.

(ii) The 4.5–mile segment from its confluence with the South Branch Ontonagon to Victoria Reservoir, as a recreational river. Notwithstanding any limitation contained in this chapter, the Secretary is authorized to acquire lands and interests in lands which, as of August 1, 1990, were owned by Upper Peninsula Energy Corporation, and notwithstanding any such limitation, such lands shall be retained and managed by the Secretary as part of the Ottawa National Forest, and those lands so acquired which are within the boundaries of any segment designated under this paragraph shall be retained and managed pursuant to this chapter.

( ) PAINT, MICHIGAN.— Segments of the mainstream and certain tributaries, totaling 51 miles, to be administered by the Secretary of Agriculture as follows:

(A) The 6–mile segment of the main stem from the confluence of the North and South Branches Paint to the Ottawa National Forest boundary, as a recreational river.

(B) The 17–mile segment of the North Branch Paint from its origin at Mallard Lake to its confluence with the South Branch Paint, as a recreational river.

(C) The 28–mile segment of the South Branch Paint from its origin at Paint River Springs to its confluence with the North Branch Paint, as a recreational river.

( ) PINE, MICHIGAN.— The 25–mile segment from Lincoln Bridge to the east 1/16th line of section 16, township 21 north, range 13 west, to be administered by the Secretary of Agriculture as a scenic river.

( ) PRESQUE ISLE, MICHIGAN.—Segments of the mainstream and certain tributaries, totaling 57 miles, to be administered by the Secretary of Agriculture as follows—

(i) The 17–mile segment from the confluence of the East and West Branches Presque Isle to Michigan State Highway 28, as a recreational river.

(ii) The 6—mile segment from Michigan State Highway 28 to Minnewawa Falls, as a scenic river.

(B) The 14–mile segment of the East Branch Presque Isle within the Ottawa National Forest, as a recreational river.

(C) The 7–mile segment of the South Branch Presque Isle within the Ottawa National Forest, as a recreational river.

(D) The 13–mile segment of the West Branch Presque Isle within the Ottawa National Forest, as a scenic river.

( ) STURGEON, HIAWATHA NATIONAL FOREST, MICHIGAN.—The 43.9–mile segment from the north line of section 26, township 43 north, range 19 west, to Lake Michigan, to be administered by the Secretary of Agriculture in the following classes:

(A) The 21.7–mile segment from the north line of section 26, township 43 north, range 19 west, to Forest Highway 13 as a scenic river.

(B) The 22.2–mile segment from Forest Highway 13 to Lake Michigan as a recreational river.

( ) STURGEON, OTTAWA NATIONAL FOREST, MICHIGAN.—The 25–mile segment from its entry into the Ottawa National Forest to the northern boundary of the Ottawa National Forest, to be administered by the Secretary of Agriculture in the following classes—

(A) The 16.5–mile segment from its entry into the Ottawa National Forest to Prickett Lake, as a wild river.

(B) The 8.5–mile segment from the outlet of Prickett Lake Dam to the northern boundary of the Ottawa National Forest, as a scenic river.

( ) EAST BRANCH OF THE TAHQUAMENON, MICHIGAN.—The 13.2–mile segment from its origin in section 8, township 45 north, range 5 west, to the Hiawatha National Forest boundary, to be administered by the Secretary of Agriculture in the following classes—

(A) The 10–mile segment from its origin in section 8, township 45 north, range 5 west, to the center of section 20, township 46 north, range 6 west, as a recreational river.

(B) The 3.2–mile segment from center of section 20, township 46 north, range 6 west, to the boundary of the Hiawatha National Forest, as a wild river.

( ) WHITEFISH, MICHIGAN.—Segments of the mainstream and certain tributaries, totaling 33.6 miles, to be administered by the Secretary of Agriculture as follows—

(A) The 11.1–mile segment of the mainstream from its confluence with the East and West Branches of the Whitefish to Lake Michigan in the following classes:

(i) The 9–mile segment from its confluence with the East and West Branches of the Whitefish to the center of section 16, township 41 north, range 21 west, as a scenic river.

(ii) The 2.1–mile segment from the center of section 16, township 41 north, range 21 west, to Lake Michigan, as a recreational river.

(B) The 15–mile segment of the East Branch Whitefish from the crossing of County road 003 in section 6, township 44 north, range 20 west, to its confluence with the West Branch Whitefish, as a scenic river.

(C) The 7.5–mile segment of the West Branch Whitefish from County Road 444 to its confluence with the East Branch Whitefish, as a scenic river.

( ) YELLOW DOG, MICHIGAN.—The 4–mile segment from its origin at the outlet of Bulldog Lake Dam to the boundary of the Ottawa National Forest, to be administered by the Secretary of Agriculture as a wild river.

( ) ALLEGHENY, PENNSYLVANIA.—The segment from Kinzua Dam downstream approximately 7 miles to the United States Route 6 Bridge, and the segment from Buckaloons Recreation Area at

Irvine, Pennsylvania, downstream approximately 47 miles to the southern end of Alcorn Island at Oil City, to be administered by the Secretary of Agriclutre as a recreational river through a cooperative agreement with the Commonwealth of Pennsylvania and the counties of Warren, Forest, and Venango, as provided under section 1281(e) of this title; and the segment from the sewage treatment plant at Franklin downstream approximately 31 miles to the refinery at Emlenton, Pennsylvania, to be administered by the Secretary of Agriculture as a recreational river through a cooperative agreement with the Commonwealth of Pennsylvania and Venango County, as provided under section 1281(e) of this title.

( ) BIG PINEY CREEK, ARKANSAS.—The 45.2–mile segment from its origin in section 27, township 13 north, range 23 west, to the Ozark National Forest boundary, to be administered by the Secretary of Agriculture as a scenic river.

( ) BUFFALO RIVER, ARKANSAS.—The 15.8–mile segment from its origin in section 22, township 14 north, range 24 west, to the Ozark National Foresty boundary, to be administered by the Secretary of Agriculture in the following classes—

(A) The 6.4–mile segment from its origin in section 22, township 14 north, range 24 west, to the Ozark National Forest boundary of the Upper Buffalo Wilderness, as a scenic river.

(B) The 9.4–mile segment from the western boundary of the Upper Buffalo Wilderness to the Ozark National Forest boundary, as a wild river.

( ) COSSATOT RIVER, ARKANSAS.—Segments of the main stem and certain tributaries, totaling 20.1 miles, to be administered as follows—

(A) The 4.2–mile segment of the main stem from its confluence with Mine Creek to the Caney Creek Wilderness Boundary on the north section line of section 13, township 4 south, range 30 west, to be administered by the Secretary of Agriculture as a recreational river.

(B) The 6.9–mile segment of the main stem from the Caney Creek Wilderness Boundary on the north section line of section 13, township 4 south, range 30 west, to the south section line of section 20, township 4 south, range 30 west, to be administered by the Secretary of Agriculture as a scenic river.

(C) The 4.4–mile segment of the Brushy Creek tributary from the north line of the south 1/2 of the southwest 1/4 section 7, township 4 south, range 30 west, to the south section line of section 20, township 4 south, range 30 west, to be administered by the Secretary of Agriculture as a scenic river.

(D) The 4.6–mile segment of the main stem from the State Highway 4 bridge to Duchett's Ford, to be administered by the Secretary of the Army as a scenic river consistent with the operation of Gillham Dam (as authorized by section 203 of the Flood Control Act of 1958 (Public Law 85-500)). For purposes of management of such segment, the Secretary of the Army may enter into a cooperative agreement or memorandum of understanding or other appropriate arrangement with the Secretary of Agriclutre or an appropriate official of the State of Arkansas.

( ) HURRICANE CREEK, ARKANSAS.—The 15.5– mile segment from its origin in section 1, township 13 north, range 21 west, to its confluence with Big Piney Creek, to be administered by the Secretary of Agriculture in the following classes:

(A) The 11.8–mile segment from its origin in scion 1, township 13 north, range 21 west, to the western boundary of the private land bordering Hurricane Creek Wilderness, a scenic river.

(B) The 2.4–mile segment from the western boundary of the private land bordering the Hurricane Creek Wilderness to the Hurricane Creek Wilderness boundary, as a wild river.

(C) The 1.3–mile segment from the Hurricane Creek Wilderness boundary to its confluence with Big Piney Creek, as a scenic river.

( ) LITTLE MISSOURI RIVER, ARKANSAS.—Segments totaling 15.7 miles, to be administered by the Secretary of Agriculture in the following classes—

(A) The 11.3–mile segment from its origin in the northwest 1/4 section 32, township 3 south, range 27 west, as a scenic river.

(B) The 4.4–mile segment from the north line of the southeast 1/4 of the southeast 1/4 of section 28, township 4 south, range 27 west, to the north line of the northwest 1/4 of the southwest 1/4 of section 5, township 5 south, range 27 west, as a wild river.

( ) MULBERRY RIVER, ARKANSAS.—The 56.0–mile segment from its origin in section 32, township 13 north, range 23 west, to the Ozark National Forest boundary, to be administered by the Secretary of Agriculture in the following classes—

(A) The 36.6–mile segment from its origin in section 32, township 13 north, range 23 west, to Big Eddy Hollow in section 3, township 11 north, range 27 west, as a recreational river.

(B) The 19.4–mile segment from Big Eddy Hollow in section 3, township 11 north, range 27 west, to the Ozark National Forest boundary, as a scenic river.

( ) NORTH SYLAMORE CREEK, ARKANSAS.—The 14.5-mile segment from the Clifty Canyon Botanical Area boundary to its confluence with the White River, to be administered by the Secretary of Agriculture as a scenic river.

( ) RICHLAND CREEK, ARKANSAS.—The 16.5–mile segment from its origin in section 35, township 13 north, range 20 west, to the northern boundary of section 32, township 14 north, range 18 west, to be administered by the Secretary of Agriculture in the following classes—

(A) The 7.8–mile segment form its origin in section 35, township 13 north, range 20 est, to the western boundary of the Richland Creek Wilderness, as a scenic river.

(B) The 5.3–mile segment from the western boundary of the Richland Creek Wilderness to the eastern boundary of the Richland Creek Wilderness, as a wild river.

(C) The 3.4–mile segment from the eastern boundary of the Richland Creek Wilderness to the northern boundary of section 32, township 14 north, range 18 west, as a scenic river.

( ) SESPE CREEK, CALIFORNIA.—The 4–mile segment of the main stem of the creek from its confluence with Rock Creek and Howard Creek downstream to its confluence with Trout Creek, to be administered by the Secretary of Agriculture as a scenic river; and the 27.5–mile segment of the main stem of the creek extending from its confluence with Trout Creek downstream to where it leaves section 26, township 5 north, range 20 west, to be administered by the Secretary of Agriculture as a wild river.

( ) SISQUOC RIVER, CALIFORNIA.—The 33–mile segment of the main stem of the river extending from its origin downstream to the Los Padres Forest

boundary, to be administered by the Secretary of Agriculture as a wild river.

( ) BIG SUR RIVER, CALIFORNIA.—The main stems of the South Fork and North Fork of the Big Sur River from their headwaters to their confluence and the main stem of the river from the confluence of the South and North Forks downstream to the boundary of the Ventana Wilderness in Los Padres National Forest, for a total distance of approximately 19.5 miles, to be administered by the Secretary of Agriculture as a wild river.

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designated by subsection (a) of this section shall, within one year from the date of designation of such component under subsection (a) (except where a different date is provided in subsection (a)), establish detailed boundaries therefore (which boundaries shall include an average of not more than 320 acres of land per mile measured from the ordinary high water mark on both sides of the river); and determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments. Notice of the availability of the boundaries and classification, and of subsequent boundary amendments shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

(c) Maps of all boundaries and descriptions of the classifications of designated river segments, and subsequent amendments to such boundaries, shall be available for public inspection in the offices of the administering agency in the District of Columbia and in locations convenient to the designated river.

(d)(1) For rivers designated on or after January 1, 1986, the Federal agency charged with the administration of each component of the National Wild and Scenic Rivers System shall prepare a comprehensive management plan for such river segment to provide for the protection of the river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this Act. The plan shall be coordinated with and may be incorporated into resource management planning for affected adjacent Federal lands. The plan shall be prepared, after consultation with State and local governments and the interested public within 3 full fiscal years after the date of designation. Notice of the completion and availability of such plans shall be published in the Federal Register.

(2) For rivers designated before January 1, 1986, all boundaries, classifications, and plans shall be reviewed for conformity within the requirements of this subsection within 10 years through regular agency planning processes. (16 U.S.C. 1274)

Report to Congress

Sec. 4. (a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the

designation of each such river or section thereof under this Act. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in subparagraphs 5(a) (1) through (27) of this Act no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers (i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and (ii) which possess the greatest proportion of private lands within their areas. Every such study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act (79 Stat. 244; 42 U.S.C. 1962 et seq.). Each report, including maps and illustrations, shall show among other things the area included within the report; the characteristics which do or do not make the area a worthy addition to the system; the current status of land ownership and use in the area; the reasonably foreseeable potential uses of the land and water which would be enhanced, foreclosed, or curtailed if the area were included in the national wild and scenic rivers system; the Federal agency (which in the case of a river which is wholly or substantially within a national forest, shall be the Department of Agriculture) by which it is proposed the area, should it be added to the system, be administered; the extent to which it is proposed that such administration, including the costs thereof, be shared by State and local agencies; and the estimated cost to the United States of acquiring necessary lands and interests in land and of administering the area, should it be added to the system. Each such report shall be printed as a Senate or House document.

(b) Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and to the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal department or agency and, unless the lands proposed to be included in the area are already owned by the United States or have already been authorized for acquisition by Act of Congress, the Governor of the State or States in which they are located or an officer designated by the Governor to receive the same. Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within ninety days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress.

(c) Before approving or disapproving for inclusion in the national wild and scenic rivers system any river designated as a wild, scenic or recreational river by or pursuant to an act of the State legislature, the Secretary of the Interior shall submit the proposal to the Secretary of Agriculture, the Secretary of the Army, the Chairman of the Federal Power Commission, and the head of any other affected Federal department or agency and shall evaluate and give due weight to any recommendations or comments which the said officials furnish him within

ninety days of the date on which it is submitted to them. If he approves the proposed inclusion, he shall publish notice thereof in the Federal Register.

(d) The boundaries of any river proposed in section 5(a) of this Act for potential addition to the National Wild and Scenic Rivers System shall generally comprise that area measured within one-quarter mile from the ordinary high water mark on each side of the river. In the case of any designated river, prior to publication of boundaries pursuant to section 3(b) of this Act, the boundaries also shall comprise the same area. This subsection shall not be construed to limit the possible scope of the study report to address areas which may lie more than one-quarter mile from the ordinary high water mark on each side of the river. (16 U.S.C. 1275)

Potential Additions

Sec. 5. (a) The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

(1) ALLEGHENY, PENNSYLVANIA.—The segment from its mouth to the town of East Brady, Pennsylvania.

(2) BRUNEAU, IDAHO.—The entire main stem.

(3) BUFFALO, TENNESSEE.— The entire river.

(4) CHATTOOGA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA.—The entire river.

(5) CLARION, PENNSYLVANIA.—The segment between Ridgway and its confluence with the Allegheny River.

(6) DELAWARE, PENNSYLVANIA AND NEW YORK.—The segment from Hanock, New York, to Matamoras, Pennsylvania.

(7) FLATHEAD, MONTANA.—The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence with the South Fork; and the South Fork from its origin to Hungry Horse Reservoir.

(8) GASCONADE, MISSOURI.—The entire river.

(9) ILLINOIS, OREGON.—The entire river.

(10) LITTLE BEAVER, OHIO.—The segment of the North and Middle Forks of the Little Beaver River in Columbiana County from a point in the vicinity of Negly and Elkton, Ohio, downstream to a point in the vicinity of East Liverpool, Ohio.

(11) LITTLE MIAMI, OHIO.—That segment of the main stem of the river, exclusive of its tributaries, from a point at the Warren-Clermont County line at Loveland, Ohio, upstream to the sources of Little Miami including North Fork.

(12) MAUMEE, OHIO AND INDIANA.—The main stem from Perrysburg, Ohio, to Fort Wayne, Indiana, exclusive of its tributaries in Ohio and inclusive of its tributaries in Indiana.

(13) MISSOURI, MONTANA.-The segment between Fort Benton and Ryan Island.

(14) MOYIE, IDAHO.—The segment from the Canadian border to its confluence with the Kootenai River.

(15) OBED, TENNESSEE.—The entire river and its tributaries, Clear Creek and Daddys Creek.

(16) PENOBSCOT, MAINE.—Its east and west branches.

(17) PERE MARQUETTE, MICHIGAN.—The entire river.

(18) PINE CREEK, PENNSYLVANIA.—The segment from Ansonia to Waterville.

(19) PRIEST, IDAHO.—The entire main stem.

(20) RIO GRANDE, TEXAS.—The portion of the river between the west boundary of Hudspeth County and the east boundary of Terrell County on the United States side of the river: *Provided,* That before undertaking any study of this potential scenic river, the Secretary of the Interior shall determine, through the channels of appropriate executive agencies, that Mexico has no objection to its being included among the studies authorized by this Act.

(21) SAINT CROIX, MINNESOTA AND WISCONSIN.—The segment between the dam near Taylors Falls and its confluence with Mississippi River.

(22) SAINT JOE, IDAHO.—The entire main stem.

(23) SALMON, IDAHO.—The segment from the town of North Fork to its confluence with the Snake River.

(24) SKAGIT, WASHINGTON.—The segment from the town of Mount Vernon to and including the mouth of Bacon Creek; the Cascade River between its mouth and the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the Glacier Peak Wilderness Area Boundary at Milk Creek; the Sauk River from its mouth to its junction with Elliot Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the Glacier Peak Wilderness Area boundary.

(25) SUWANNEE, GEORGIA AND FLORIDA.—The entire river from its source in the Okefenokee Swamp in Georgia to the gulf and the outlying Ichetucknee Springs, Florida.

(26) UPPER IOWA, IOWA.—The entire river.

(27) YOUGHIOGHENY, MARYLAND AND PENNSYLVANIA.—The segment from Oakland, Maryland, to the Youghiogheny Reservoir, and from the Youghiogheny Dam downstream to the town of Connellsvsille, Pennsylvania.

(28) AMERICAN, CALIFORNIA.—The North Fork from the Cedars to the Auburn Reservoir.

(29) AU SABLE, MICHIGAN.—This segment downstream from Foot Dam to Oscoda and upstream from Loud Reservoir to its source, including its principle tributaries and excluding Mio and Bamfield Reservoirs.

(30) BIG THOMPSON, COLORADO.—The segment from its source to the boundary of Rocky Mountain National Park.

(31) CACHE LA POUDRE, COLORADO.—Both forks from their sources to their confluence, thence the Cache la Poudre to the eastern boundary of Roosevelt National Forest.

(32) CAHABA, ALABAMA.—The segment from its junction with United States Highway 31 south of Birmingham downstream to its junction with United States Highway 80 west of Selma.

(33) CLARKS FORK, WYOMING.—The segment from the Clarks Fork Canyon to the Crandall Creek Bridge.

(34) COLORADO, COLORADO AND UTAH.—The segment from its confluence with the Dolores River, Utah, upstream to a point 19.5 miles from the Utah-Colorado border in Colorado.

(35) CONEJOS, COLORADO.—The three forks from their sources to their confluence, thence the Conejos to its first junction with State Highway 17, excluding Platoro Reservoir.

(36) ELK, COLORADO.—The segment from its source to Clark.

(37) ENCAMPMENT, COLORADO.-The Main Fork and West Fork to their confluence, thence the Encampment to the Colorado-Wyoming border, including the tributaries and headwaters.

(38) GREEN, COLORADO.—The entire segment within the State of Colorado.

(39) GUNNISON, COLORADO.—The segment from the upstream (southern) boundary of the Black Canyon of the Gunnison National Monument to its confluence with the North Fork.

(40) ILLINOIS, OKLAHOMA.—The segment from Tenkiller Ferry Reservoir upstream to the Arkansas-Oklahoma border, including the Flint and Barren Fork Creeks.

(41) JOHN DAY, OREGON.— The main stem from Service Creek Bridge (at river mile 157) downstream to Tumwater Falls (at river mile 10).

(42) KETTLE, MINNESOTA.—The entire segment within the State of Minnesota.

(43) LOS PINOS, COLORADO.—The segment from its source, including the tributaries and headwaters within the San Juan Primitive Area, to the northern boundary of the Granite Peak Ranch.

(44) MANISTEE, MICHIGAN.—The entire river from its source to Manistee Lake, including its principal tributaries and excluding Tippy and Hodenpyl Reservoirs.

(45) NOLICHUCKY, TENNESSEE AND NORTH CAROLINA.—The entire main stem.

(46) OWYHEE, SOUTH FORK, OREGON.—The main stem from the Oregon-Idaho border downstream to the Owyhee Reservoir.

(47) PIEDRA, COLORADO.—The Middle Fork and East Fork from their sources to their confluence, thence the Piedra to its junction with Colorado Highway 10.

(48) SHEPAUG, CONNECTICUT.—The entire river.

(49) SIPSEY FORK, WEST FORK, ALABAMA.—The segment, including its tributaries, from the impoundment formed by the Lewis M. Smith Dam upstream to its source in the William B. Bankhead National Forest.

(50) SNAKE, WYOMING.—The segment from the southern boundaries of Teton National Park to the entrance to Palisades Reservoir.

(51) SWEETWATER, WYOMING.—The segment from Wilson Bar downstream to Spring Creek.

(52) TUOLUMNE, CALIFORNIA.—The main river from its source on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir.

(53) UPPER MISSISSIPPI, MINNESOTA.—The segment from its source at the outlet of Itasca Lake to its junction with the northwestern boundary of the city of Anoka.

(54) WISCONSIN, WISCONSIN.—The segment from Prarie du Sac to its confluence with the Mississippi River at Prairie du Chien.

(55) YAMPA, COLORADO.—The segment within the boundaries of the Dinosaur National Monument.

(56) DOLORES, COLORADO.—The segment of the main stem from Rico upstream to its source, including its headwaters; the West Dolores from its source, including its headwaters, downstream to its confluence with the main stem; and the segment from the west boundary, section 2, township 38 north, range 16 west, NMPM, below the proposed McPhee Dam, downstream to the Colorado-Utah border, excluding the segment from

one mile above Highway 90 to the confluence of the San Miguel River.

(57) SNAKE, WASHINGTON, OREGON, AND IDAHO.—The segment from an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Williamette meridian, downstream to the town of Asotin, Washington.

(58) HOUSATONIC, CONNECTICUT.—The segment from the Massachusetts-Connecticut boundary downstream to its confluence with the Shepaug River.

(59) KERN, CALIFORNIA.—The main stem of the North Fork from its source to Isabelle Reservoir excluding its tributaries.

(60) LOXAHATCHEE, FLORIDA.—The entire river including its tributary, North Fork.

(61) OGEECHEE, GEORGIA.—The entire river.

(62) SALT, ARIZONA.—The main stem from a point on the north side of the river intersected by the Fort Apache Indian Reservation boundary (north of Buck Mountain) downstream to Arizona State Highway 288.

(63) VERDE, ARIZONA.—The main stem from the Prescott National Forest boundary near Paulden to the vicinity of Table Mountain, approximately 14 miles above Horseshoe Reservoir, except for the segment not included in the national forest between Clarkdale and Camp Verde, North segment.

(64) SAN FRANCISCO, ARIZONA.-The main stem from confluence with the Gila upstream to the Arizona-New Mexico border, except for the segment between Clifton and the Apache National Forest.

(65) FISH CREEK, NEW YORK.—The entire East Branch.

(66) BLACK CREEK, MISSISSIPPI.—The segment from Big Creek Landing in Forest County downstream to Old Alexander Bridge Landing in Stone County.

(67) ALLEGHENY, PENNSYLVANIA.—The main stem from Kinzua Dam downstream to East Brady.

(68) CAPACON, WEST VIRGINIA.—The entire river.

(69) ESCATAWPA, ALABAMA AND MISSISSIPPI.—The segment upstream from a point approximately one mile downstream from the confluence of the Escatawpa River and Jackson Creek to a point where the Escatawpa River is joined by the Yellowhouse Branch in Washington County, Alabama, near the town of Deer Park, Alabama; and the segment of Brushy Creek upstream from its confluence with the Escatawpa to its confluence with Scarsborough Creek.

(70) MYAKKA, FLORIDA.—The segment south of the southern boundary of the Myakka River State Park.

(71) SOLDIER CREEK, ALABAMA.—The segment beginning at the point where Soldier Creek intersects the south line of section 31, township 7 south, range 6 east, downstream to a point on the south line of section 6, township 8 south, range 6 east, which point is 1,322 feet west of the south line of section 5, township 8 south, range 6 east in the county of Baldwin, State of Alabama.

(72) RED, KENTUCKY.—The segment from Highway numbered 746 (also known as Spradlin Bridge) in Wolf County, Kentucky, downstream to the point where the river descends below seven hundred feet above sea level (in its normal flow) which point is at the Menifee and Powell County line just downstream of the iron bridge where Kentucky Highway numbered 77 passes over the river.

(73) BLUESTONE, WEST VIRGINIA.—From its headwaters to its confluence with the New.

(74) GAULEY, WEST VIRGINIA.—Including the tributaries of the Meadow and the Cranberry, from the headwaters to its confluence with the New.

(75) GREENBRIER, WEST VIRGINIA.—From its headwaters to its confluence with the New.

(76) BIRCH, WEST VIRGINIA.—The main stem from the Cora Brown Bridge in the Nicholas County to the confluence of the river with the Elk River in Braxton County.

(77) COLVILLE, ALASKA.

(78) ETIVLUK-NIGU, ALASKA.

(79) UTUKOK, ALASKA.

(80) KANEKTOK, ALASKA.

(81) KISARALIK, ALASKA.

(82) MELOZITNA, ALASKA.

(83) SHEENJEK (lower segment), ALASKA.

(84) SITUK, ALASKA.

(85) PORCUPINE, ALASKA.

(86) YUKON (RAMPARTS SECTION), ALASKA.

(87) SQUIRREL, ALASKA.

(88) KOYUK, ALASKA.

(89) WILDCAT BROOK, NEW HAMPSHIRE.—The segment from its headwaters including the principal tributaries to its confluence with the Ellis River. The study authorized in this paragraph shall be completed no later than six years from the date of enactment of this paragraph and an interim report shall be prepared and submitted to the Congress no later than three years from the date of enactment of this paragraph.

(90) HORSEPASTURE, NORTH CAROLINA.—The segment from Bohaynee Road (N.C. 281) downstream to Lake Jocassee.

(91) THE NORTH UMPQUA, OREGON.—The segment from the Soda Springs Powerhouse to the confluence of Rock Creek. The provisions of section 7(a) shall apply to tributary Steamboat Creek in the same manner as such provisions apply to the rivers referred to in such section 7(a). The Secretary of Agriculture shall, in the Umpqua National Forest plan, provide that management practices for Steamboat Creek and its immediate environment conserve, protect, and enhance the anadromous fish habitat and population.

(92) FARMINGTON, WEST BRANCH, CONNECTICUT AND MASSACHUSETTS[14].—The segment from the intersection of the New Hartford-Canton, Connecticut, town line upstream to the base of the West Branch Reservoir in Hartland, Connecticut; and the segment from the confluence with the Thorp Brook in Sandisfield, Massachusetts, to Hayden Pond in Otis Massachusetts.

(93) GREAT EGG HARBOR RIVER, NEW JERSEY.—The entire river.

(94) KLICKITAT, WASHINGTON.—The segment from the southern boundary of the Yakima Indian Reservation, Washington, as described in the Treaty with the Yakimas of 1855 (12 Stat. 951), and as acknowledged by the Indian Claims Commission in Yakima Tribe of Indians v. U.S., 16 Ind. Cl. Comm. 536 (1966), to its confluence with the Little Klickitat River, Washington: *Provided,* That said study shall be carried on in consultation with the Yakima Indian Nation and shall include a determination of the degree to which the Yakima Indian Nation should participate in the preservation and administration of the river segment should it be proposed for inclusion in the Wild and Scenic Rivers system.

(95) WHITE SALMON, WASHINGTON: The segment from its confluence with Trout Lake Creek, Washington, to its confluence with Gilmer Creek,

Washington, near the town of B Z Corner, Washington.

(96) MAURICE, NEW JERSEY.—The segment from Shell Pile to the point three miles north of Laurel Lake.

(97) MANUMUSKIN, NEW JERSEY.—The segment from its confluence with the Maurice River to the crossing of State Route 49.

(98) MENANTICO CREEK, NEW JERSEY.—The segment from its confluence with the Maurice River to its source.

(99) MERCED, CALIFORNIA.—The segment from a point 300 feet upstream of the confluence with Bear Creek downstream to the point of maximum flood control storage of Lake McClure (elevation 867 feet mean sea level).

(100) BLUE, OREGON.—The segment from its headwaters to the Blue River Reservoir, by the Secretary of Agriculture.

(101) CHEWAUCAN, OREGON.—The segment from its headwaters to the Paisley Urban Growth boundary to be studied in cooperation with, and integrated with, the Klamath River Basin Plan; by the Secretary of Agriculture.

(102) NORTH FORK MALHEUR, OREGON.—The segment from the Malheur National Forest boundary to Beulah Reservoir; by the Secretary of the Interior.

(103) SOUTH FORK MCKENZIE, OREGON.—The segments from its headwaters to the upper end of Cougar Reservoir and from the lower end of Cougar Reservoir to its confluence with the McKenzie River; by the Secretary of Agriculture.

(104) STEAMBOAT CREEK, OREGON.—The entire creek; by the Secretary of Agriculture.

(105) WALLOWA, OREGON.—The segment from its confluence with the Minam River to its confluence with the Grande Ronde River; by the Secretary of Agriculture.

(106) MERRIMACK RIVER, NEW HAMPSHIRE.—The segment from its origin at the confluence of the Pemigewasset and Winnipesaukee Rivers in Franklin, New Hampshire, to the backwater impoundment at Hooksett Dam, excluding Garvins Falls Dam and its impoundment.

(107) PEMIGEWASSET, NEW HAMPSHIRE.—The segments from Profile Lake downstream to the southern boundary of the Franconia Notch State Park and from the northern Thornton townline downstream to the backwater of the Ayres Island Dam; by the Secretary of the Interior.

(108) ST. MARY'S RIVER, FLORIDA AND GEORGIA.—The segment from its headwaters to its confluence with the Bells River.

(109) MILLS RIVER, NORTH CAROLINA.—The North Fork from the bottom of the spillway of the Hendersonville Reservoir downstream to its confluence with the South Fork; the South Fork from its confluence with the Pigeon Branch downstream to its confluence with the North Fork; and the main stem from the confluence of the North and South Forks downstream to a point 750 feet upstream from the centerline of North Carolina Highway 191/280.

(110) SUDBURY, ASSABET, AND CONCORD, MASSACHUSETTS.—The segment of the Sudbury from the Danforth Street Bridge in the town of Framingham, to its confluence with the Assabet from 1,000 feet downstream of Sudbury and the Concord from the confluence of the Sudbury and Assabet downstream to the Route 3 Bridge in the town of Billerica. The study of such river segments shall be completed and the report submitted thereon not later than at

the end of the third fiscal year beginning after the date of enactment of this paragraph.

(b)(1) The studies of rivers named in subparagraphs (28) through (55) of subsection (a) of this section shall be completed and reports thereon submitted by not later than October 2, 1979: *Provided,* That with respect to the rivers named in subparagraphs (33), (50), and (51), the Secretaries shall not commence any studies until—

(i) the State legislature has acted with respect to such rivers or

(ii) one year from the date of enactment of this Act, whichever is earlier. Studies of the river named in paragraphs (38), (55), (83), and (87) shall be completed and the reports transmitted to the Congress not later than January 1, 1987.

(2) The study of the river named in subparagraph (56) of subsection (a) of this section shall be completed and the report thereon submitted by not later than January 3, 1976.

(3) The studies of the rivers named in paragraphs (59) through (76) of subsection (a) shall be completed and reports submitted thereon not later than five full fiscal years after the date of the enactment of this paragraph. The study of rivers named in paragraphs (62) through (64) of subsection (a) shall be completed and the report thereon submitted by not later than April 1981. The study of the river named in paragraph (90) of subsection (a) shall be completed not later than three years after the date of enactment of this sentence. The study of the river named in paragraph (93) of subsection (a) shall be completed not later than three years after the date of the enactment of this sentence.

(4) For the purposes of conducting the studies of rivers named in subsection (a), there are authorized to be appropriated such sums as necessary. Effective October 1, 1986, there are authorized to be appropriated for the purpose of conducting the study of the river named in paragraph (93) not to exceed $150,000.

(5) The studies of the rivers in paragraphs (77) through (88) shall be completed and reports transmitted thereon not later than three full fiscal years from date of enactment of this paragraph. For the rivers listed in paragraphs (77), (78), and (79) the studies prepared and transmitted to the Congress pursuant to section 105(c) of the Naval Petroleum Reserves Production Act of 1976 (Public Law 94-258) shall satisfy the requirements of this section.

(6) Studies of rivers listed in paragraphs (80) and (81) shall be completed, and reports submitted within and not later than the time when the Bristol Bay Cooperative Region Plan is submitted to Congress in accordance with section 1204[15] of the Alaska National Interest Lands Conservation Act.

(7) The study of the West Branch of the Farmington River identified in paragraph (92) of subsection (a) shall be completed and the report submitted thereon not later than the end of the third fiscal year beginning after the enactment of this paragraph. Such report shall include a discussion of management alternatives for the river if it were to be included in the national wild and scenic river system.

(8) The study of the Merrimak River, New Hampshire, shall be completed and the report thereon submitted not later than three after the date of enactment of this paragraph.

(9) The study of the Pemigewasset River, New Hampshire, shall be completed and the

report thereon submitted not later than three years after the date of enactment of this paragraph.

(8)[16] The study of the river named in paragraph (108) of subsection (a) shall be completed no later than three years after the date of enactment of this paragraph. In carrying out the study, the Secretary of the Interior shall consult with the Governors of the States of Florida and Georgia or their representatives, representatives of affected local governments, and owners of land adjacent to the river. Such consultation shall include participation in the assessment of resources values, and shall be carried out through public meetings and media notification. The study shall also include a recommendation on the part of the Secretary as to the role the States, local governments and landowners should play in the management of the river if it were designated as a component of the National Wild and Scenic Rivers System.

(c) The study of any of said rivers shall be pursued in as close cooperation with appropriate agencies of the affected State and its political subdivisions as possible, shall be carried on jointly with such agencies if request for such joint study is made by the State, and shall include a determination of the degree to which the State or its political subdivisions might participate in the preservation and administration of the river should it be proposed for inclusion in the national wild and scenic rivers system.

(d)(1) In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potentials. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all Federal agencies as potential alternative uses of the water and related land resources involved.

(2) The Congress finds that the Secretary of the Interior, in preparing the Nationwide Rivers Inventory as a specific study for possible additions to the National Wild and Scenic Rivers System, identified the Upper Klamath River from below the John Boyle Dam to the Oregon-California State line. The Secretary, acting through the Bureau of Land Management, is authorized under this subsection to complete a study of the eligibility and suitability of such segment for potential addition to the National Wild and Scenic Rivers System. Such study shall be completed, and a report containing the results of the study shall be submitted to Congress by April 1, 1990. Nothing in this paragraph shall affect the authority or responsibilities of any other Federal agency with respect to activities or action on this segment and its immediate environment. (16 U.S.C. 1276)

Land Acquisition

Sec. 6. (a)(1) The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 3 of this Act, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on

both sides of the river. Lands owned by a State may be acquired only by donation or by exchange in accordance with the subsection (d) of this section. Lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this Act. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this Act.

(2) When a tract of land lies partially within and partially outside the boundaries of a component of the National Wild and Scenic Rivers System, the appropriate Secretary may, with the consent of the landowners for the portion outside the boundaries, acquire the entire tract. The land or interest therein so acquired outside the boundaries shall not be counted against the average one-hundred-acre-per-mile fee title limitation of subsection (a)(1). The lands or interests therein outside such boundaries, shall be disposed of, consistent with existing authorities of law, by sale, lease, or exchange.

(b) If 50 per centum or more of the entire acreage outside the ordinary high water mark on both sides of the river within a federally administered wild, scenic or recreational river area is owned in fee title by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under authority of this Act. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this Act. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this Act. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this Act, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefore, convey to the grantor any federally owned property which is under his jurisdiction within the

State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 3 of this Act or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate Secretary jurisdiction over such lands for administration in accordance with the provisions of this Act. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this Act within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) The appropriate Secretary is authorized to accept donations of lands and interests in land, funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g)(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years, or in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such a date retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this Act. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term "improved property", as used in this Act, means a detached, one-family dwelling (hereinafter referred to as "dwelling"), the construction of which was begun before January 1, 1967, (except where a different date is specifically provided by law with respect to any particular river), together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated. (16 U.S.C. 1277)

Federal Water Resource Project Authorities

Sec. 7. (a) The Federal Power Commission shall not license the construction of any dam, water

conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 3 of this Act as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National Wild and Scenic Rivers System. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would effect the component and the values to be protected by it under this Act. Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 2 of this Act and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

(b) The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended, on or directly affecting any river which is listed in section 5, subsection (a), of this Act, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval—

(i) during the ten-year period following enactment of this Act or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing,

including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: *Provided,* That if any Act designating any river or rivers for potential addition to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such interim period from the date a report is due and the time a report is actually submitted to the Congress; and

(iii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress for inclusion in the national wild and scenic rivers system, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior under section 2(a)(ii) of this Act, is necessary for the secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of designation of a river for study as provided in section 5 of this Act. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(c) The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this Act, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 5, subsection (a), of this Act. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

(d) Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965. (16 U.S.C. 1278)

Limitation to Entry, Sale or Disposal of Land

Sec. 8. (a) All public lands within the authorized boundaries of any component of the national wild and scenic rivers system which is

designated in section 3 of this Act or which is hereafter designated for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States. This subsection shall not be construed to limit the authorities granted in section 6(d) or section 14A of this Act.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 5, subsection (a), of this Act are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 7, subsection (b), of this Act. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a) are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the Unites States for the periods specified in section 7(b) of this Act. (16 U.S.C. 1279)

Federal Mining and Mineral Leasing Laws

Sec. 9. (a) Nothing in this Act shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that—

(i) all prospecting, mining operations, and other activities on mining claims which, in the case of a component of the system designated in section 3 of this Act, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this Act or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this Act;

(ii) subject to valid existing rights, the perfection of, or issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior, or in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this Act or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the components in question.

(b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 5, subsection (a) of this Act are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 7, subsection (b) of this Act. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance of leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. Notwithstanding the foregoing provisions of this subsection or any other provision of this Act, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 5(a), are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 7(b) of this Act. (16 U.S.C. 1280)

Administration

Sec. 10. (a) Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its aesthetic, scenic, historic, archaeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

(b) Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Act of September 3, 1964 (78 Stat. 890; 16 U.S.C., ch. 23),[17] shall be subject to the provisions of both the Wilderness Act and this Act with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of these Acts the more restrictive provisions shall apply.

(c) Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this Act and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of these Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural

resources as he deems appropriate to carry out the purposes of this Act.

(d) The Secretary of Agriculture, in his administration of any component of the national wild and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this Act.

(e) The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State or county-owned lands. (16 U.S.C. 1281)

Cooperation and Assistance to States

Sec. 11. (a) The Secretary of the Interior shall encourage and assist the states to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), needs and opportunities for establishing State and local wild, scenic and recreational river areas.

(b)(1) The Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal agency, shall assist, advise, and cooperate with States or their political subdivisions, landowners, private organizations, or individuals to plan, protect, and manage river resources. Such assistance, advice and cooperation may be through written agreements or otherwise. This authority applies within or outside a federally administered area and applies to rivers which are components of the National Wild and Scenic Rivers System and to other rivers. Any agreement under this subsection may include provisions for limited financial or other assistance to encourage participation in the acquisition, protection, and management of river resources.

(2) Wherever appropriate in furtherance of this Act, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to utilize the following:

(A) For activities on federally-owned land, the Volunteers in the Parks Act of 1969 (16 U.S.C. 18g-j) and the Volunteers in the Forest Act of 1972 (16 U.S.C. 558a-558d).

(B) For activities on all other lands, section 6 of the Land and Water Conservation Fund Act of 1965 (relating to the development of statewide comprehensive outdoor recreation plans).

(3) For purposes of this subsection, the appropriate Secretary or the head of any Federal agency may utilize and make available Federal facilities, equipment, tools and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal agency deems necessary or desirable.

(4) No permit or other authorization provided for under provision of any other Federal law shall be conditioned on the existence of any agreement provided for in this section. (16 U.S.C. 1282)

Management and Protection

Sec. 12. (a) The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 2(a)(ii), 3(a), or 5(a), shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following the date of enactment of this sentence, as may be necessary to protect such rivers in accordance with the purposes of this Act. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 2(a)(ii). Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this Act.

(b) Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party.

(c) The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Administrator, Environmental Protection Agency and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river. (16 U.S.C. 1285)

Jurisdiction of States

Sec. 13. (a) Nothing in this Act shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoyment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

(b) The jurisdiction of the States and the United States over waters of any stream included in the national wild, scenic or recreational river area shall be determined by established principles of law. Under the provisions of this Act, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.

(d) The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this Act to the extent that such jurisdiction may be exercised without impairing the purposes of this Act or its administration.

(e) Nothing contained in this Act shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system. (16 U.S.C. 1286)

(f) Nothing in this Act shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided,* That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this Act.

Sec. 14. The claim and allowance of the value of an easement as charitable contribution under section 170 of title 26, United States Code, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, as heirs, and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate of its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift.

Sec. 14A. (a) Where appropriate in the discretion of the Secretary, he may lease federally owned land (or any interest therein) which is within the boundaries of any component of the National Wild and Scenic Rivers system and which has been acquired by the Secretary under this Act. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this Act.

(b) Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition be the United States.

Sec. 15. Notwithstanding any other provision to the contrary in sections 3 and 9 of this Act, with respect to components of the National Wild and Scenic Rivers System in Alaska designated by paragraphs (38) through (50) of sections 3(a) of this Act—

(1) the boundary of each such river shall include an average of not more than six hundred and forty acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary extend around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and

(2) the withdrawal made by paragraph (iii) of section 9(a) shall apply to the minerals in Federal lands which constitute the bed or bank or are situated within one-half mile of the bank of any river designated a wild river by the Alaska National Interest Lands Conservation Act.

Sec. 16. As used in this Act, the term—

(a) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing", as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided,* That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) "Scenic easement" means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement. For any designated wild and scenic river, the appropriate Secretary shall treat the acquisition of fee title with the reservation of regular existing uses to the owner as a scenic easement for purposes of this Act. Such an acquisition shall not constitute fee title ownership for purposes of section 6(b).

Sec. 17. There are hereby authorized to be appropriated, including such sums as have heretofore been appropriated, the following amounts for land acquisition for each of the rivers described in section 3(a) of this Act:

Clearwater, Middle Fork, Idaho, $2,909,800;

Eleven Point, Missouri, $10,407,000;

Feather, Middle Fork, California, $3,935,700;

Rio Grande, New Mexico, $253,000;

Rogue, Oregon, $15,147,000

St. Croix, Minnesota and Wisconsin, $21,769,000;

Salmon, Middle Fork Idaho, $1,837,000; and

Wolf Wisconsin, $142,150.

Footnotes

[1]Public Law 92-560, which inserted this paragraph, contains additional provisions.

[2]Public Law 94-199 added paragraphs 11 and 12. Public Law 94-199 also contains several related provisions.

[3]For additional provisions of law concerning the Missouri River segment, see Public Law 94-486 (Sec. 202 and Sec. 203).

[4]The National Parks and Recreation Act of 1978, Public Law 95-625, sec. 704(b)-(j).

[5]Section 401(p) of the Act of October 12, 1979 amended section 704(a) of the Act of November 10, 1978 which added this section. That amendment changed the reference here to "section 704(c)".

[6]Section 9(b) of the Central Idaho Wilderness Act of 1980 (PL 96-312) contains the following provision:

(b) That segment of the main Salmon River designated as a component of the Wild and Scenic Rivers System by this Act, which lies within the River of No Return Wilderness or the Gospel-Hump Wilderness designated by Public Law 95-237, shall be managed under the provisions of the Wild and Scenic

Rivers Act, as amended, and the regulations promulgated pursuant thereto, notwithstanding section 10(b) of the Wild and Scenic Rivers Act or any provisions of the Wilderness Act to the contrary.

[7]Public Law 96-487 which designated rivers in Alaska contains many provisions applying only to rivers in that State.

[8]Designated as paragraph (56) in original law. Title I of Public Law 99-590 contains additional provisions concerning the Cache la Poudre.

[9]Designated as paragraph (57) in original law.

[10]Designated as paragraph (58) in original law.

[11]Section 13 of Public Law 99-663, which inserted this paragraph, contains additional provisions affecting tributaries.

[12]Title I of Public Law 100-557 which designated rivers (68) through (107) contains additional provisions.

[13]Public Law 100-633, which inserted this paragraph, contains additional provisions.

[14]Title II, Section 202 of Public Law 99-590 contains additional provisions concerning the Farmington River.

[15]Probably should refer to Section 1203.

[16]This should be (10). Future technical amendments probably will be made to establish correct numbering sequence.

[17]So in original law. Refers to "the Wilderness Act."

National Trails System Act

- **Act of October 2, 1968 (P.L. 90-543, 82 Stat. 919, as amended; 16 U.S.C. 1241(note), 1241-1251)**

Sec. 1. This Act may be cited as the "National Trails System Act." (16 U.S.C. 1241(note))

Statement of Policy

Sec. 2. (a) In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historic travel routes of the Nation, which are often more remotely located.

(b) The purpose of this Act is to provide the means for attaining these objectives by instituting a national system of recreation, scenic and historic trails, by designating the Appalachian Trail and the Pacific Crest Trail as the initial components of that system, and by prescribing the methods by which, and standards according to which, additional components may be added to the system.

(c) The Congress recognizes the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of the Nation's trails. In recognition of these contributions, it is further the purpose of this Act to encourage and assist volunteer citizen involvement in the planning, development, maintenance, and management, where appropriate, of trails. (16 U.S.C. 1241)

National Trails System

Sec. 3. (a) The national system of trails shall be composed of the following:

(1) National recreation trails, established as provided in section 4 of this Act, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.

(2) National scenic trails, established as provided in section 5 of this Act, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic region of the Nation.

(3) National historic trails, established as provided in section 5 of this Act, which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historic significance. Designation of such trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous on-site. National historic trails shall have as

their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this Act are included as Federal protection components of a national historic trail.

The appropriate Secretary may certify other lands as protected segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments meet the national historic trail criteria established in this Act and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.

(4) Connecting or side trails, established as provided in section 6 of this Act, which will provide additional points of public access to national recreation, national scenic or national historic trails or which will provide connections between such trails.

The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker for the national trails system.

(b) For purposes of this section, the term "extended trails" means trails or trail segments which total at least one hundred miles in length, except that historic trails of less than one hundred miles may be designated as extended trails. While it is desirable that extended trails be continuous, studies of such trails may conclude that it is feasible to propose one or more trail segments which, in the aggregate, constitute at least one hundred miles in length.

(c) On October 1, 1982, and at the beginning of each odd numbered fiscal year thereafter, the Secretary of the Interior shall submit to the Speaker of the United States House of Representatives and to the President of the United States Senate, an initial and revised (respectively) National Trails System plan. Such comprehensive plan shall indicate the scope and extent of a completed nationwide system of trails, to include (1) desirable nationally significant scenic and historic components which are considered necessary to complete a comprehensive national system, and (2) other trails which would balance out a complete and comprehensive nationwide system of trails. Such plan, and the periodic revisions thereto, shall be prepared in full consultation with the Secretary of Agriculture, the Governors of the various States, and the trails community. (16 U.S.C. 1242)

National Recreation Trails

Sec. 4. (a) The Secretary of the Interior, or the Secretary of Agriculture where lands administered by him are involved, may establish and designate national recreation trails, with the consent of the Federal agency, State, or political subdivision having jurisdiction over the lands involved, upon finding that—

(i) such trails are reasonably accessible to urban areas, and, or

(ii) such trails meet the criteria established in this Act and such supplementary criteria as he may prescribe.

(b) As provided in this section, trails within park, forest, and other recreation areas administered by the Secretary of the Interior or the Secretary of Agriculture or other federally administered areas may be

established and designated as "National Recreation Trails" by the appropriate Secretary and, when no Federal land acquisition is involved—

(i) trails in or reasonably accessible to urban areas may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the States, their political subdivisions, or other appropriate administering agencies;

(ii) trails within park, forest, and other recreation areas owned or administered by States may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the State; and

(iii) trails on privately owned lands may be designated "National Recreation Trails" by the appropriate Secretary with the written consent of the owner of the property involved. (16 U.S.C. 1243)

National Scenic and National Historic Trails

Sec. 5. (a) National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

(1) The Appalachian National Scenic Trail, a trail of approximately two thousand miles extending generally along the Appalachian Mountains from Mount Katahdin, Maine, to Springer Mountain, Georgia. Insofar as practicable, the right-of-way for such trail shall comprise the trail depicted on the maps identified as "Nationwide System of Trails, Proposed Appalachian Trail, NST-AT-101 May 1967," which shall be on file and available for public inspection in the office of the Director of the National Park Service. Where practicable, such rights-of-way shall include lands protected for it under agreements in effect as of the date of enactment of this Act, to which Federal agencies and State were parties. The Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.

(2) The Pacific Crest National Scenic Trail, a trail of approximately two thousand three hundred fifty miles, extending from the Mexican-California border northward generally along the mountain ranges of the west coast States to the Canadian-Washington border near Lake Ross, following the route as generally depicted on the map, identified as "Nationwide System of Trails, Proposed Pacific Crest Trail, NST-PC-103 May 1967" which shall be on file and available for public inspection in the office of the Chief of the Forest Service. The Pacific Crest Trail shall be administered by the Secretary of Agriculture, in consultation with the Secretary of the Interior.

(3) The Oregon National Historic Trail, a route of approximately two thousand miles extending from near Independence, Missouri, to the vicinity of Portland, Oregon, following a route as depicted on maps identified as "Primary Route of the Oregon Trail 1841-1848," in the Department of the Interior's Oregon Trail study report dated April 1977, and which shall be on file and available for public inspection in the office of the Director of the National Park Service. The trail shall be administered by the Secretary of the Interior.

(4) The Mormon Pioneer National Historic Trail, a route of approximately one thousand three hundred miles extending from Nauvoo, Illinois, to Salt Lake City, Utah, following the primary historical route of the Mormon Trail as generally depicted on a map,

identified as, "Mormon Trail Vicinity Map, figure 2" in the Department of the Interior Mormon Trail study report dated March 1977, and which shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior.

(5) The Continental Divide National Scenic Trail, a trail of approximately thirty-one hundred miles, extending from the Montana-Canada border to the New Mexico-Mexico border, following the approximate route depicted on the map, identified as "Proposed Continental Divide National Scenic Trail" in the Department of the Interior Continental Divide Trail study report dated March 1977 and which shall be on file and available for public inspection in the office of the Chief, Forest Service, Washington, D.C. The Continental Divide National Scenic Trail shall be administered by the Secretary of Agriculture in consultation with the Secretary of the Interior. Notwithstanding the provisions of section 7(c), the use of motorized vehicles on roads which will be designated segments of the Continental Divide National Scenic Trail shall be permitted in accordance with regulations prescribed by the appropriate Secretary.

(6) The Lewis and Clark National Historic Trail, a trail of approximately three thousand seven hundred miles, extending from Wood River, Illinois, to the mouth of the Columbia River in Oregon, following the outbound and inbound routes of the Lewis and Clark expedition depicted on maps identified as, "Vicinity Map, Lewis and Clark Trail" study report dated April 1977. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior.

(7) The Iditarod National Historic Trail, a route of approximately two thousand miles extending from Seward, Alaska, to Nome, Alaska, following the routes as depicted on maps identified as "Seward-Nome Trail," in the Department of the Interior's study report entitled "The Iditarod Trail (Seward-Nome Route) and other Alaskan Gold Rush Trails" dated September 1977. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior.

(8) The North Country National Scenic Trail, a trail of approximately thirty-two hundred miles, extending from eastern New York State to the vicinity of Lake Sakakawea in North Dakota, following the approximate route depicted on the map identified as "Proposed North Country Trail-Vicinity Map" in the Department of the Interior "North Country Trail Report," dated June 1975. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

(9) The Overmountain Victory National Historic Trail, a system totaling approximately two hundred seventy-two miles of trail with routes from the mustering point near Abingdon, Virginia, to Sycamore Shoals (near Elizabethton, Tennessee); from Sycamore Shoals to Quaker Meadows (near Morganton, North Carolina); from the mustering point in Surry County, North Carolina, to Quaker Meadows; and from Quaker Meadows to Kings Mountain, South Carolina, as depicted on

the map identified as Map 3—Historic Features—1780 in the draft study report entitled "Overmountain Victory Trail" dated December 1979. The map shall be on file and available for public inspection in the Office of the Director, National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

(10) The Ice Age National Scenic Trail, a trail of approximately one thousand miles, extending from Door County, Wisconsin, to Interstate Park in Saint Croix County, Wisconsin, generally following the route described in "On the Trail of the Ice Age—A Hiker's and Biker's Guide to Wisconsin's Ice Age National Scientific Reserve and Trail," by Henry S. Reuss, Member of Congress, dated 1980. The guide and maps shall be on file and available for public inspection in the Office of the Director, National Park Service, Washington, District of Columbia. Overall administration of the trail shall be the responsibility of the Secretary of the Interior pursuant to section 5(d) of this Act. The State of Wisconsin, in consultation with the Secretary of the Interior, may, subject to the approval of the Secretary, prepare a plan for the management of the trail which shall be deemed to meet the requirements of section 5(e) of this Act. Notwithstanding the provisions of section 7(c), snowmobile use may be permitted on segments of the Ice Age National Scenic Trail where deemed appropriate by the Secretary and the managing authority responsible for the segment.

(11) The Potomac Heritage National Scenic Trail, a corridor of approximately seven hundred and four miles following the route as generally depicted on the map identified as "National Trails System, Proposed Potomac Heritage Trail" in "The Potomac Heritage Trail," a report prepared by the Department of the Interior and dated December 1974, except that no designation of the trail shall be made in the State of West Virginia. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall initially consist of only those segments of the corridor located within the exterior boundaries of federally administered areas. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Potomac Heritage Trail. The Secretary of the Interior may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this Act and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of the Interior.

(12) The Natchez Trace National Scenic Trail, a trail system of approximately six hundred and ninety-four miles extending from Nashville, Tennessee, to Natchez, Mississippi, as depicted on the map entitled "Concept Plan, Natchez Trace Trails Study" in "The Natchez Trace," a report prepared by the Department of the Interior and dated August 1979. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

(13) The Florida National Scenic Trail, a route of approximately thirteen hundred miles

extending through the State of Florida as generally depicted in "The Florida Trail," a national scenic trail study draft report prepared by the Department of the Interior and dated February 1980. The report shall be on file and available for public inspection in the office of the Chief of the Forest Service, Washington, District of Columbia. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Florida Trail except with the consent of owner thereof. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this Act and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of Agriculture.

(14) The Nez Perce National Historic Trail, a route of approximately eleven hundred and seventy miles extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana, as generally depicted in "Nez Perce (Nee-Mee-Poo) Trail Study Report" prepared by the Department of Agriculture and dated March 1982. The report shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia. The trail shall be administered by the Secretary of Agriculture. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Nez lands outside of federally administered areas as segments of the trail upon application from the States or local governmental agencies involved if such segments meet the criteria established in this chapter and are administered by such agencies without expense to the United States. So that significant route segments and sites recognized as associated with the Nez Perce Trail may be distinguished by suitable markers, the Secretary of Agriculture is authorized to accept the donation of suitable markers for placement at appropriate locations. Any such markers associated with the Nez Perce Trail which are to be located on lands administered by any other department or agency of the United States may be placed on such lands only with the concurrence of the head of such department or agency.

(15) The Santa Fe National Historic Trail, a trail of approximately 950 miles from a point near Old Franklin, Missouri, through Kansas, Oklahoma, and Colorado to Santa Fe, New Mexico, as generally depicted on a map entitled "The Santa Fe Trail" contained in the Final Report of the Secretary of the Interior pursuant to subsection (b) of this section, dated July 1976. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Santa Fe Trail except with the consent of the owner thereof. Before acquiring any easement or entering into any cooperative agreement with a private landowner with respect to the trail, the Secretary shall notify the landowner of the potential liability, if any, for injury to the public resulting from physical conditions which may be on the landowner's land. The

United States shall not be held liable by reason of such notice or failure to provide such notice to the landowner. So that significant route segments and sites recognized as associated with the Santa Fe Trail may be distinguished by suitable markers, the Secretary of the Interior is authorized to accept the donation of suitable markers for placement at appropriate locations.

(16)(A) The Trail of Tears National Historic Trail, a trail consisting of water routes and overland routes traveled by the Cherokee Nation during its removal from ancestral lands in the East to Oklahoma during 1838 and 1839, generally located within the corridor described through portions of Georgia, North Carolina, Alabama, Tennessee, Kentucky, Illinois, Missouri, Arkansas, and Oklahoma in the final report of the Secretary of the Interior prepared pursuant to subsection (b) of this section entitled "Trail of Tears" and dated June 1986. Maps depicting the corridor shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Trail of Tears except with the consent of the owner thereof.

(B) In carrying out his responsibilities pursuant to subsection (f) of this section and section 1246(c) of this title, the Secretary of the Interior shall give careful consideration to the establishment of appropriate interpretive sites for the Trail of Tears in the vicinity of Hopkinsville, Kentucky, Fort Smith, Arkansas, Trail of Tears State Park, Missouri, and Tahlequah, Oklahoma.

(17) The Juan Bautista de Anza National Historic Trail, a trail comprising the overland route traveled by Captain Juan Bautista de Anza of Spain during the years 1775 and 1776 from Sonora, Mexico, to the vicinity of San Francisco, California, of approximately 1,200 miles through Arizona and California, as generally described in the report of the Department of the Interior prepared pursuant to subsection (b) of this section entitled "Juan Bautista de Anza National Trail Study, Feasibility Study and Environmental Assessment" and dated August 1986. A map generally depicting the trail shall be on file and available for public inspection in the Office of the Director of the National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Juan Bautista de Anza National Historic Trail without the consent of the owner thereof. In implementing this paragraph, the Secretary shall encourage volunteer trail groups to participate in the development and maintenance of the trail.

( ) The California National Historic Trail, a route of approximately five thousand seven hundred miles, including all routes and cutoffs, extending from Independence and Saint Joseph, Missouri, and Council Bluffs, Iowa, to various points in California and Oregon, as generally described in the report of the Department of the Interior prepared pursuant to subsection (b) of this section entitled "California and Pony Express Trails, Eligibility/Feasibility Study/Environmental Assessment" and dated September 1987. A map generally depicting the route shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall

be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the United States for the California National Historic Trail except with the consent of the owner thereof.

( ) The Pony Express National Historic Trail, a route of approximately one thousand nine hundred miles, including the original route and subsequent route changes, extending from Saint Joseph, Missouri, to Sacramento, California, as generally described in the report of the Department of the Interior prepared pursuant to subsection (b) of this section entitled "California and Pony Express Trails, Eligibility/Feasibility Study/Environmental Assessment", and dated September 1987. A map generally depicting the route shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the United States for the Pony Express National Historic Trail except with the consent of the owner thereof.

(b) The Secretary of the Interior, through the agency most likely to administer such trail, and the Secretary of Agriculture where lands administered by him are involved, shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other trails as national scenic or national historic trails. Such studies shall be made in consultation with the heads of other Federal agencies administering land through which such additional proposed trails would pass and in cooperation with interested interstate, State, and local governmental agencies, public and private organizations, and landowners and land users concerned. The feasibility of designating a trail shall be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied, and whether the development of trail would be financially feasible. The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recommendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from the date of enactment of this sentence, whichever is later. Such studies, when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:

(1) the proposed route of such trail (including maps and illustrations);

(2) the areas adjacent to such trails, to be utilized for scenic, historic, natural, cultural, or developmental purposes;

(3) the characteristics which, in the judgment of the appropriate Secretary, make the proposed trail worthy of designation as a national scenic or national historic trail; and in the case of national historic trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the national historic significance based on the criteria developed under the Historic Sites Act of 1935 (40 Stat. 666; 16 U.S.C. 461);

(4) The current status of landownership and current and potential use along the designated route;

(5) the estimated cost of acquisition of lands or interest in lands, if any;

(6) the plans for developing and maintaining the trail and the cost thereof;

(7) the proposed Federal administering agency (which, in the case of a national scenic or national historic trail wholly or substantially within a National Forest, shall be the Department of Agriculture);

(8) the extent to which a State or its political subdivisions and public and private organizations might reasonably be expected to participate in acquiring the necessary lands and in the administration thereof;

(9) the relative use of the lands involved, including: the number of anticipated visitor-days for the entire length of, as well as for segments of, such trail; the number of months which such trail, or segments thereof, will be open for recreation purposes; the economic and social benefits which might accrue from alternate land uses; and the estimated man-years of civilian employment and expenditures expected for the purposes of maintenance, supervision, and regulation of such trail;

(10) the anticipated impact of public outdoor recreation use on the preservation of a proposed national historic trail and its related historic and archeological features and settings, including the measures proposed to ensure evaluation and preservation of the values that contribute to their national historic significance; and

(11) to qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route need not currently exist as a discernible trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally accurately follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variation offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked on site as segments which link to the historic trail.

(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, exploration, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails, and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.

(c) The following routes shall be studied in accordance with the objectives outlined in subsection (b) of this section:

(1) Continental Divide Trail, a three-thousand, one-hundred-mile trail extending from near the Mexican border in southwestern New Mexico northward generally along the Continental Divide to the Canadian border in Glacier National Park.

(2) Potomac Heritage Trail, an eight-hundred-and-twenty-five-mile trail extending generally from the mouth of the Potomac River to its sources in Pennsylvania and West Virginia, including the one-hundred-and-seventy-mile Chesapeake and Ohio Canal towpath.

(3) Old Cattle Trails of the Southwest from the vicinity of San Antonio, Texas, approximately eight hundred miles through Oklahoma via Baxter Springs and Chetopa, Kansas, to Fort Scott, Kansas, including the Chisholm Trail, from the vicinity of San Antonio or Cuero, Texas, approximately eight hundred miles north through Oklahoma to Abilene, Kansas.

(4) Lewis and Clark Trail, from Wood River, Illinois, to the Pacific Ocean in Oregon, following both the outbound and inbound routes of the Lewis and Clark Expedition.

(5) Natchez Trace, from Nashville, Tennessee, approximately six hundred miles to Natchez, Mississippi.

(6) North Country Trail, from the Appalachian Trail in Vermont, approximately three thousand two hundred miles through the States of New York, Pennsylvania, Ohio, Michigan, Wisconsin, and Minnesota, to the Lewis and Clark Trail in North Dakota.

(7) Kittanning Trail from Shirleysburg in Huntingdon County to Kittanning, Armstrong County, Pennsylvania.

(8) Oregon Trail, from Independence, Missouri, approximately two thousand miles to near Fort Vancouver, Washington.

(9) Santa Fe Trail, from Independence, Missouri, approximately eight hundred miles to Santa Fe, New Mexico.

(10) Long Trail, extending two hundred and fifty-five miles from the Massachusetts border northward through Vermont to the Canadian Border.

(11) Mormon Trail, extending from Nauvoo, Illinois, to Salt Lake City, Utah, through the States of Iowa, Nebraska, and Wyoming.

(12) Gold Rush Trails in Alaska.

(13) Mormon Battalion Trail, extending two thousand miles from Mount Pisgah, Iowa, through Kansas, Colorado, New Mexico, and Arizona to Los Angeles, California.

(14) El Camino Real from St. Augustine to San Mateo, Florida, approximately 20 miles along the southern boundary of the St. Johns River from Fort Caroline National Memorial to the St. Augustine National Park Monument.

(15) Bartram Trail, extending through the States of Georgia, North Carolina, South Carolina, Alabama, Florida, Louisiana, Mississippi, and Tennessee.

(16) Daniel Boone Trail, extending from the vicinity of Statesville, North Carolina, to Fort Boonesborough State Park, Kentucky.

(17) Desert Trail, extending from the Canadian border through parts of Idaho, Washington, Oregon, Nevada, California, and Arizona, to the Mexican border.

(18) Dominguez-Escalante Trail, extending approximately two thousand miles along the route of the 1776 expedition led by Father Francisco Atanasio Dominguez and Father Silvestre Velez de Escalante, originating in Santa Fe, New Mexico; proceeding northwest along the San Juan, Dolores, Gunnison, and White Rivers in Colorado; thence westerly to Utah Lake; thence southward to Arizona and returning to Santa Fe.

(19) Florida Trail, extending north from Everglades National Park, including the Big Cypress Swamp, the Kissimmee Prairie, the Withlacoochee State Forest, Ocala

National Forest, Osceola National Forest, and Black Water River State Forest, said completed trail to be approximately one thousand three hundred miles long, of which over four hundred miles of trail have already been built.

(20) Indian Nations Trail, extending from the Red River in Oklahoma approximately two hundred miles northward through the former Indian nations to the Oklahoma-Kansas boundary line.

(21) Nez Perce Trail extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana.

(22) Pacific Northwest Trail, extending approximately one thousand miles from the Continental Divide in Glacier National Park, Montana, to the Pacific Ocean beach of Olympic National Park, Washington, by way of—

(A) Flathead National Forest and Kootenai National Forest in the State of Montana;

(B) Kaniksu National Forest in the State of Idaho; and

(C) Colville National Forest, Okanogan National Forest, Pasayten Wilderness Area, Ross Lake National Recreation Area, North Cascades National Park, Mount Baker, the Skagit River, Deception Pass, Whidbey Island, Olympic National Forest, and Olympic National Park in the State of Washington. (16 U.S.C. 1244)

(23) Overmountain Victory Trail, extending from the vicinity of Elizabethton, Tennessee, to Kings Mountain National Military Park, South Carolina.

(24) Juan Bautista de Anza Trail, following the overland route taken by Juan Bautista de Anza in connection with his travels from the United States Mexican States to San Francisco, California.

(25) Trail of Tears, including the associated forts and specifically, Fort Mitchell, Alabama, and historic properties, extending from the vicinity of Murphy, North Carolina, through Georgia, Alabama, Tennessee, Kentucky, Illinois, Missouri, and Arkansas, to the vicinity of Tahlequah, Oklahoma.

(26) Illinois Trail, extending from the Lewis and Clark Trail at Wood River, Illinois, to the Chicago Portage National Historic Site, generally following the Illinois River and the Illinois and Michigan Canal.

(27) Jedediah Smith Trail, to include the routes of the explorations led by Jedediah Smith—

(A) during the period 1826-1827, extending from the Idaho-Wyoming border, through the Great Salt Lake, Sevier, Virgin, and Colorado River Valleys, and the Mojave Desert, to the San Gabriel Mission, California; thence through the Tehachapi Mountains, San Joaquin and Stanislaus River Valleys, Ebbetts Pass, Walker River Valley, Bald Mount, Mount Grafton, and Great Salt Lake to Bear Lake, Utah; and

(B) during 1828, extending from the Sacramento and Trinity River valleys along the Pacific coastline, through the Smith and Willamette River Valleys to the Fort Vancouver National Historic Site, Washington, on the Columbia River.

(28) General Crook Trail, extending from Prescott, Arizona, across the Mogollon Rim to Fort Apache.

(29) Beale Wagon Road, within the Kaibab and Coconino National Forests in Arizona: *Provided*, such study may be prepared in conjunction with ongoing planning processes for these National Forests to be completed before 1990.

(30) Pony Express Trail, extending from Saint Joseph, Missouri, through Kansas, Nebraska, Colorado, Wyoming, Utah, Nevada, to Sacramento, California, as indicated

on a map labeled "Potential Pony Express Trail", dated October 1983 and the California Trail, extending from the vicinity of Omaha, Nebraska, and Saint Joseph, Missouri, to various points in California, as indicated on a map labeled "Potential California Trail" and dated August 1, 1983. Notwithstanding subsection (b) of this section, the study under this paragraph shall be completed and submitted to the Congress no later than the end of two complete fiscal years beginning after the date of the enactment of this paragraph. Such study shall be separated into two portions, one relating to the Pony Express Trail and one relating to the California Trail.

(31) De Soto Trail, the approximate route taken by the expedition of the Spanish explorer Hernando de Soto in 1539, extending through portions of the States of Florida, Georgia, South Carolina, North Carolina, Tennessee, Alabama, Mississippi, to the area of Little Rock, Arkansas, on to Texas and Louisiana, and any other States which may have been crossed by the expedition. The study under this paragraph shall be prepared in accordance with subsection(b) of this section, except that it shall be completed and submitted to the Congress with recommendations as to the trail's suitability for designation not later than one calendar year after December 11, 1987.

(32) Coronado Trail, the approximate route taken by the expedition of the Spanish explorer Francisco Vasquez de Coronado between 1540 and 1542, extending through portions of the States of Arizona, New Mexico, Texas, Oklahoma, and Kansas. The study under this paragraph shall be prepared in accordance with subsection (b) of this section. In conducting the study under this paragraph, the Secretary shall provide for (A) the review of all original Spanish documentation on the Coronado Trail, (B) the continuing search for new primary documentation on the trail, and (C) the examination of all information on the archeological sites along the trail.

(33) The route from Selma to Montgomery, Alabama traveled by people in a march dramatizing the need for voting rights legislation, in March 1965, includes Sylvan South Street, Water Avenue, the Edmund Pettus Bridge, and Highway 80. The study under this paragraph shall be prepared in accordance with subsection (b) of this section, except that it shall be completed and submitted to the Congress with recommendations as to the trail's suitability for designation not later than 1 year after July 3, 1990.

(34) American Discovery Trail, extending from Pt. Reyes, California, across the United States through Nevada, Utah, Colorado, Kansas, Nebraska, Missouri, Iowa, Illinois, Indiana, Ohio, West Virginia, Maryland, and the District of Columbia, to Cape Henlopen State Park, Delaware, to include in the central United States a northern route through Colorado, Nebraska, Iowa, Illinois, and Indiana and a southern route through Colorado, Kansas, Missouri, Illinois, and Indiana.

(35) Ala Kahakai Trail in the State of Hawaii, an ancient Hawaiian trail on the Island of Hawaii extending from the northern tip of the Island of Hawaii approximately 175 miles along the western and southern coats to the northern boundary of Hawaii Volcanoes National Park.

(d) Trail advisory councils; establishment and termination; term and compensation; membership; chairman.—The Secretary charged with the administration of each respective

trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of November 10, 1978 for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment[1], except that the Advisory Council established for the Iditarod Historic Trail shall expire twenty years from the date of its establishment. If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

(1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;

(2) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

(3) one or more members appointed to represent private organizations, including corporate and individual land-owners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail; and such appointments shall be made from recommendations of the heads of such organizations: *Provided,* That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

(4) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.

(e) Within two complete fiscal years of the date of enactment of legislation designating a national scenic trail, except for the Continental Divide National Scenic Trail, and the North Country National Scenic Trail, as part of the system, and within two complete fiscal years of the date of enactment of this subsection for the Pacific Crest and Appalachian Trails, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, the relevant advisory council established pursuant to section 5(d), and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural historical and cultural resources

to be preserved (along with high potential historic sites and high potential route segments in the case of national historical trails), details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;

(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and

(3) general and site-specific development plans including anticipated costs.

(f) Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail, as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to section 5(d) of this Act, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;

(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;

(3) a protection plan for any high potential historic sites or high potential route segments; and

(4) general and site-specific development plans, including anticipated costs. (16 U.S.C. 1244)

Connecting and Side Trails

Sec. 6. Connecting or side trails within park, forest, and other recreation areas administered by the Secretary of the Interior or Secretary of Agriculture may be established, designated, and marked by the appropriate Secretary as components of a national recreation, national scenic or national historic trail. When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, State, or local governmental agencies with their consent or, where the appropriate Secretary deems necessary or desirable, on privately owned lands with the consent of the landowner. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the appropriate Secretary. (16 U.S.C. 1245)

Administration and Development

Sec. 7. (a)(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 5(a) shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this Act shall be deemed to transfer among Federal agencies

any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

(B) The Secretary charged with the overall administration of any trail pursuant to section 5(a) may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this Act. During any period in which management responsibilities for any trail segments are transferred under such an agreement, the management of any such segments shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement except to such extent as the agreement may otherwise expressly provide.

(2) Pursuant to section 5(a), the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register; Provided, That in selecting the rights-of-way, full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) After publication on notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) Such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles; *Provided,* That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this Act shall be

construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided,* That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further,* That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purpose of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established. The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

(d) Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with

donated or appropriated funds or exchange.

(e) Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the State or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interest therein to be utilized as segments of the national scenic or national historic trail: Provided, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: Provided further, That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: Provided, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at their fair market price.

(f)(1) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property and federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The value of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of National Forest lands.

(2) In acquiring lands or interests therein for a National Scenic Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this act, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands

designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this act. The proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

(g) The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided,* That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this Act. For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments of high potential historic sites. Except for designated protected components of the trail, no land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of section 4(f) of the Department of Transportation Act (49 U.S.C. 1653f) unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(h)(1) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area. Such agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with the Volunteers in the Parks Act of 1969 and the Volunteers in the Forests Act of 1972) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. The appropriate Secretary shall also initiate consultations with affected States and their political subdivisions to encourage—

(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and

(B) the development and implementation by such entities of provisions for land practices compatible with the purposes of this

Act, for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection.

(2) Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this Act.

(i) The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trail system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the National Park system or the National Forest System, as the case may be, in carrying out his administrative responsibilities for such component.

(j) Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, trail biking, overnight and long distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this Act or other Federal laws, or any State or local laws.

(k) For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of the Internal Revenue Code of 1954, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest other wise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of P.L. 96-541. (16 U.S.C. 1246)

State and Metropolitan Area Trails

Sec. 8. (a) The Secretary of the Interior is directed to encourage States to consider, in their comprehensive statewide outdoor recreation plans and proposals for financial assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act, needs and opportunities for establishing park, forest, and other recreation and historic trails on lands owned or administered by States, and recreation trails on lands in or near urban areas.

The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to the Act of October 15, 1966 (80 Stat. 915), as amended, needs and opportunities for establishing historic trails. He is further directed, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat. 49), to encourage States, political subdivisions, and private interests, including nonprofit organizations, to establish such trails.

(b) The Secretary of Housing and Urban Development is directed, in administering the program of comprehensive urban planning and assistance under section 701 of the Housing Act of 1954, to encourage the planning of recreation trails in connection with the recreation and transportation planning for metropolitan and other urban areas. He is further directed, in administering the urban open-space program under title VII of the Housing Act of 1961, to encourage such recreation trails.

(c) The Secretary of Agriculture is directed, in accordance with authority vested in him, to encourage States and local agencies and private interests to establish such trails.

(d) The Secretary of Transportation, the Chairman of the Interstate Commerce Commission, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with the National Trails System Act, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this Act, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

(e) Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions,

or other appropriate administering agencies with the approval of the Secretary of the Interior. (16 U.S.C. 1247)

Rights-of-Way and Other Properties

Sec. 9. (a) The Secretary of the Interior or the Secretary of Agriculture as the case may be, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with laws applicable to the national park system and the National Forest System, respectively: *Provided,* That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this Act.

(b) The Department of Defense, the Department of Transportation, the Interstate Commerce Commission, the Federal Communications Commission, the Federal Power Commission, and other Federal agencies having jurisdiction or control over or information concerning the use, abandonment, or disposition or road ways, utility rights-of-way, or other properties which may be suitable for the purpose of improving or expanding the national trails system shall cooperate with the Secretary of the Interior and the Secretary of Agriculture in order to assure, to the extent practicable, that any such properties having values suitable for trail purposes may be made available for such use.

(c) Commencing upon the date of enactment of this subsection, any and all right, title, interest, and estate of the United States in all rights-of-way of the type described in the Act of March 8, 1922 (43 U.S.C. 912), shall remain in the United States upon the abandonment or forfeiture of such rights-of-way, or portions thereof, except to the extent that any such right-of-way, or portion thereof, is embraced within a public highway no later than one year after a determination of abandonment or forfeiture, as provided under such Act.

(d)(1) All rights-of-way, or portions thereof, retained by the United States pursuant to subsection (c) which are located within the boundaries of a conservation system unit or a National Forest shall be added to and incorporated within such unit or National Forest and managed in accordance with applicable provisions of law, including this Act.

(2) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or a National Forest but adjacent to or contiguous with any portion of the public lands shall be managed pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this section.

(3) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or National Forest which the Secretary of the Interior determines suitable for use as a public recreational trail or other recreational purposes shall be managed by the Secretary for such uses, as well as for such other uses as the Secretary determines to be appropriate pursuant to applicable laws, as long as such uses do not preclude trail use.

(e)(1) The Secretary of the Interior is authorized where appropriate to release and quitclaim to a unit of government or to another entity meeting the requirements of this subsection any and all right, title and interest in the surface estate of any portion of any right-of-way to the extent any such right, title, and interest was retained by the United States pursuant to subsection (c), if

such portion is not located within the boundaries of any conservation system unit or National Forest. Such release and quitclaim shall be made only in response to an application therefor by a unit of State or local government or another entity which the Secretary of the Interior determines to be legally and financially qualified to manage the relevant portion for public recreational purposes. Upon receipt of such an application, the Secretary shall publish a notice concerning such application in a newspaper of general circulation in the area where the relevant portion is located. Such release and quitclaim shall be on the following conditions:

(A) If such unit or entity attempts to sell, convey, or otherwise transfer such right, title, or interest or attempts to permit the use of any part of such portion for any purpose incompatible with its use for public recreation, then any and all right, title, and interest released and quitclaimed by the Secretary pursuant to this subsection shall revert to the United States.

(B) Such unit or entity shall assume full responsibility and hold the United States harmless for any legal liability which might arise with respect to the transfer, possession, use, release, or quitclaim of such right-of-way.

(C) Notwithstanding any other provision of law, the United States shall be under no duty to inspect such portion prior to such release and quitclaim, and shall incur no legal liability with respect to any hazard or any unsafe condition existing on such portion at the time of such release and quitclaim.

(2) The Secretary is authorized to sell any portion of a right-of-way retained by the United States pursuant to subsection (c) located outside the boundaries of a conservation system unit or National Forest if any such portion is—

(A) not adjacent to or contiguous with any portion of the public lands; or

(B) determined by the Secretary, pursuant to the disposal criteria established by section 203 of the Federal Land Policy and Management Act of 1976, to be suitable for sale.

Prior to conducting any such sale, the Secretary shall take appropriate steps to afford a unit of State or local government or any other entity an opportunity to seek to obtain such portion pursuant to paragraph (1) of this subsection.

(3) All proceeds from sales of such retained rights of way shall be deposited into the Treasury of the United States and credited to the Land and Water Conservation Fund as provided in section 2 of the Land and Water Conservation Fund Act of 1965.

(4) The Secretary of the Interior shall annually report to the Congress the total proceeds from sales under paragraph (2) during the preceding fiscal year. Such report shall be included in the President's annual budget submitted to the Congress.

(f) As used in this section—

(1) The term "conservation system unit" has the same meaning given such term in the Alaska National Interest Lands Conservation Act (P.L. 96-487; 94 Stat. 2371 et seq.), except that such term shall also include units outside Alaska.

(2) The term "public lands" has the same meaning given such term in the Federal Land Policy and Management Act of 1976. (16 U.S.C. 1248)

Authorization of Appropriations

Sec. 10. (a)(1) There are hereby authorized to be appropriated for the

acquisition of lands or interests in lands not more than $5,000,000 for the Appalachian National Scenic Trail and not more than $500,000 for the Pacific Crest National Scenic Trail. From the appropriations authorized for fiscal year 1979 and succeeding fiscal years pursuant to the Land and Water Conservation Fund Act (78 Stat. 897), as amended, not more than the following amounts may be expended for the acquisition of lands and interests in lands authorized to be acquired pursuant to the provisions of this Act: for the Appalachian National Scenic Trail, not to exceed $30,000,000 for fiscal year 1979, $30,000,000 for fiscal year 1980, and $30,000,000 for fiscal year 1981, except that the difference between the foregoing amounts and the actual appropriations in any one fiscal year shall be available for appropriation in subsequent fiscal years.

(2) It is the express intent of the Congress that the Secretary should substantially complete the land acquisition program necessary to insure the protection of the Appalachian Trail within three complete fiscal years following the date of enactment of this sentence. Until the entire acquisition program is completed, he shall transmit in writing at the close of each fiscal year the following information to the Committee on Energy and Natural Resources of the Senate and to the Committee on Interior and Insular Affairs of the House of Representatives:

(A) the amount of land acquired during the fiscal year and the amount expended therefor;

(B) the estimated amount of land remaining to be acquired; and

(C) the amount of land planned for acquisition in the ensuing fiscal year and the estimated cost thereof.

(b) For the purposes of Public Law 95-42 (91 Stat. 211), the lands and interests therein acquired pursuant to this section shall be deemed to qualify for funding under the provisions of section 1, clause 2, of said Act.

(c)(1) There is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this Act relating to the trails designated by paragraphs 5(a)(3), (4), (5), (6), (7), (8), (9), and (10); *Provided,* That no such funds are authorized to be appropriated prior to October 1, 1978: *And provided further,* That notwithstanding any other provisions of this Act or any other provisions of law, no funds may be expended by Federal agencies for the acquisition of lands or interests in lands outside the exterior boundaries of existing Federal areas for the Continental Divide National Scenic Trail, the North Country National Scenic Trail, The Ice Age National Scenic Trail, the Oregon National Historic Trail, the Mormon Pioneer National Historic Trail, the Lewis and Clark National Historic Trail, and the Iditarod National Historic Trail, except that funds may be expended for the acquisition of lands and interests therein for the purpose of providing for one trail interpretation site, as described in section 7(c), along with such trail in each State crossed by the trail.

(2) Except as otherwise provided in this chapter, there is authorized to be appropriated such sums as may be necessary to implement the provisions of this chapter relating to the trails designated by Sec. 5 of this Act. Not more than $500,000 may be appropriated for the purposes of acquisition of land and interests therein for the trail designated by section (a)(12) of this Act, and not more than $2,000,000 may be appropriated for the

purposes of the development of such trail. The administrating agency for the trail shall encourage volunteer trail groups to participate in the development of the trail. (16 U.S.C. 1249)

Volunteer Assistance

Sec. 11. (a)(1) In addition to the cooperative agreement and other authorities contained in this Act, the Secretary of the Interior, the Secretary of Agriculture, and the head of any Federal agency administering Federal lands, are authorized to encourage volunteers and volunteer organizations to plan, develop, maintain, and manage, where appropriate, trails throughout the Nation.

(2) Wherever appropriate in furtherance of the purposes of this Act, the Secretaries are authorized and encouraged to utilize the Volunteers in the Parks Act of 1969, the Volunteers in the Forests Act of 1972, and section 6 of the Land and Water Conservation Fund Act of 1965 (relating to the development of Statewide Comprehensive Outdoor Recreation Plans).

(b) Each Secretary or the head of any Federal land managing agency, may assist volunteers and volunteer organizations in planning, developing, maintaining, and managing trails. Volunteer work may include, but need not be limited to:

(1) Planning, developing, maintaining, or managing (A) trails which are components of the national trails system, or (B) trails which, if so developed and maintained, could qualify for designation as components of the national trails system; and

(2) operating programs to organize and supervise volunteer trail building efforts with respect to the trails referred to in paragraph (1), conducting trail-related research projects, or providing education and training to volunteers on methods of trails planning, construction, and maintenance.

(c) The appropriate Secretary or the head of any Federal land managing agency may utilize and make available Federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any federal land managing agency deems necessary or desirable. (16 U.S.C. 1250)

Definitions

Sec. 12. As used in this Act:

(1) The term "high potential historic sites" means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

(2) The term "high potential route segments" means those segments of a trail which would afford high quality recreation experience in a portion of the route having greater than average scenic values or affording an opportunity to vicariously share the experience of the original users of a historic route.

(3) The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific islands, the Northern Mariana Islands, and other territory or possession of the United States.

(4) The term "without expense to the United States" means that no funds may be expended by Federal

agencies for the development of trail related facilities or for the acquisition of lands or interests in lands outside the exterior boundaries of Federal areas. For the purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Fund Act of 1965 or any other provision of law shall not be treated as an expense to the United States. (16 U.S.C. 1251)

Intergovernmental Cooperation Act of 1968

- **Act of October 16, 1968 (P.L. 90-577, 82 Stat. 1098)**

Note—All sections, except Section 501, were repealed by P.L. 97-258, Section 5(b), Sept. 13, 1982, an Act to revise, codify, and enact without substantive change certain laws relating to money and finance, as title 31, U.S.C. The result is that the provisions of the Intergovernmental Cooperation Act of 1968 are now found in Title 31, Chapter 65, Sections 6501-6508 except for Section 501 which relates to urban lands and that is found in P.L. 81-152 as noted below. See P.L. 97-258.

Note—The sections of Title III and IV below were not included in the transfer to Title 31, U.S.C. Although now repealed, they are included below to indicate the intent of Congress in enacting the Intergovernmental Cooperation Act.

TITLE III — SPECIAL OR TECHNICAL SERVICES PROVIDED FOR STATE AND LOCAL UNITS OF GOVERNMENT BY FEDERAL DEPARTMENTS AND AGENCIES

Statement of Purpose

Sec. 301. It is the purpose of this title to encourage intergovernmental cooperation in the conduct of specialized to technical services and provision of facilities essential to the administration of State or local governmental activities, many of which are nationwide in scope and financed in part by Federal funds; to enable State or local governments to avoid unnecessary duplication of special service functions; and to authorize all departments and agencies of the executive branch of the Federal Government which do not have such authority to provide reimbursable specialized or technical services to State and local governments. (42 U.S.C. 4221, now repealed)

TITLE IV — DEVELOPMENT ASSISTANCE PROGRAMS; COORDINATED INTERGOVERNMENTAL POLICY AND ADMINISTRATION

Declaration of Development Assistance Policy

Sec. 401. (a) The economic and social development of the Nation and the achievement of satisfactory levels of living depend upon the sound and orderly development of all areas, both urban and rural. Moreover, in a time of rapid urbanization, the sound and orderly development of urban communities depends to a large degree upon the social and economic health and the sound development of smaller communities and rural areas. The President shall, therefore, establish rules and regulations governing the formulation, evaluation, and review of Federal programs and projects having a significant impact on area and community development, including programs providing Federal assistance to the States and localities, to the end that they shall most effectively serve these basic objectives. . . . (42 U.S.C. 4231, now repealed)

TITLE V — ACQUISITION, USE, AND DISPOSITION OF LAND WITHIN URBAN AREAS BY FEDERAL AGENCIES IN CONFORMITY WITH LAND UTILIZATION PROGRAMS OF AFFECTED LOCAL GOVERNMENT

Sec. 501. The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), is amended by adding at the end thereof a new title as follows:

Note—Title V of this Act amends the Federal Property and Administrative Services Act of 1949 by adding at the end thereof a new title VIII. See P.L. 81-152, Title VIII for those provisions. Provisions of this title were not repealed by P.L. 97-258.

Carlson-Foley Act
(Control of Noxious Plants)

- **Act of October 17, 1968 (P.L. 90-583, 82 Stat. 1146; 43 U.S.C. 1241)**

Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the heads of federal departments or agencies are authorized and directed to permit the commissioner of agriculture or other proper agency head of any State in which there is in effect a program for the control of noxious plants to enter upon any lands under their control or jurisdiction and destroy noxious plants growing on such land if:

(1) such entry is in accordance with a program submitted to and approved by such department or agency: *Provided,* That no entry shall occur when the head of such federal department or agency, or his designee, shall have certified that entry is inconsistent with the national security;

(2) the means by which noxious plants are destroyed are acceptable to the head of such department or agency; and

(3) the same procedure required by the State program with respect to privately owned land has been followed.

Sec. 2. Any State incurring expenses pursuant to section 1 of this Act upon presentation of an itemized account of such expenses shall be reimbursed by the head of the department or agency having control or jurisdiction of the land with respect to which such expenses were incurred: *Provided,* That such reimbursement shall be only to the extent that funds appropriated specifically to carry out the purposes of this Act are available therefor during the fiscal year in which the expenses are incurred.

Sec. 3. There are hereby authorized to be appropriated to departments or agencies of the federal government such sums as the Congress may determine to be necessary to carry out the purposes of this Act.

ACTS OF THE 1970'S

National Environmental Policy Act of 1969

- **Act of January 1, 1970 (P.L. 91-190, 83 Stat. 852; 42 U.S.C. 4321(note), 4321, 4331-4335, 4341-4346, 4346a-b, 4347)**

Note—Implementing regulations found at 40 CFR 1500

Sec. 1. This Act may be cited as the "National Environmental Policy Act of 1969." (42 U.S.C. 4321(note))

Purpose

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. (42 U.S.C. 4321)

TITLE I — DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Federal Government Responsibility

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain,

wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. (42 U.S.C. 4331)

Consideration of Environmental Impacts

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by Title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement. The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by Title II of this Act. (42 U.S.C. 4332)

Conformity of Administrative Procedures

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act. (42 U.S.C. 4333)

Other Statutory Obligations of Agencies

Sec. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency. (42 U.S.C. 4334)

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing

authorizations of Federal agencies. (42 U.S.C. 4335)

TITLE II — COUNCIL ON ENVIRONMENTAL QUALITY

Reports to Congress; Recommendations for Legislation

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, man-made, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment; (2) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and non-governmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development, and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation. (42 U.S.C. 4341)

Council on Environmental Quality

Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in light of the policy set forth in Title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment. (42 U.S.C. 4342)

Staffing the Council

Sec. 203. (a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of Title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the Council may

accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council. (42 U.S.C. 4343)

Duty and Function of Council

Sec. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in Title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in light of the policy set forth in Title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request. (42 U.S.C. 4344)

Obtaining Information—Using Advisory Committee

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizen's Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments, and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not necessarily overlap or conflict with similar activities authorized by law and performed by established agencies. (42 U.S.C. 4345)

Compensation for Council Members

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for

Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). (42 U.S.C. 4346)

Travel Reimbursement

Sec. 207. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Govany State or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council. (42 U.S.C. 4346a)

International Activities

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries. (42 U.S.C. 4346b)

Authorization of Appropriations

Sec. 209. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter. (42 U.S.C. 4347)

Environmental Quality Improvement Act of 1970

- **Act of April 3, 1970 (P.L. 91-224, 84 Stat. 114, as amended; 42 U.S.C. 4371(note) 4371-4374)**

Sec. 201. This title may be cited as the "Environmental Quality Improvement Act of 1970." (42 U.S.C. 4371 (note))

Findings

Sec. 202. (a) The Congress finds—

(1) that man has caused changes in the environment;

(2) that many of these changes may affect the relationship between man and his environment; and

(3) that population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this title are—

(1) to assure that each Federal department and agency conducting or supporting public work activities which affect the environment shall implement the policies established by existing law; and

(2) to authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by P.L. 91-190. (42 U.S.C. 4371)

Office of Environmental Quality

Sec. 203. (a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this title referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Bureau of the Budget.

(c) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

(d) In carrying out his functions the Director shall assist and advise

the President on policies and programs of the Federal Government affecting environmental quality by—

(1) providing the professional and administrative staff and support for the Council on Environmental Quality established by P.L. 91-190;

(2) assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) in carrying out his functions. (42 U.S.C. 4372)

Report to Congress

Sec. 204. Each Environmental Quality Report required by P.L. 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report. (42 U.S.C. 4373)

Authorization of Appropriations

Sec. 205. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) $2,126,000 for the fiscal year ending September 30, 1979; and

(b) $3,000,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and September 30, 1986. (42 U.S.C. 4374)

Youth Conservation Corps

- **Act of August 13, 1970 (P.L. 91-378, 84 Stat. 794, as amended; 16 U.S.C. 1701-1706)**

Declaration and Purpose

Sec. 1. The Congress finds that the Youth Conservation Corps has demonstrated a high degree of success as a pilot program wherein American youth, representing all segments of society, have benefitted by gainful employment in the healthful outdoor atmosphere of the national park system, the National Forest System, other public land and water areas of the United States and by their employment have developed, enhanced, and maintained the natural resources of the United States, and whereas in so doing the youth have gained an understanding and appreciation of the Nation's environment and heritage equal to one full academic year of study, it is accordingly, the purpose of this Act to expand and make permanent the Youth Conservation Corps and thereby further the development and maintenance of the natural resources by America's youth, and in so doing to prepare them for the ultimate responsibility of maintaining and managing these resources for the American people. (16 U.S.C. 1701)

Establishment

Sec. 2. (a) To carry out the purposes of this Act, there is established in the Department of the Interior and the Department of Agriculture a Youth Conservation Corps (hereinafter referred to as the "Corps"). The Corps shall consist of young men and women who are permanent residents of the United States, its territories, possessions, trust territories, or Commonwealth of Puerto Rico who have attained age fifteen but have not attained age nineteen, and whom the Secretary of the Interior or the Secretary of Agriculture may employ without regard to the civil service or classification laws, rules, or regulations, for the purpose of developing, preserving, or maintaining the lands and waters of the United States.

(b) The Corps shall be open to youth from all parts of the country of both sexes and youth of all social, economic, and racial classifications with all Corps members receiving compensation consistent with work accomplished, and with no person being employed as a member of the Corps for a term in excess of ninety days during any single year. (16 U.S.C. 1702)

Functions of the Secretary of the Interior and the Secretary of Agriculture

Sec. 3. (a) In carrying out this Act, the Secretary of the Interior and the Secretary of Agriculture shall—

(1) determine the areas under their administrative jurisdictions which are appropriate for carrying out the programs using employees of the Corps;

(2) determine with other Federal agencies the areas under the administrative jurisdiction of these agencies which are appropriate for carrying out programs using members of the Corps, and determine and select appropriate work and education programs and projects for

participation by members of the Corps;

(3) determine the rates of pay, hours, and other conditions of employment in the Corps, except that all members of the Corps shall not be deemed to be Federal employees other than for the purpose of Chapter 171 of Title 28, United States Code, and chapter 81 of Title 5, United States Code;

(4) provide for such transportation, lodging, subsistence, and other services and equipment as they may deem necessary or appropriate for the needs of members of the Corps in their duties;

(5) promulgate regulation to insure the safety, health, and welfare of the Corps members; and

(6) provide to the extent possible, that permanent or semipermanent facilities used as Corps camps be made available to local schools, school districts, State junior colleges and universities, and other education institutions for use as environmental/ecological education camps during periods of nonuse by the Corps program.

Costs for operations maintenance, and staffing of Corps camp facilities during periods of use by non-Corps programs as well as any liability for personal injury or property damage stemming from such use shall be the responsibility of the entity or organization using the facility and shall not be a responsibility of the Secretaries or the Corps.

(b) Existing but unoccupied Federal facilities and surplus or unused equipment (or both), of all types including military facilities and equipment, shall be utilized for the purpose of the Corps where appropriate and with the approval of the Federal agency involved. To minimize transportation costs, Corps members shall be employed on conservation projects as near to their places of residence as is feasible.

(c) The Secretary of the Interior and the Secretary of Agriculture may contract with any public agency or organization or any private nonprofit agency or organization which has been in existence for at least five years for the operation of any Youth Conservation Corps project. (16 U.S.C. 1703)

Grants to States

Sec. 4. (a) The Secretary of the Interior and the Secretary of Agriculture shall jointly establish a program under which grants shall be made to States to assist them in meeting the cost of projects for the employment of young men and women to develop, preserve, and maintain non-Federal public lands and waters within the States. For purposes of this section, the term 'States' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

(b)(1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary of the Interior and the Secretary of Agriculture. Such application shall be in such form, and submitted in such manner, as the Secretaries shall jointly by regulation prescribe, and shall contain—

(A) assurances satisfactory to the Secretaries that individuals employed under the project for which the application is submitted shall (i) have attained the age of fifteen but not attained the age of nineteen, (ii) be permanent residents of the United States or its territories, possessions, or the Trust Territory of the Pacific Islands, (iii) be employed without regard to the personnel laws, rules, and regulations applicable to full-time employees of the applicant, (iv) be employed for

a period of not more than ninety days in any calendar year, and (v) be employed without regard to their sex or social, economic, or racial classification; and

(B) such other information as the Secretaries may jointly by regulation prescribe.

(2) The Secretaries may approve applications which they determine (A) to meet the requirements of paragraph (1), and (B) are for projects which will further the development, preservation, or maintenance of non-Federal public lands or waters within the jurisdiction of the applicant.

(c)(1) The amount of any grant under this section shall be determined jointly by the Secretaries, except that no grant for any project may exceed 80 per centum of the cost (as determined by the Secretaries) of such project.

(2) Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretaries find necessary.

(d) Thirty per centum of the sums appropriated under section 6 for any fiscal year shall be made available for grants under this section for such fiscal year. (16 U.S.C. 1704)

Reports to President and Congress

Sec. 5. The Secretary of the Interior and Secretary of Agriculture shall annually prepare a joint report detailing the activities carried out under this Act and providing recommendations. Each report for a program year shall be submitted concurrently to the President and the Congress not later than April 1 following the close of that program year. (16 U.S.C. 1705)

Authorization of Appropriations

Sec. 6. There are authorized to be appropriated amounts not to exceed $60,000,000 for each fiscal year, which amounts shall be made available to the Secretary of the Interior and the Secretary of Agriculture to carry out the purposes of this Act. Notwithstanding any other provision of law, funds appropriated for any fiscal year to carry out this Act shall remain available for obligation and expenditure until the end of the fiscal year following the fiscal year for which appropriated. (16 U.S.C. 1706)

Geothermal Steam Act of 1970

- **Act of December 24, 1970 (P.L. 91-581, 84 Stat. 1566; 30 U.S.C. 1001-1003, 1005-1007, 1011, 1013-1014, 1016, 1021-1025)**

Definitions

Sec. 2. As used in this Act, the term—

(a) "Secretary" means the Secretary of the Interior;

(b) "geothermal lease" means a lease issued under authority of this Act;

(c) "geothermal steam and associated geothermal resources" means (i) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or other associated energy found in geothermal formations; and (iv) any byproduct derived from them;

(d) "byproduct" means any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium, which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves;

(e) "known geothermal resources area" means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated resources are good enough to warrant expenditures of money for that purpose.

(f) "Significant thermal features within units of the National Park System" shall include, but not be limited to, the following:

(1) Thermal features within units of the National Park System listed in Section 1026(a)(1) of this title and designated as significant in the Federal Register notice of August 3, 1987 (Vol. 52, No. 148 Fed. Reg. 28790).

(2) Crater Lake National Park.

(3) Thermal features within Big Bend National Park and Lake Meade National Recreation Area proposed as significant in the Federal Register notice of February 13, 1987 (Vol. 52, No. 30 Fed. Reg. 4700).

(4) Thermal features within units of the National Park System added to the significant thermal features list pursuant to Section 1026(a)(2) of this title. (30 U.S.C. 1001)

Lands Subject to Geothermal Leasing

Sec. 3. Subject to the provisions of section 15 of this Act, the Secretary of the Interior may issue leases for the development and utilization of geothermal steam and associated geothermal resources (1) in lands administered by him, including public, withdrawn, and acquired lands, (2) in any National Forest or other lands administered by the Department of Agriculture through the Forest Service, including public, withdrawn, and acquired lands, and

(3) in lands which have been conveyed by the United States subject to a reservation to the United States of the geothermal steam and associated geothermal resources therein. (30 U.S.C. 1002)

Bids

Sec. 4. If lands to be leased under this Act are within any known geothermal resources area, they shall be leased to the highest responsible qualified bidder by competitive bidding under regulations formulated by the Secretary. If the lands to be leased are not within any known geothermal resources area, the qualified person first making application for the lease shall be entitled to a lease of such lands without competitive bidding. . . . (30 U.S.C. 1003)

* * * *

Duration of Leases

Sec. 6. (a) Geothermal leases shall be for a primary term of ten years. If geothermal steam is produced or utilized in commercial quantities within this term, such lease shall continue for so long thereafter as geothermal steam is produced or utilized in commercial quantities, but such continuation shall not exceed an additional forty years. . . . (30 U.S.C. 1005)

* * * *

Lease Acreage

Sec. 7. A geothermal lease shall embrace a reasonable compact area of not more than two thousand five hundred and sixty acres, except where a departure therefrom is occasioned by an irregular subdivision or subdivisions. . . . (30 U.S.C. 1006)

* * * *

Readjustment

Sec. 8. (a) The Secretary may readjust the terms and conditions, except as otherwise provided herein, of any geothermal lease issued under this Act at not less than ten-year intervals beginning ten years after the date the geothermal steam is produced, as determined by the Secretary. Each geothermal lease issued under this Act shall provide for such readjustment. . . .

* * * *

(c) Any readjustment of the terms and conditions as to use, protection, or restoration of the surface of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency other than the Department of the Interior may be made only upon notice to, and with the approval of, such department or agency. (30 U.S.C. 1007)

* * * *

Lease Termination

Sec. 12. Leases may be terminated by the Secretary for any violation of the regulations or lease terms after thirty days notice provided that such violation is not corrected within the notice period, or in the event the violation is such that it cannot be corrected within the notice period then provided that lessee has not commenced in good faith within said notice period to correct such violation and thereafter to proceed diligently to correct such violation. . . . (30 U.S.C. 1011)

* * * *

Surface Land Use

Sec. 14. Subject to the other provisions of this Act, a lessee shall be entitled to use so much of the surface of the land covered by his geothermal lease as may be found by the Secretary to be necessary for the production, utilization, and conservation of geothermal resources. (30 U.S.C. 1013)

* * * *

Land Withdrawn

Sec. 15. . . .(b) Geothermal leases for lands withdrawn or acquired in aid of functions of the Department of Agriculture may be issued only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purposes for which they were withdrawn or acquired. Geothermal leases for lands to which section 24 of Federal Power Act, as amended (16 U.S.C. 818), is applicable, may be issued only with the consent of, and subject to, such terms and conditions as the Federal Power Commission may prescribe to insure adequate utilization of such lands for power and related purposes. . . . . (30 U.S.C. 1014)

* * * *

Multiple Use Management

Sec. 17. Administration of this Act shall be under the principles of multiple use of lands and resources, and geothermal leases shall, insofar as feasible, allow for coexistence of other leases of the same lands for deposits of minerals under the laws applicable to them, for the location and production of claims under the mining laws, and for other uses of areas covered by them. Operations under such other leases or for such other uses, however, shall not unreasonably interfere with or endanger operations under any lease issued pursuant to this Act, nor shall operations under leases so issued unreasonably interfere with or endanger operations under any lease, license, claim or permit issued pursuant to the provisions of any other Act. (30 U.S.C. 1016)

* * * *

State Water Laws

Sec. 22. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws. (30 U.S.C. 1021)

* * * *

Waste Prevention

Sec. 23. . . . . (b) Rights to develop and utilize geothermal steam and associated geothermal resources underlying lands owned by the United States may be acquired solely in accordance with the provisions of this Act. (30 U.S.C. 1022)

Rules and Regulations

Sec. 24. The Secretary shall prescribe such rules and regulations as he may deem appropriate to carry out the provisions of this Act. Such regulations may include, without limitation, provisions for (a) the prevention of waste, (b) development and conservation of geothermal and other natural resources, (c) the protection of the public interest, (d) assignment, segregation, extension of terms, relinquishment of leases, development contracts, unitization, pooling, and drilling

agreements, (e) compensatory royalty agreements, suspension of operations or production, and suspension of reduction of rentals or royalties, (f) the filing of surety bonds to assure compliance with the terms of the lease and to protect surface use and resources, (g) use of the surface by a lessee of the lands embraced in his lease, (h) the maintenance by the lessee of an active development program, and (i) protection of water quality and other environmental qualities. (30 U.S.C. 1023)

Authorities Affecting Land Conveyance

Sec. 25. As to any land subject to geothermal leasing under section 3 of the Act, all laws which either (a) provide for the disposal of land by patent or other form of conveyance or by grant or by operation of law subject to a reservation of any mineral or (b) prevent or restrict the disposal of such land because of the mineral character of the land, shall hereafter be deemed to embrace geothermal steam and associated geothermal resources as a substance which either must be reserved or must prevent or restrict the disposal of such land, as the case may be. This section shall not be construed to affect grants, patents, or other forms of conveyances made prior to the date of enactment of this Act. (30 U.S.C. 1024)

* * * *

Federal Reservation of Certain Mineral Rights; Extraction of Minerals Without Substantial Interference With Geothermal Production

Sec. 28. The United States reserves the ownership of and the right to extract under such rules and regulations as the Secretary may prescribe oil, hydrocarbon gas, and helium from all geothermal steam and associated geothermal resources produced from lands leased under this chapter in accordance with presently applicable laws: *Provided,* That whenever the right to extract oil, hydrocarbon gas, and helium from geothermal steam and associated geothermal resources produced from such lands is exercised pursuant to this section, it shall be exercised so as to cause no substantial interference with the production of geothermal steam and associated geothermal resources from such lands. (30 U.S.C. 1025)

Occupational Safety and Health Act of 1970

- **Act of December 29, 1970 (P.L. 91-596, 84 Stat. 1590, 29 U.S.C. 655, 668)**

Occupational Safety and Health Standards

Sec. 6. (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.

(b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:

(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested

person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and (iii) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing: *Provided*, That the Secretary may issue one interim order to

be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for a temporary order under this paragraph (6) shall contain:

(i) a specification of the standard or portion thereof from which the employer seeks a variance,

(ii) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health,

Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health, Education, and Welfare, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c)(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any

time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health, Education, and Welfare regarding the need for mandatory standards in determining the priority for establishing such standards. (29 U.S.C. 655)

Federal Agency Safety Programs and Responsibilities

Sec. 19. (a) It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof)—

(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;

(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;

(3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;

(4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a) (3) of this section; and

(5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e) (2) of title 5, United States Code.

(b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a) (5) of this section, together with his evaluations of and recommendations derived from such reports. The President shall transmit annually to the Senate and the House of Representatives a report of

the activities of Federal agencies under this section.

(c) Ommitted.

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a) (3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy. (29 U.S.C. 668)

Mining and Minerals Policy Act of 1970

- **Act of December 31, 1970 (P.L. 91-631, 84 Stat. 1876; 30 U.S.C. 21a)**

Sec. 1. This Act may be cited as the Mining and Minerals Policy Act of 1970.

Sec. 2. The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

For the purpose of this Act "minerals" shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.

It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this Act. For this purpose the Secretary of the Interior shall include in his annual report to the Congress a report on the state of the domestic mining, minerals, and mineral reclamation industries, including a statement of the trend in utilization and depletion of these resources, together with such recommendations for legislative programs as may be necessary to implement the policy of this Act. (30 U.S.C. 21a)

Uniform Relocation Assistance and Land Acquisition Policies Act of 1970

- **Act of January 2, 1971 (P.L. 91-646, as amended, 84 Stat. 1894; 42 U.S.C. 4601 (note), 4601, 4602, 4604, 4621-4633, 4635, 4636, 4638, 4651-4655)**

Short Title

That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970". (42 U.S.C. 4601 (note)).

TITLE I — GENERAL PROVISIONS

Sec. 101. As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6)(A) The term "displaced person" means, except as provided in subparagraph (B)—

(i) any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in section 101(7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the land agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 202 (a) and (b) and 205 of this title, any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include—

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(10) The term "comparable replacement dwelling" means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services,

and the displaced person's place of employment.

(11) The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(12) The term "lead agency" means the Department of Transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. (42 U.S.C. 4601)

Effect Upon Property Acquisition

Sec. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971. (42 U.S.C. 4602)

Certification

Sec. 103. (a) Notwithstanding sections 210 and 305 of this Act, the head of a Federal agency may discharge any of his responsibilities under this Act by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this Act.

(b)(1) The head of the lead agency shall issue regulations to carry out this section.

(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this Act.

(c)(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law. (42 U.S.C. 4604)

TITLE II — UNIFORM RELOCATION ASSISTANCE

Declaration of Findings and Policy

Sec. 201. (a) The Congress finds and declares that—

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this Act has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this title is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) It is the intent of Congress that—

(1) Federal agencies shall carry out this title in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act;

(3) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this Act will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public Law 90-284), commonly known as the Civil Rights Act of 1968, and title VI of the Civil Rights Act of 1964. (42 U.S.C. 4621)

Moving and Related Expenses

Sec. 202. (a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been

required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d)(1) Except as otherwise provided by Federal law—

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation; the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term—

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means—

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system; located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned. (42 U.S.C. 4622)

Replacement Housing for Homeowner

Sec. 203. (a) (1) In addition to payments otherwise authorized by this title, the head of the displacing agency shall make an additional payment not in excess of $22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage. (42 U.S.C. 4623)

Replacement Housing for Tenants and Certain Others

Sec. 204. (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $5,250. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations. (42 U.S.C. 4624)

Relocation Planning, Assistance Coordination, and Advisory Services

Sec. 205. (a) Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of—

(A) a major disaster as defined in section 102(2) of the Disaster Relief Act of 1974;

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this title with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this title with respect to such activities. Such related activities shall constitute a single program or project for purposes of this Act.

(f) Notwithstanding section 101(6) of this Act, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency. (42 U.S.C. 4625)

Housing Replacement by Federal Agency as Last Resort

Sec. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds

authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 203 and 204 on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person. (42 U.S.C. 4626)

State Required to Furnish Real Property Incident to Federal Assistance (Local Cooperation)

Sec. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by section 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance. (42 U.S.C. 4627)

State Acting as Agent for Federal Program

Sec. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project. (42 U.S.C. 4628)

Public Works Programs and Projects of the Government of the District of Columbia and of the Washington Metropolitan Area Transit Authority

Sec. 209. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act. (42 U.S.C. 4629)

Requirements for Relocation Payments and Assistance of Federally Assisted Program; Assurances of Availability of Housing

Sec. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available

to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such displacing agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 205(c)(3). (42 U.S.C. 4630)

Federal Share of Costs

Sec. 211. (a) The cost to a displacing agency of providing payments and assistance under this title and title III of this Act shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) No payment or assistance under this title or title III of this Act shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.

(c) Any grant to, or contract or agreement with, a State agency executed before January 2, 1971, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305. (42 U.S.C. 4631)

Administration — Relocation Assistance in Programs Receiving Federal Financial Assistance

Sec. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities. (42 U.S.C. 4632)

Duties of Lead Agency

Sec. 213. (a) The head of lead agency shall—

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this Act;

(2) ensure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(3) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

(4) perform such other duties as may be necessary to carry out this Act.

(b) The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency.

(c) The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority only with respect to relocation assistance under this title and title I. (42 U.S.C. 4633)

Note—Sec. 214 was repealed by P.L. 100-17.

Planning and Other Preliminary Expenses for Additional Housing

Sec. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market

needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts. (42 U.S.C. 4635)

Payments not to be Considered as Income

Sec. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance). (42 U.S.C. 4636)

Note—Sec. 217 was repealed by P.L. 100-17.

Transfers of Surplus Property

Sec. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing. (42 U.S.C. 4638)

Note—Sec. 219 was repealed by P.L. 100-17.

Repeals

Sec. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234).

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473).

(3) Section 2680 of title 10, United States Code.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)).

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. 1465).

(6) Paragraphs (7) (b) (iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8).

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074).

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307).

(10) Chapter 5 of title 23, United States Code.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495).

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section.

Effective Date

Sec. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

TITLE III — UNIFORM REAL PROPERTY ACQUISITION POLICY

Uniform Policy on Real Property Acquisition Practices

Sec. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be

less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this title may, after the person has been fully informed of his right to receive just compensation for such property, donate such

property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine. (42 U.S.C. 4651)

Buildings, Structures, and Improvements

Sec. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b) (1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection. (42 U.S.C. 4652)

Expenses Incidental to Transfer of Title to United States

Sec. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier. (42 U.S.C. 4653)

Litigation Expenses

Sec. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any

right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346 (a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding. (42 U.S.C. 4654)

Requirements for Uniform Land Acquisition Policies; Payments of Expenses Incidental to Transfer of Real Property to State; Payment of Litigation Expenses in Certain Cases

Sec. 305. (a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such acquiring agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

(b) For purposes of this section, the term "acquiring agency" means—

(1) a State agency (as defined in section 101(3)) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation. (42 U.S.C. 4655)

Repeals

Sec. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section.

Intergovernmental Personnel Act of 1970

- **Act of January 5, 1971 (P.L. 91-648; 84 Stat. 1909, as amended; 5 U.S.C. 3371(note), 5 U.S.C. 3371-3376; 42 U.S.C. 4701-4702, 4721-4728, 4741-4746, 4761-4772)**

Short Title

Sec. 1. This Act may be cited as the "Intergovernmental Personnel Act of 1970".

Declaration of Policy

Sec. 2. The Congress hereby finds and declares—

That effective State and local governmental institutions are essential in the maintenance and development of the Federal system in an increasingly complex and interdependent society.

That, since numerous governmental activities administered by the State and local governments are related to national purpose and are financed in part by Federal funds, a national interest exists in a high caliber of public service in State and local governments.

That the quality of public service at all levels of government can be improved by the development of systems of personnel administration consistent with such merit principles as—

(1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(2) providing equitable and adequate compensation;

(3) training employees, as needed, to assure high-quality performance;

(4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;

(5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens; and

(6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

That Federal financial and technical assistance to State and local governments for strengthening their personnel administration in a manner consistent with these principles is in the national interest. (42 U.S.C. 4701)

Administration of authorities

Sec. 3. The authorities provided by this Act shall be administered in such manner as (1) to recognize fully the rights, powers, and responsibilities of State and local governments, and (2) to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own systems of personnel administration. (42 U.S.C. 4702)

TITLE I — DEVELOPMENT OF POLICIES AND STANDARDS

Note—This title is not included because it became obsolete with the abolishment of the Advisory Council. It included Sec. 101, purpose of the title; Sec. 102, establishing an Advisory Council on Intergovernmental Personnel Policy; and Sec. 103, requiring a report to the President and the Congress.

TITLE II — STRENGTHENING STATE AND LOCAL PERSONNEL ADMINISTRATION

Declaration of Purpose

Sec. 201. The purpose of this title is to assist the State and local governments to strengthen their staffs by improving their personnel administration. (42 U.S.C. 4721)

State Government and Statewide Programs and Grants

Sec. 202. (a) The Office of Personnel Management (hereinafter referred to as the "Office") is authorized to make grants to a State for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this Act, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the Governor of that State that the programs or projects contained within the State's application are consistent with the applicable principles set forth in clauses (1)-(6) of the third paragraph of section 2 of this Act, to strengthen personnel administration in that State government or in local governments of that State. The authority provided by this section shall be employed in such a manner as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own systems of personnel administration.

(b) An application for a grant shall be made at such a time or times, and contain such information, as the Office may prescribe. The Office may make a grant under subsection (a) of this section only if the application therefor—

(1) provides for designation, by the Governor or chief executive authority, of the State office that will have primary authority and responsibility for the development and administration of the approved program or project at the State level;

(2) provides for the establishment of merit personnel administration where appropriate and the further improvement of existing systems based on merit principles;

(3) provides for specific personnel administration improvement needs of the State government and, to the extent appropriate, of the local governments in that State, including State personnel administration services for local governments;

(4) provides assurance that the making of a Federal Government grant will not result in a reduction in relevant State or local government expenditures or the substitution of Federal funds for State or local funds previously made available for these purposes; and

(5) sets forth clear and practicable actions for the improvement of particular aspects of personnel administration such as—

(A) establishment of statewide personnel systems of general or special functional coverage to meet the needs of urban, suburban, or rural governmental jurisdictions

that are not able to provide sound career services, opportunities for advancement, adequate retirement and leave systems, and other career inducements to well-qualified professional, administrative, and technical personnel;

(B) making State grants to local governments to strengthen their staffs by improving their personnel administration;

(C) assessment of State and local government needs for professional, administrative, and technical manpower, and the initiation of timely and appropriate action to meet such needs;

(D) strengthening one or more major areas of personnel administration, such as recruitment and selection, training and development, and pay administration;

(E) undertaking research and demonstration projects to develop and apply better personnel administration techniques, including both projects conducted by State and local government staffs and projects conducted by colleges or universities or other appropriate nonprofit organizations under grants or contracts.

(F) strengthening the recruitment, selection, assignment, and development of handicapped persons, women, and members of disadvantaged groups whose capacities are not being utilized fully;

(G) training programs related directly to upgrading within the agency for nonprofessional employees who show promise of developing a capacity for assuming professional responsibility;

(H) achieving the most effective use of scarce professional, administrative, and technical manpower; and

(I) increasing intergovernmental cooperation in personnel administration, with respect to such matters as recruiting, examining, pay studies, training, education, personnel interchange, manpower utilization, and fringe benefits. (42 U.S.C. 4722)

Local Government Programs and Grants

Sec. 203. (a) The Office is authorized to make grants to a general local government, or a combination of general local governments, that serve a population of fifty thousand or more, for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this Act, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the mayor(s), or chief executive officer(s), of the general local government or combination of local governments that the programs or projects are consistent with the applicable principles set forth in clauses (1)-(6) of the third paragraph of section 2 of this Act, to strengthen the personnel administration of such governments. Such a grant may not be made—

(1) if, at the time of submission of an application, the State concerned has an approved plan which, with the agreement of the particular local government concerned, provides for strengthening one or more aspects of personnel administration in that local government, unless the local government concerned has problems which are not met by the previously approved plan and for which, with the agreement of the State government concerned with respect to those aspects of personnel administration covered in the approved plan, it is submitting an application; or

(2) after the State concerned has a statewide plan which has been developed by an appropriate State

agency designated or established pursuant to State law which provides such agency with adequate authority, administrative organization, and staffing to develop and administer such a statewide plan, and to provide technical assistance and other appropriate support in carrying out the local components of the plan, and which provides procedures insuring adequate involvement of officials of affected local governments in the development and administration of such a statewide plan, unless the local government concerned has special, unique, or urgent problems which are not met by the approved statewide plan and for which it submits an application for funds to be distributed under section 506(a).

Upon the request of a Governor or chief executive authority, a grant to a general local government or combination of such governments in that State may not be made during a period not to exceed ninety days commencing with the date provided in section 513, or the date on which official regulations for this Act are promulgated, whichever date is later: *Provided,* That the request of the Governor or chief executive authority indicates that he is developing a plan under (1) above, or during a period not to exceed one hundred and eighty days commencing with the date provided in section 513, or the date on which official regulations for this Act are promulgated, whichever date is later, provided the request of the Governor or chief executive authority indicates that he is developing a statewide plan under (2) above.

(b) An application for a grant from a general local government or a combination of general local governments shall be made at such time or times and shall contain such information as the Office may prescribe. The Office may make a grant under subsection (a) of this section only if the application therefor meets requirements similar to those established in section 202(b) of this Act for a State application for a grant, unless any such requirement is specifically waived by the Office, and the requirements of subsection (c) of this section. Such a grant may cover the costs of developing the program or project covered by the application. The Office may make grants to general local governments, or combinations of such governments, that serve population of less than fifty thousand, if it finds that such grants will help meet essential needs in programs or project of national interest and will assist general local governments experiencing special problems in personnel administration related to such programs or projects.

(c) An application to be submitted to the Office under subsection (b) of this section shall first be submitted by the general local government or combination of such governments to the Governor for review, comments, and recommendations. The Governor may refer the application to the State office designated under section 202(b)(1) of this Act for review. Comments and recommendation (if any) made as a result of the review, and a statement by the general local government or combination of such governments that it has considered the comments and recommendations of the Governor shall accompany the application to the Office. The application need not be accompanied by the comments and recommendations of the Governor if the general local government or combination of such governments certifies to the Office that the application has been before the Governor for review and comment for a period of sixty days without comment by the Governor. An explanation in writing

shall be sent to the Governor of a State by the Office whenever the Office does not concur with recommendations of the Governor in approving any local government applications. (42 U.S.C. 4723)

Intergovernmental Cooperation in Recruiting and Examining

Sec. 204. (a) The Office may join, on a shared-cost basis, with State and local governments in cooperative recruiting and examining activities under such procedures and regulations as may jointly be agreed upon.

(b) The Office also may, on the written request of a State or local government and under such procedures as may be jointly agreed upon, certify to such governments from appropriate Federal registers the names of potential employee. The State or local government making the request shall pay the Office for the costs, as determined by the Office, of performing the service, and such payments shall be credited to the appropriation or fund from which the expenses were or are to be paid. (42 U.S.C. 4724)

Technical Assistance

Sec. 205. The Office may furnish technical advice and assistance, on request, to State and general local governments seeking to improve their systems of personnel administration. The Office may waive, in whole or in part, payments from such governments for the costs of furnishing such assistance. All such payments shall be credited to the appropriation or fund from which the expenses were or are to be paid. (42 U.S.C. 4725)

Coordination of Federal Programs

Sec. 206. The Office, after consultation with other agencies concerned, shall—

(1) coordinate the personnel administration support and technical assistance given to State and local governments and the support given State programs or projects to strengthen local government personnel administration, including the furnishing of needed personnel administration services and technical assistance, under authority of this Act with any such support given under other Federal programs; and

(2) make such arrangements, including the collection, maintenance, and dissemination of data on grants for strengthening State and local government personnel administration and on grants to States for furnishing needed personnel administration services and technical assistance to local governments, as needed to avoid duplication and insure consistent administration of related Federal activities. (42 U.S.C. 4726)

Interstate Compacts

Sec. 207. The consent of the Congress is hereby given to any two or more States to enter into compacts or other agreements, not in conflict with any law of the United States, for cooperative efforts and mutual assistance (including the establishment of appropriate agencies) in connection with the development and administration of personnel and training programs for employees and officials of State and local governments. (42 U.S.C. 4727)

Transfer of Functions

Sec. 208. (a) There are hereby transferred to the Office all functions, powers, and duties of—

(1) the Secretary of Agriculture under section 10(e)(2) of the Food Stamp Act of 1964 (7 U.S.C. 2019(e)(2));

(2) the Secretary of Labor under

(A) the Act of June 6, 1933, as amended (29 U.S.C. 49 et seq.) and

(B) section 303(a)(1) of the Social Security Act (42 U.S.C. 503(a)(1));

(3) the Secretary of Health, Education, and Welfare under—

(A) sections 134(a)(6) and 204(a)(6) of the Mental Retardation Facilities and Community Health Centers Construction Act of 1963 (42 U.S.C. 2674 (a)(6) and 2684(a)(6));

(B) section 303(a)(6) of the Older Americans Act of 1965 (42 U.S.C. 3023(a)(6);

(C) sections 314(a)(2)(F) and (d)(2)(F) and 604(a)(8) of the Public Health Service Act (42 U.S.C. 246 (a)(2)(F) and (d)(2)(F) and 291d(a)(8)); and

(D) section 2(a)(5)(A), 402(a)(5)(A), 505(a)(3)(A), 1002(a)(5)((A), 1402(a)(5)(A), 1602(a)(5)(A), and 1902 (a)(4)(A) of the Social Security Act (42 U.S.C. 302(a)(5)(A), 602(a)(5)(A), 705(a)(3)(A), 1202(a)(5)(A), 1352 (a)(5)(A), 1382(a)(5)(A), and 1396a(a)(4)(A)); and

(4) any other department, agency, office, or officer (other than the President) under any other provision of law or regulation applicable to a program of grant-in-aid that specifically requires the establishment and maintenance of personnel standards on a merit basis with respect to the program; insofar as the functions, powers, and duties relate to the prescription of personnel standards on a merit basis.

(b) In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office for positions engaged in carrying out such programs. The standards shall—

(1) include the merit principles in section 2 of this Act;

(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration.

(c) The Office shall—

(1) provide consultation and technical advice and assistance to State and local governments to aid them in complying with standards prescribed by the Office under subsection (a) of this section; and

(2) advise Federal agencies administering programs of grants of financial assistance as to the application of required personnel administration standards, and recommend and coordinate the taking of such actions by the Federal agencies as the Office considers will most effectively carry out the purpose of this title.

(d) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of any Federal agency employed, used, held, available, or to be made available in connection with the functions, powers, and duties vested in the Office by this section as the Director of the Management and Budget shall determine shall be transferred to the Office at such time or times as the Director shall direct.

(e) Personnel standards prescribed by Federal agencies under laws and regulations referred to in subsection (a) of this section shall continue in

effect until modified or superseded by standards prescribed by the Office under subsection (a) of this section.

(f) Any standards or regulations established pursuant to the provisions of this section shall be such as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own individual systems of personnel administration.

(g) Nothing in this section or in section 202 or 203 of this Act shall be construed to—

(1) authorize any agency or official of the Federal Government to exercise any authority, direction, or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee;

(2) authorize the application of personnel standards on a merit basis to the teaching personnel of educational institutions or school systems;

(3) prevent participation by employees or employee organizations in the formulation of policies and procedures affecting the conditions of their employment, subject to the laws and ordinances of the State or local government concerned;

(4) require or request any State or local government employee to disclose his race, religion, or national origin, or the race, religion, or national origin, of any of his forebears;

(5) require or request any State or local government employee, or any person applying for employment as a State or local government employee, to submit to any interrogation or examination or to take any psychological test or any polygraph test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters; or

(6) require or request any State or local government employee to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(h) Effective one year after October 13, 1978, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

(1) requirements prescribed under laws and regulations referred to in subsection (a) of this section;

(2) requirements that generally prohibit discrimination in employment or require equal employment opportunity;

(3) the Davis-Bacon Act [40 U.S.C. 276a to 276a-5]; and

(4) chapter 15 of Title 5, relating to political activities of certain State and local employees. (42 U.S.C. 4728)

TITLE III — TRAINING AND DEVELOPING STATE AND LOCAL EMPLOYEES

Declaration of Purpose

Sec. 301. (a) The purpose of this title is to strengthen the training and development of State and local government employees and officials, particularly in professional, administrative, and technical fields. (42 U.S.C. 4741)

Admission to Federal Employee Training Programs

Sec. 302. (a) In accordance with such conditions as may be prescribed by the head of the Federal agency concerned, a Federal agency may admit State and local government employees and officials to agency training programs established for Federal professional, administrative, or technical personnel.

(b) Federal agencies may waive, in whole or in part, payments from, or on behalf of, State and local governments for the costs of training provided under this section. Payments received by the Federal agency concerned for training under this section shall be credited to the appropriation or fund used for paying the training costs.

(c) The Office may use appropriations authorized by this Act to pay the initial additional developmental or overhead costs that are incurred by reason of admittance of State and local government employees to Federal training courses and to reimburse other Federal agencies for such costs. (42 U.S.C. 4742)

Grants to State and Local Governments for Training

Sec. 303. (a) If in its judgment training is not adequately provided for under grant-in-aid or other statutes, the Office is authorized to make grants to State and general local governments for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this Act, for up to 50 per centum) of the costs of developing and carrying out programs, on the certification of the Governor of that State, or the mayor or chief executive officer of the general local government, that the programs are consistent with the applicable principles set forth in clauses (1)-(6) of the third paragraph of section 2 of this Act, to train and educate their professional, administrative, and technical employees and officials. Such grants may not be used to cover costs of full-time graduate-level study, provided for in section 305 of this Act, or the costs of the construction or acquisition of training facilities. The State and local government share of the cost of developing and carrying out training and education plans and programs may include, but shall not consist solely of, the reasonable value of facilities and of supervisory and other personal services made available by such governments. The authority provided by this section shall be employed in such a manner as to encourage innovation and allow for diversity on the part of State and local governments in developing and carrying out training and educational programs for their personnel.

(b) An application for a grant from a State or general local government shall be made at such time or times, and shall contain such information, as the Office may prescribe. The Office may make a grant under subsection (a) of this section, only if the application therefor meets requirements established by this subsection unless any requirement is specifically waived by the Office. Such grant to a State, or to a general local government under subsection (c) of this section, may cover the costs of developing the program covered by the application. The program covered by the application shall—

(1) provide for designation, by the Governor or chief executive authority, of the State office that will have primary authority and responsibility for the development and administration of the program at the State level;

(2) provide, to the extent feasible, for coordination with relevant training available under or supported by other Federal Government programs or grants;

(3) provide for training needs of the State government and of local governments in that State;

(4) provide, to the extent feasible, for intergovernmental cooperation in employee training matters, especially within metropolitan or regional areas; and

(5) provide assurance that the making of a Federal Government grant will not result in a reduction in relevant State or local government expenditures or the substitution of Federal funds for State or local funds previously made available for these purposes.

(c) A grant authorized by subsection (a) of this section may be made to a general local government, or a combination of such governments, that serve a population of fifty thousand or more, for up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this Act, for up to 50 per centum) of the costs of developing and carrying out programs or projects, on the certification of the mayor(s), or chief executive officer(s), of the general local government or combination of local governments that the programs or projects are consistent with the applicable principles set forth in clauses (1)-(6) of the third paragraph of section 2 of this Act, to train and educate their professional, administrative, and technical employees and officials. Such a grant may not be made—

(1) if, at the time of submission of an application, the State concerned has an approved plan which, with the agreement of the particular local government concerned, provides for strengthening one or more aspects of training in that local government, unless the local government concerned has problems which are not met by the previously approved plan and for which, with the agreement of the State government concerned with respect to those aspects of training covered in the approved plan, it is submitting an application; or

(2) after the State concerned has a statewide plan which has been developed by an appropriate State agency designated or established pursuant to State law which provides such agency with adequate authority, administrative organization, and staffing to develop and administer such a statewide plan, and to provide technical assistance and other appropriate support in carrying out the local components of the plan, and which provides procedures insuring adequate involvement of officials of affected local governments in the development and administration of such a statewide plan, unless the local government concerned has special, unique, or urgent problems which are not met by the approved statewide plan and for which it submits an application for funds to be distributed under section 506 (a).

Upon the request of a Governor or chief executive authority, a grant to a general local government or combination of such governments in that State may not be made during a period not to exceed ninety days commencing with the date provided in section 513, or the date on which official regulations for this Act are promulgated, which ever date is later: *Provided,* That the request of the Governor or chief executive authority indicates that he is developing a plan under (1) above, or during a period not to exceed one hundred and eighty days commencing with the date provided in section 513, or the date on which official

regulations for this Act are promulgated, whichever date is later, provided the request of the Governor or chief executive authority indicates that he is developing a statewide plan under (2) above. To be approved, an application for a grant under this subsection must meet requirements similar to those established in subsection (b) of this section for State applications, unless any such requirement is specifically waived by the Office, and the requirements of subsection (d) of this section. The Office may make grants to general local governments, or combinations of such governments that serve a population of less than fifty thousand if it finds that such grants will help meet essential needs in programs or projects of national interest and will assist general local governments experiencing special needs for personnel training and education related to such programs or projects.

(d) An application to be submitted to the Office under subsection (c) of this section shall first be submitted by the general local government or combination of such governments to the Governor for review, comments, and recommendations. The Governor may refer the application to the State office designated under section 303(b)(1) of this Act for review. Comments and recommendations (if any) made as a result of the review and a statement by the general local government or combination of such governments that it has considered the comments and recommendations of the Governor shall accompany the application to the Office. The application need not be accompanied by the comments and recommendations of the Governor if the general local government or combination of such governments certifies to the Office that the application has been before the Governor for review and comment for a period of sixty days without comment by the Governor. An explanation in writing shall be sent to the Governor of a State by the Office whenever the Office does not concur with recommendations of the Governor in approving any local government applications. (42 U.S.C. 4743)

Grants to Other Organizations

Sec. 304. (a) The Office is authorized to make grants to other organizations to pay up to 75 per centum (or, with respect to fiscal years commencing after the expiration of three years following the effective date of the grant provisions of this Act, up to 50 per centum) of the costs of providing training to professional, administrative, or technical employees and officials of State or local governments if the Office—

(1) finds that State or local governments have requested the proposed program:

(2) determines that the capability to provide such training does not exist, or is not readily available, within the Federal or the State or local governments requesting such program or within associations of State or local governments, or if such capability does exist that such government or association is not disposed to provide such training; and

(3) approves the program as meeting such requirements as may be prescribed by the Office in its regulations pursuant to this Act.

(b) For the purpose of this section "other organization" means—

(1) a national, regional, statewide, areawide, or metropolitan organization, representing member State of local governments;

(2) an association of State or local public officials; or

(3) a nonprofit organization one of whose principal functions is to offer professional advisory, research, development, educational or related services to governments. (42 U.S.C. 4744)

Government Service Fellowships

Sec. 305. (a) The Office is authorized to make grants to State and general local governments to support programs approved by the Office for providing Government Service Fellowships for State and local government personnel. The grants may cover—

(1) the necessary costs of the fellowship recipient's books, travel, and transportation, and such related expenses as may be authorized by the Office;

(2) reimbursement to the State or local government for not to exceed one-fourth of the salary of each fellow during the period of the fellowship; and

(3) payment to the educational institutions involved of such amounts as the Office determines to be consistent with prevailing practices under comparable federally supported programs for each fellow, less any amount charged the fellow for tuition and nonrefundable fees and deposits.

(b) Fellowships awarded under this section may not exceed two years of full-time graduate-level study for professional, administrative, and technical employees. The regulations of the Office shall include eligibility criteria for the selection of fellowship recipients by State and local governments.

(c) The State or local government concerned shall—

(1) select the individual recipients of the fellowships;

(2) during the period of the fellowship, continue the full salary of the recipient and normal employment benefits such as credit for seniority, leave accrual, retirement, and insurance; and

(3) make appropriate plans for the utilization and continuation in public service of employees completing fellowships and outline such plans in the application for the grant. (42 U.S.C. 4745)

Coordination of Federal Programs

Sec. 306. The Office, after consultation with other agencies concerned, shall—

(1) prescribe regulations concerning administration of training for employees and officials of State and local governments provided for in this title, including requirements for coordination of and reasonable consistency in such training programs;

(2) coordinate the training support given to State and local governments under authority of this Act with training support given such governments under other Federal programs; and

(3) make such arrangements, including the collection and maintenance of data on training grants and programs, as may be necessary to avoid duplication of programs providing for training and to insure consistent administration of related Federal training activities, with particular regard to title IX of the Higher Education Act of 1965. (42 U.S.C. 4746)

TITLE IV — MOBILITY OF FEDERAL, STATE AND LOCAL EMPLOYEES

Declaration of Purpose

Sec. 401. The purpose of this title is to provide for the temporary assignment of personnel between the Federal Government and State and local governments and institutions

of higher education. (5 U.S.C. 3371(note))

Amendments to Title 5, United States Code

Sec. 402. (a) Chapter 33 of title 5, United States Code, is amended by inserting the following new subchapter at the end thereof:

SUBCHAPTER VI — ASSIGNMENTS TO AND FROM STATES

Definitions

Sec. 3371. For the purpose of this subchapter—

(1) "State" means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality: and

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1); and

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority.

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act;

(3) "Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the Legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) "other organization" means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials; or

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management. (5 U.S.C. 3371)

General Provisions

Sec. 3372. (a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of an executive agency may arrange for the assignment of—

(1) an employee of his agency to a State or local government; and

(2) an employee of a State or local government to his agency; for work of mutual concern to his agency and the State or local government that he determines will be

beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of an executive agency may extend the period of assignment for not more than two additional years.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of an executive agency to an institution of higher education; and

(2) an employee of an institution of higher education to an executive agency.

(3) an employee of a Federal agency to any other organization; and

(4) an employee of another organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(d) Where the employee is assigned to a tribal organization, the employee shall be eligible for promotions, periodic step-increases, additional step-increases, merit pay, and cash awards, as defined in chapters 53 and 54 of this title, on the same basis as other Federal employees. (5 U.S.C. 3372)

Assignment of Employees to State and Local Governments

Sec. 3373. (a) An employee of an executive agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or

(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the executive agency and the State or local government concerned.

(b) The assignment of an employee of an executive agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursement shall be credited to the appropriation of the executive agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State of local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employees contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee, or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Civil Service Office determines to be similar. The executive agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d)(1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of

Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits form the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual. (5 U.S.C. 3373)

Assignments of Employees from State or Local Governments

Sec 3374. (a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution. The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, section 203, 205, 207, 208, 209, 602, 603, 606, 607, 643, 654, 1905, and 1913, of title 18, sections 1343, 1344, and 1349(b) of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and

(3) is subject to such regulations as the President may prescribe. The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made

with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned. (5 U.S.C. 3374)

Travel Expenses

Sec. 3375. (a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away form his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724(a) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter. (5 U.S.C. 3375)

Regulations

Sec. 3376. The President may prescribe regulations for the administration of this subchapter.

(b) The analysis of chapter 33 of title 5, United States Code, is amended by inserting the following at the end thereof:

SUBCHAPTER VI — ASSIGNMENTS TO AND FROM STATES

Sec.
3371. Definitions.
3372. General provisions.
3373. Assignments of employees to State or local governments.
3374. Assignments of employees from State or local governments.
3375. Travel expenses.
3376. Regulations.

Repeal of Special Authorities

Sec. 403. The Act of August 2, 1956, as amended (7 U.S.C. 1881-1888), section 553 of the Act of April 11, 1965 as amended (20 U.S.C. 867), and section 314(f) of the Public Health Service Act (42 U.S.C. 246(f)) (less applicability to commissioned officers of the Public Health Service) are hereby repealed.

Sec. 404. This title shall become effective sixty days after the date of enactment of this Act. (5 U.S.C. 3376)

TITLE V — GENERAL PROVISIONS

Declaration of Purpose

Sec. 501. The purpose of this title is to provide for the general administration of titles I, II, III, and V of this Act (hereinafter referred to as "this Act"), and to provide for the establishment of certain advisory committees. (42 U.S.C. 4761)

Definitions

Sec. 502. For purpose of this Act—

(1) "Office" means the Office of Personnel Management;

(2) "Federal agency" means an executive department, military department, independent establishment, or agency in the executive branch of the Government of the United States, including Government owned or controlled corporations;

(3) "State" means a State of the United States, the District of

Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States, and includes interstate and Federal-interstate agencies but does not include the governments of the political subdivisions of a State;

(4) "local government" means a city, town, county or other subdivision or district of a State, including agencies, instrumentalities, and authorities of any of the foregoing and any combination of such units or combination of such units and a State. A "general local government" means a city, town, county, or comparable general-purpose political subdivision of a State, and

(5) Notwithstanding the population requirements of sections 4723(a) and 4743(c) of this title [42 U.S.C.], a "local government" and a "general local government" also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688)(43 U.S.C. 1601 et seq.), which performs substantial governmental functions. The requirements of sections 4723(c) and 4743(d) of this title, relating to reviews by the Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this chapter is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments. (42 U.S.C. 4762)

General Administrative Provisions

Sec. 503. (a) Unless otherwise specifically provided, the Office shall administer this Act.

(b) The Office shall furnish such advice and assistance to State and local governments as may be necessary to carry out the purposes of this Act.

(c) In the performance of, and with respect to, the functions, powers, and duties vested in it by this Act, the Office may—

(1) issue such standards and regulations as may be necessary to carry out the purposes of this Act;

(2) consent to the modification of any contract entered into pursuant to this Act, such consent being subject to any specific limitations of this Act;

(3) include in any contract made pursuant to this Act such covenants, conditions, or provisions as it deems necessary to assure that the purposes of this Act will be achieved; and

(4) utilize the services and facilities of any Federal agency, any State or local government, and any other public or nonprofit agency or institution, on a reimbursable basis or otherwise, in accordance with agreements between the Office and the head thereof.

(d) In the performance of, and with respect to the functions, powers, and duties vested in it by this Act, the Office—

(1) may collect information from time to time with respect to State and local government training programs and personnel administration improvement programs and projects under this Act, and make such information available to interest groups, organizations, or agencies, public or private;

(2) may conduct such research and make such evaluation as needed for the efficient administration of this Act;

(3) shall include in its annual report a report of the administration of this Act; and

(4) shall make such arrangements as may be necessary to avoid duplication of programs providing

for training and to insure consistent administration of the related Federal training activities, with particular regard to title I of the Higher Education Act of 1965.

(e) The provisions of this Act are not a limitation on existing authorities under other statues but are in addition to any such authorities, unless otherwise specifically provided in this Act. (42 U.S.C. 4763)

Reporting Requirements

Sec. 504. (a) A State or local government office designated to administer a program or project under this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal funds and the operation of the approved program or project as the Office may require, and shall keep and make available such records as may be required by the Office for the verification of such reports and evaluations.

(b) An organization which receives a training grant under section 304 of this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal grant funds and the operation of the training program as the Office may be required by the Office for the verification of such reports and evaluations. (42 U.S.C. 4764)

Review and Audit

Sec. 505. The Office, the head of the Federal agency concerned, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received. (42 U.S.C. 4765)

Distribution of Grants

Sec. 506. (a) The Office shall allocate 20 per centum of total amount available for grants under this Act in such manner as will most nearly provide an equitable distribution of the grants among States and between State and local governments, taking into consideration such factors as the size of the population, number of employees affected, the urgency of the programs or projects, the need for funds to carry out the purposes of this Act, and the potential of the governmental jurisdictions concerned to use the funds most effectively.

(b)(1) The Office shall allocate 80 per centum of the total amount available for grants under this Act among the States on a weighted formula taking into consideration such factors as the size of population and the number of State and local government employees affected.

(2) The amount allocated for each State under paragraph (1) of this subsection shall be further allocated by the Office to meet the needs of both the State government and the local governments within the State on a weighted formula taking into consideration such factors as the number of State and local government employees and the amount of State and local government expenditures. The Office shall determine the categories of employees and expenditures to be included or excluded, as the case may be, in the number of employees and amount of expenditures. The minimum allocation for meeting needs of local governments in each State (other than the District of Columbia) shall be 50 per centum of the

amount allocated for the State under paragraph (1) of this subsection.

(3) The amount of any allocation under paragraph (2) of this subsection which the Office determines, on the basis of information available to it, will not be used to meet needs for which allocated shall be available for use to meet the needs of the State governments or local governments in that State, as the case may be, on such date or dates as the Office may fix.

(4) The amount allocated for any State under paragraph (1) of this subsection which the Office determines, on the basis of information available to it, will not be used shall be available for reallocation by the Office from time to time, on such date or dates as it may fix, among other States with respect to which such a determination has not been made, in accordance with the formula set forth in paragraph (1) of this subsection, but with such amount for any of such other States being reduced to the extent it exceeds the sum the Office estimates said State needs and will be able to use; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced.

(5) For the purposes of this subsection, "State" means the several States of the United States and the District of Columbia.

(c) Notwithstanding the other provisions of this section, the total of the payments from the appropriations for any fiscal year under this Act made with respect to programs or projects in any one State may not exceed an amount equal to 12 1/2 per centum of such appropriation. (42 U.S.C. 4766)

Termination of Grants

Sec. 507. Whenever the Office, after giving reasonable notice and opportunity for hearing to the State of general local government concerned, finds—

(1) that a program or project has been so changed that it no longer complies with the provisions of this Act; or

(2) that in the operation of the program of project there is a failure to comply substantially with any such provision;

the Office shall notify the State or general local government of its findings and no further payments may be made to such government by the Office until it is satisfied that such noncompliance has been, or will promptly be, corrected. However, the Office may authorize the continuance of payments to those projects approved under this Act which are not involved in the noncompliance. (42 U.S.C. 4767)

Advisory Committees

Sec. 508. (a) The Office may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such advisory committee or committees as it may determine to be necessary to facilitate the administration of this Act.

(b) Members of advisory committees who are not regular full-time employees of the United States, while serving on the business of the committees including travel time may receive compensation at rates not exceeding the daily rate for GS-18; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently. (42 U.S.C. 4768)

Appropriation Authorization

Sec. 509. There are authorized to be appropriated, without fiscal year limitation, such sums as may be necessary to carry out the programs authorized by this Act. (42 U.S.C. 4769)

Revolving Fund

Sec. 510. Section 1304(e) of title 5, United States Code (relating to the revolving fund of the Civil Service Office), is amended—

(1) by striking out "of $4,000,000" in paragraph (1); and (2) by inserting", which appropriations are hereby authorized" immediately before the semicolon at the end of paragraph (2)(A). (5 U.S.C. 1304(e)(2)(A))

Limitations on Availability of Funds for Cost Sharing

Sec. 511. Federal funds made available to State or local governments under other programs may not be used by the State or local government for cost-sharing purposes under grant provisions of this Act, except that Federal funds of a program financed wholly by Federal funds may be used to pay a pro-rata share of such cost sharing. State or local government funds used for cost sharing on other federally assisted programs may not be used for cost sharing under grant provisions of this Act. (42 U.S.C. 4770)

Method of Payment

Sec. 512. Payments under this Act may be made in installments, and in advance or by way of reimbursement, as the Office may determine, with necessary adjustments on account of overpayments or underpayments. (42 U.S.C. 4771)

Effective Date of Grant Provisions

Sec. 513. Grant provisions of this Act shall become effective one hundred and eighty days following January 5, 1971. (42 U.S.C. 4772)

Cooperative Law Enforcement

- **Act of August 10, 1971 (P.L. 92-82, 85 Stat. 303; 16 U.S.C. 551a)**

The Secretary of Agriculture, in connection with the administration and regulation of the use and occupancy of the National Forests and National Grasslands, is authorized to cooperate with any State or political subdivision thereof, on lands which are within or part of any unit of the National Forest System, in the enforcement or supervision of the laws or ordinances of a State or subdivision thereof. Such cooperation may include the reimbursement of a State or its subdivision for expenditures incurred in connection with activities on National Forest System lands. This Act shall not deprive any State or political subdivision thereof of its right to exercise civil and criminal jurisdiction, within or on lands which are a part of the National Forest System. (16 U.S.C. 551a)

Wild Horses and Burros Protection Act

- **Act of December 15, 1971 (P.L. 92-195, 85 Stat. 649, as amended; 16 U.S.C. 1331-1338, 1338a, 1339, 1340)**

Purpose and Declaration

Sec. 1. Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros will be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands. (16 U.S.C. 1331)

Definitions

Sec. 2. As used in this Act—

(a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with the public lands administered by him through the Forest Service;

(b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros on public lands of the United States;

(c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

(d) "herd" means one or more stallions and his mares; and

(e) "public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service.

(f) "excess animals" means wild free-roaming horses or burros—(1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area. (16 U.S.C. 1332)

Powers and Duties of the Secretary

Sec. 3. (a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with Advisory Board established in section 7 of this Act deems such

action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 7 of this Act. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.

(b)(1) The Secretary shall maintain a current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels). In making such determinations the Secretary shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, such individuals independent of Federal and State government as have been recommended by the National Academy of Sciences, and such other individuals whom he determines have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

(2) Where the Secretary determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976; (iii) information contained in court ordered environmental impact statements as defined in section 2 of the Public Range Lands Improvement Act of 1978; and (iv) such additional information as becomes available to him from time to time, including that information developed in the research study mandated by this section, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation:

(A) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

(B) The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be humanely captured and

removed for private maintenance and care for which he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling); *Provided,* That not more than four animals may be adopted per year by any individual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party; and

(C) The Secretary shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost efficient manner possible.

(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a research design panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Representatives on or before January 1, 1983.

(c) Where excess animals have been transferred to a qualified individual for adoption and private maintenance pursuant to this Act and the Secretary determines that such individual has provided humane conditions, treatment and care for such animal or animals for a period of one year, the Secretary is authorized upon application by the transferee to grant title to not more than four animals to the transferee at the end of the one-year period.

(d) Wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this Act—

(1) upon passage of title pursuant to subsection (c) except for the limitation of subsection (c)(1) of this section; or

(2) if they have been transferred for private maintenance or adoption pursuant to this Act and die of natural causes before passage of title; or

(3) upon destruction by the Secretary or his designee pursuant to subsection (b) of this section; or

(4) if they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 4 and disposal is authorized by the Secretary or his designee; or

(5) upon destruction or death for purposes of or incident to the program authorized in section 3 of this Act; *Provided,* That no wild free-roaming horse or burro or its remains may be sold or transferred for consideration for processing into commercial products. (16 U.S.C. 1333)

Private Lands

Sec. 4. If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of

the Secretary, who shall arrange to have the animals removed. In no event shall wild free-roaming horses and burros be destroyed except by the agents of the Secretary. Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands. Any individuals who maintain such wild free-roaming horses or burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained. (16 U.S.C. 1334)

Recovery Rights

Sec. 5. A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found. (16 U.S.C. 1335)

Cooperative Agreements and Regulations

Sec. 6. The Secretary is authorized to enter into cooperative agreements with other landowners and with the State and local governmental agencies and may issue such regulations as he deems necessary for the furtherance of the purposes of this Act. (16 U.S.C. 1336)

Joint Advisory Board

Sec. 7. The Secretary of the Interior and the Secretary of Agriculture are authorized and directed to appoint a joint advisory board of not more than nine members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection. They shall select as advisers persons who are not employees of the Federal or State Governments and whom they deem to have special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management. Members of the board shall not receive reimbursement except for travel and other expenditures necessary in connection with their services. (16 U.S.C. 1337)

Provisions for the Protection of Animals on Public Lands

Sec. 8. (a) Any person who—

(1) willfully removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary, or

(2) converts a wild free-roaming horse or burro to private use, without authority from the Secretary, or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(5) sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of this Act, or the remains thereof, or

(6) willfully violates a regulation issued pursuant to this Act, shall be subject to a fine of not more than $2,000 or imprisonment for not more than one year, or both. Any person so charged with such violation by the Secretary may be tried and sentenced by any United States commissioner or magistrate

designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, title 18, United States Code.

(b) Any employee designated by the Secretary of the Interior or the Secretary of Agriculture shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this Act or any regulation made pursuant thereto, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction, and shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations made pursuant thereto. Any judge of a court established under the laws of the United States, or any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. (16 U.S.C. 1338)

Transportation of Captured Animals

Sec. 9. In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary. (16 U.S.C. 1338a)

Limitation of Authority

Sec. 10. Nothing in this Act shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist. (16 U.S.C. 1339)

Joint Report to Congress

Sec. 11. After the expiration of thirty calendar months following the date of enactment of this Act, and every twenty-four calendar months thereafter, the Secretaries of the Interior and Agriculture will submit to Congress a joint report on the administration of this Act, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as he might deem appropriate.

The Secretary of the Interior and the Secretary of Agriculture shall consult with respect to the implementation and enforcement of this Act and to the maximum feasible extent coordinate the activities of their respective departments and in the implementation and enforcement of this Act. The Secretaries are authorized and directed to undertake those studies of the habits of wild free-roaming horses and burros they may deem necessary in order to carry out the provisions of this Act. (16 U.S.C. 1340)

Volunteers in the National Forests Act of 1972

- **Act of May 18, 1972 (P.L. 92-300, 88 Stat. 147, as amended; 16 U.S.C. 558a(note), 558a-558d)**

Sec. 1. The Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized to recruit, train, and accept without regard to the civil service classification laws, rules, or regulations the services of individuals without compensation as volunteers for or in aid of interpretive functions, visitor services, conservation measures and development, or other activities in and related to areas administered by the Secretary through the Forest Service. In carrying out this section, the Secretary shall consider referrals of prospective volunteers made by ACTION. (16 U.S.C. 558a)

Sec. 2. The Secretary is authorized to provide for incidental expenses, such as transportation, uniforms, lodging, and subsistence. (16 U.S.C. 558b)

Sec. 3. (a) Except as otherwise provided in this section, a volunteer shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(b) For the purpose of the tort claim provisions of title 28 of the United States Code, a volunteer under this Act shall be considered a Federal employee.

(c) For the purposes of subchapter I of chapter 81 of title 5 of the United States Code, relating to compensation to Federal employees for work injuries, volunteers under this Act shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply.

(d) For the purposes of claims relating to damage to, or loss of, personal property of a volunteer incident to volunteer service, a volunteer under sections 1-4 of this Act shall be considered a Federal employee and the provisions of section 3721 of title 31 shall apply. (16 U.S.C. 558c)

Sec. 4. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. (16 U.S.C. 558d)

Sec. 5. This Act may be cited as the "Volunteers in the National Forests Act of 1972{"}. (16 U.S.C. 558a(note))

Note—The Act of June 5, 1978, amended the original act to remove the $100,000 authorization limit, effective October 1, 1978.

Rural Development Act of 1972

- **Act of August 30, 1972 (P.L. 92-419, 86 Stat. 657; 7 U.S.C. 2669)**

Pilot Projects for the Production and Marketing of Industrial Hydrocarbons and alcohols from Agricultural Commodities and Forest Products

Sec. 509. (a) The Secretary is authorized and directed to formulate and carry out a pilot program for the production and marketing of industrial hydrocarbons derived from agricultural commodities and forest products for the purpose of stabilizing and expanding the market for such commodities and products and expanding the Nation's supply of industrial hydrocarbons.

(b) The Secretary shall provide for four pilot projects for the production of industrial hydrocarbons and alcohols from agricultural commodities and forest products by guaranteeing loans, not to exceed $15,000,000 per each such project, to public, private, or cooperative organizations organized for profit or nonprofit, or to individuals for a term not to exceed twenty years at a rate of interest agreed upon by the borrower and lender.

(c) No loan may be guaranteed under this section unless (1) research indicates the total energy content of the products and byproducts to be manufactured by the loan applicant will exceed the total energy input from fossil fuels used in the manufacture of such products and byproducts, and (2) such other conditions as the Secretary deems appropriate to achieve the purposes of this section are met.

(d) In order to assure that the recipients of loans made under this section have a dependable supply of agricultural commodities at a stable price for use in the pilot projects provided for in this section, the Secretary is authorized to enter into long-term contracts, not exceeding five years, with the recipients of such loans. Such contracts shall guarantee the recipients of such loans a specified quantity of agricultural commodities annually at mutually agreed upon prices, but the agricultural commodities shall not be sold under any such contracts at less than the price support level prescribed for the commodity concerned unless the commodities are out of condition, unstorable, or sample-grade or lower, as prescribed in Department of Agriculture standards.

(e) The Secretary shall supply from Commodity Credit Corporation stocks or, to such extent or in such amounts as are provided in appropriation Acts, purchase such quantities of agricultural commodities as may be necessary to comply with the terms of agreements entered into under this section.

(f) The provisions of this section shall be carried out through the Commodity Credit Corporation. (7 U.S.C. 2669)

Note—Title IV was repealed by the Cooperative Forestry Assistance Act of 1978 (92 Stat. 365). Section 509 is an amendment to The Rural Development Act by Sec. 1420 of Title XIV of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, P.L. 95-113 (91 Stat. 998).

Supplemental National Forest Reforestation Fund

- **Act of September 18, 1972 (P.L. 92-421, 86 Stat. 678; 16 U.S.C. 576c, 576d)**

Sec. 1. Notwithstanding any other provision of law, the Secretary of Agriculture shall establish a "Supplemental National Forest Reforestation Fund" and transfer to that fund beginning with the fiscal year commencing July 1, 1972, and ending on June 30, 1987, such amounts as may be appropriated therefor. There is hereby authorized to be appropriated for such purpose for each of the fiscal years during such period the sum of $65,000,000. (16 U.S.C. 576c)

Sec. 2. Moneys transferred to the National Forest Reforestation Fund under the provisions of this Act shall be available to the Secretary of Agriculture, for expenditure upon appropriation, for the purpose of supplementing programs of tree planting and seeding of national forest lands determined by the Secretary to be in need of reforestation. Such moneys shall be available until expended, and shall be provided without prejudice to appropriations or funds available from other sources for the same purposes, including those available, pursuant to section 3 of the Act of June 9, 1930 (46 Stat. 527, 16 U.S.C. 576b). (16 U.S.C. 576d)

Note—The requirement to make an annual report to Congress on the use of funds for reforestation (Section 3, 86 Stat 678; 16 U.S.C. 576e) has been repealed by Sec. 102(b) of the Congressional Reports Elimination Act of 1980 (94 Stat. 2237; 7 U.S.C. 1766b).

Federal Advisory Committee Act of 1972

- **Act of October 6, 1972 (P.L. 92-463, 86 Stat. 770; 5 U.S.C. Appendix 2)**

Findings and Purposes

Sec. 2. (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the federal government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the federal government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

Applicability

Sec. 4. (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

* * * *

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State of local officials or agencies.

Responsibilities of the President

Sec. 6.

* * * *

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a

reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

Responsibilities of Agency Heads

Sec. 8. (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

Establishment and Purpose of Advisory Committees

Sec. 9. (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the federal government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with—

(1) the Director, in the case of Presidential advisory committees, or

(2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purpose;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed. A copy of any such charter shall also be furnished to the Library of Congress.

Advisory Committee Procedures

Sec. 10. (a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United State Code.

(e) There shall be designated an officer or employee of the federal government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such

meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the federal government and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

Fiscal and Administrative Provisions

Sec. 12. (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

Termination of Advisory Committees

Sec. 14. (a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the federal government, such advisory committee is renewed by the President or such officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the federal government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President

or any officer of the federal government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

Real Property Quiet Title Actions

- **Act of October 25, 1972 (P.L. 92-562, 86 Stat. 1176 as amended; 28 U.S.C. 2409a)**

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 7424, 7425, and 7426), or section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use

or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal Claims to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term "tide or submerged lands" means "lands beneath navigable waters" as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

Agriculture and Consumer Protection Act of 1973 (Rural Environmental Conservation Program)

- **Act of August 10, 1973 (P.L. 93-86, 87 Stat. 221, as amended; 16 U.S.C. 1503, 1504, 1510)**

Sec. 1003. (a) Conservation Plans—Approved Conservation Plans of eligible landowners and operators developed in cooperation with the soil and water conservation district or the State forester or other appropriate State officials in which their lands are situated shall form a basis for contracts under this chapter. Under the contract the landowner or operator shall agree—

(1) to effectuate the plan for his farm, ranch, forest, wetland, or other land substantially in accordance with the schedule outlined therein;

(2) to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants or grants received thereunder upon his violation of the contract at any stage during the time he has control of the land if the Secretary, after considering the recommendations of the Soil and Water Conservation District Board, or the State forester or other appropriate official in a contract entered into under the provisions of section 1509 of this title, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds or accept such payment adjustments as the Secretary may deem appropriate if he determines that the violation by the owner or operator does not warrant termination of the contract;

(3) upon transfer of his right and interest in the farm, ranch, forest, wetland, or other land during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States all payments or grants received thereunder unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract;

(4) not to adopt any practice specified by the Secretary in the contract as a practice which would tend to defeat the purposes of the contract;

(5) to comply with all applicable Federal, State, or local laws, and regulations, including those governing environmental protection and noxious weed abatement; and

(6) to such additional provisions as the Secretary determines are desirable and includes in the contract to effectuate the purpose of the program or to facilitate the practical administration of the program; *Provided,* That all contracts entered into to effectuate the purposes of the Water Bank Act for wetlands shall contain the further agreement of the owner or operator that he shall not drain, burn, fill, or otherwise destroy the wetland character of such areas, nor use such areas for agricultural purposes: *And provided further,* That contracts entered into for the protection of wetlands to effectuate the purposes of the Water Bank Act may include wetlands covered by Federal or State government easement which permits agricultural use, together with such adjacent areas as determined desirable by the Secretary.

(b) Payments for Land Used for Conservation Purposes—In return for such agreement by the

landowner or operator the Secretary shall agree to make payments in appropriate circumstances for the use of land maintained for conservation purposes as set forth in this chapter, and share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost-sharing is appropriate and in the public interest. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the physical installation of conservation practices and measures under the contract, but, in the case of a contract not entered into under an advertising and bid procedure under the provisions of section 1509(d) of this title, not less than 50 per centum or more than 75 per centum of the actual costs incurred by the owner or operator.

(c) Termination of Contracts.—The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other similar conservation, land use, or commodity programs administered by the Secretary. (16 U.S.C. 1503)

Making Conservation Materials Available

Sec. 1004. The Secretary is authorized to make available to eligible owners and operators conservation materials including seeds, seed inoculants, soil conditioning materials, trees, plants, and, if he determines it is appropriate to the purposes of this chapter, fertilizer and liming materials. (16 U.S.C. 1504)

Sec. 1009. Repealed (see note).

Sec. 1010. . . . authorized to be appropriated annually such sums as may be necessary to carry out the provisions of this title. The programs, contracts, and authority authorized under this title shall be in addition to, and not in substitution for, other programs in such areas authorized by this or any other title or Act, and shall not expire with the termination of any other title or Act. (16 U.S.C. 1510)

Note—Sec. 1009 and the proviso to Sec. 1010 were repealed by the Cooperative Forestry Assistance Act of 1978 (92 Stat. 365). The authority for the Forestry Incentives Program is found in section 4 of the Cooperative Forestry Assistance Act of 1978.

Rehabilitation Act of 1973
Title V, Section 505

- **Act of September 26, 1973 (P.L. 93-112, Title V, 87 Stat. 390, as amended; 29 U.S.C. 791, 793-794, 794a, 794b)**

Note—Section numbers refer to U.S. Code sections.

Employment of Individuals with Disabilities

Sec. 791. (a) Interagency Committee on Employees who are Individuals with Disabilities; establishment; membership; co-chairmen; availability of other Committee resources; purpose and functions.—There is established within the Federal Government an Interagency Committee on Employees who are Individuals with Disabilities (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman[1] of the Equal Employment Opportunity Commission (hereafter in this section referred to as the "Commission"), the Director of the Office of Personnel Management, the Secretary of Veterans Affairs[2], the Secretary of Labor, the Secretary of Education, and the Secretary of Health and Human Services. Either the Director of the Office of Personnel Management and the Chairman of the Commission shall serve as co-chairpersons of the Committee or the Director or Chairman shall serve as the sole chairperson of the Committee, as the Director and Chairman jointly determine, from time to time, to be appropriate. The resources of the President's Committees on Employment of People With Disabilities and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of individuals with disabilities, and to review, on a periodic basis, in cooperation with the Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with disabilities, by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Federal agencies; affirmative action program plans.—Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of individuals with disabilities in such department, agency, or instrumentality. Such plan shall include a description

of the extent to which and methods whereby the special needs of employees who are individuals with disabilities are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities.

(c) State agencies; rehabilitated individuals, employment.—The Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for individuals with disabilities, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) Report to Congressional committees.—The Commission, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of individuals with disabilities by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the activities of the Commission under subsections (b) and (c) of this section.

(e) Federal work experience without pay; non-Federal status.—An individual who, as a part of an individualized written rehabilitation program under a State plan approved under this chapter, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f) Federal agency cooperation; special consideration for positions on President's Committee on Employment of People With Disabilities

(1) The Secretary of Labor and the Secretary of Education are authorized and directed to cooperate with the President's Committee on Employment of People With Disabilities in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of People With Disabilities, special consideration shall be given to qualified individuals with disabilities.

(g) Standards used in determining a violation of section.—The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans With Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through

504 and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

* * * *

Employment Under Federal Contracts

Sec. 793. (a) Amount of contracts or subcontracts; provisions for employment and advancement of qualified individuals with handicaps; regulations.—Any contract in excess of $10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities. The provisions of this section shall apply to any subcontract in excess of $10,000 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

(b) Administrative enforcement; complaints; investigations; departmental action.—If any individual with a disability believes any contractor has failed or refused to comply with the provisions of a contract with the United States, relating to employment of individuals with disabilities, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) Waiver by President; national interest special circumstances for waiver of particular agreements.—

(1) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination.

(2)(A) The Secretary of Labor may waive the requirements of the affirmative action clause required by regulations promulgated under subsection (a) of this section with respect to any of a prime contractor's or subcontractor's facilities that are found to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, if the Secretary of Labor also finds that such waiver will not interfere with or impede the effectuation of this chapter.

(B) Such waivers shall be considered only upon the request of the contractor or subcontractor. The Secretary of Labor shall promulgate regulations that set forth the standards used for granting such a waiver.

(d) Standards used in determining violation of section.—The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with

Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

(e) Avoidance of duplicative efforts and inconsistencies.—The Secretary shall develop procedures to ensure that administrative complaints filed under this section and under the Americans with Disabilities Act of 1990 (42 U.S.C.A. Sec. 12101 et seq.) are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this section and the Americans with Disabilities Act of 1990 (42 U.S.C.A. Sec. 12101 et seq.).

Nondiscrimination Under Federal Grants and Programs

Sec. 794. (a) Promulgation of rules and regulations.—No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined.—For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2891(12) of Title 20) system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers; exception.—Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section.—The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of section 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.

Remedies and Attorney Fees

Sec. 794a. (a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of the title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.

(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C.A. Sec. 2000d et seq.) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

(b) In any action or proceeding to enforce or charge a violation of a provision of this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Removal of Architectural, Transportation, or Communication Barriers.

Sec. 794b. (a) Technical and financial assistance.—The Secretary may provide directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, technical assistance—

(1) to persons operating community rehabilitation programs; and

(2) with the concurrence of the Access Board established by section 792 of this title, to any public or nonprofit agency, institution, or organization;

for the purpose of assisting such persons or entities in removing architectural, transportation, or communication barriers. Any concurrence of the Access Board under this paragraph shall reflect its consideration of the cost studies carried out by States under section 792(c)(1) of this title.

(b) Compensation of experts or consultants.—Any such experts or consultants, while serving pursuant to such contracts, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding

the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of Title 5, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently.

(c) Conditions for assistance.—The Secretary, with the concurrence of the Access Board and the President, may provide, directly or by contract, financial assistance to any public or nonprofit agency, institution, or organization for the purpose of removing architectural, transportation, and communication barriers. No assistance may be provided under this paragraph until a study demonstrating the need for such assistance has been conducted and submitted under section 792(h)(1) of this title.

(d) Authorization of appropriations.—In order to carry out this section, there are authorized to be appropriated such sums as may be necessary.

Endangered Species Act of 1973

- **Act of December 28, 1973 (P.L. 93-205, 87 Stat. 884, as amended; 16 U.S.C. 1531-1536, 1538-1540)**

This Act may be cited as the "Endangered Species Act of 1973."

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Findings, Purposes, and Policy

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) Purposes.—The purposes of this Act are to provide a means whereby the ecosystems upon which

endangered species and threatened species may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy.—

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered and threatened species and shall use their authorities in furtherance of the purpose of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act. (16 U.S.C. 1531).

Definitions

Sec. 3. For the purposes of this Act—

(1) The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibition of commodities by museums or similar cultural or historical organizations.

(3) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term "critical habitat" for a threatened or endangered species means—

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as

set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming risk to man.

(7) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term "foreign commerce" includes, among other things, any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any countries outside the United States.

(10) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) Repealed. P.L. 97-304, Section 4(b), Oct. 13, 1982, 96 Stat. 1420.

(12) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action.

(13) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; of any foreign government, any state, municipality, or political subdivision of a state; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

(16) The term "species" includes any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement which interbreeds when mature.

(17) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) The term "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term "United States", when used in a geographical context, includes all States. (16 U.S.C. 1532)

Determination of Endangered Species and Threatened Species

Sec. 4. (a) General.—

(1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habit or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or man-made factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3) The Secretary, by regulation promulgated in accordance with

subsection (b) and to maximum extent prudent and determinable—

(A) shall concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

(b) Basis for Determinations.—

(1)(A) The Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been—

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or

(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or remove a species from, either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this sub-paragraph in the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petition action is warranted, but that—

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this Act are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C)(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 to prevent a significant risk to the well being of any such species.

(D)(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habit designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of Title 5 U.S.C. (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this Act.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in

which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(ii), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

(B)(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an

endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that—

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of Title 5 U.S.C. shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur. Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

Note—For listed species, see 50 C.F.R., Part 17.

(c) Lists.—

(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat

within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b) of this section.

(2) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.

(d) Protective Regulations.—Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a) (1) of this title, in the case of fish or wildlife, or section 9(a) (2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by the State.

(e) Similarity of Appearance Cases.—The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

(f) Recovery Plans.—

(1) The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable—

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan—

(i) a description of such site-specific management actions as

may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

(g) Monitoring.—

(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this chapter are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c) of this section.

(2) The Secretary shall make prompt use of the authority under paragraph 7 of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(h) The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(i) If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this

section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition. (16 U.S.C. 1533)

Land Acquisition

Sec. 5. (a) Program.—The Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to section 1533 of this title. To carry out such a program, the appropriate Secretary—

(1) shall utilize the land and acquisition and other authority under the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate; and

(2) is authorized to acquire by purchase, donation, or otherwise, lands, waters, or interest therein, and such authority shall be in addition to any other land acquisition authority vested in him.

(b) Acquisition.—Funds made available pursuant to the Land and Water Conservation Fund Act of 1965, as amended, may be used for the purpose of acquiring lands, waters, or interests therein under subsection (a) of this section. (16 U.S.C. 1534)

Cooperation with the States

Sec. 6. (a) General.—In carrying out the program authorized by this chapter, the Secretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

(b) Management Agreements.—The Secretary may enter into agreements with any state for the administration and management of any area established for the conservation of endangered species or threatened species. Any revenues derived from the administration of such areas under these agreements shall be subject to the provisions of section 715s of this title.

(c) Cooperative Agreements.—

(1) In furtherance of the purpose of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species and

threatened species, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of fish or wildlife determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this Act, for all resident species of fish or wildlife in the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife;

(D) the State agency is authorized to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered species or threatened species of fish or wildlife; and

(E) provision is made for public participation in designating resident species of fish or wildlife as endangered or threatened: or

That under the State program—

(i) the requirements set forth in subparagraphs (C), (D), and (E) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 1533(d) of this title or section 1538(a)(1) of this title with respect to the taking of any resident endangered or threatened species.

(2) In furtherance of the purposes of this chapter, the Secretary is authorized to enter into a cooperative agreement in accordance with this section with any State which establishes and maintains an adequate and active program for the conservation of endangered species and threatened species of plants. Within one hundred and twenty days after the Secretary receives a certified copy of such a proposed State program, he shall make a determination whether such program is in accordance with this chapter. Unless he determines, pursuant to this paragraph, that the State program is not in accordance with this chapter, he shall enter into a cooperative agreement with the State for the purpose of assisting in implementation of the State program. In order for a State program to be deemed an adequate and active program for the conservation of endangered species of plants and threatened species of plants, the Secretary must find, and annually thereafter reconfirm such finding, that under the State program—

(A) authority resides in the State agency to conserve resident species of plants determined by the State agency or the Secretary to be endangered or threatened;

(B) the State agency has established acceptable conservation programs, consistent with the purposes and policies of this chapter, for all resident species of plants in

the State which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(C) the State agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of plans; and

(D) provision is made for public participation in designating resident species of plants as endangered or threatened; or

That under the State program—

(i) the requirements set forth in subparagraphs (C) and (D) of this paragraph are complied with, and

(ii) plans are included under which immediate attention will be given to those resident species of plants which are determined by the Secretary or the State agency to be endangered or threatened and which the Secretary and the State agency agree are most urgently in need of conservation programs; except that a cooperative agreement entered into with a State whose program is deemed adequate and active pursuant to clause (i) and this clause shall not affect the applicability of prohibitions set forth in or authorized pursuant to section 1533(d) or section 1538(a)(1) of this title with respect to the taking of any resident endangered or threatened species.

(d) Allocation of Funds.—

(1) The Secretary is authorized to provide financial assistance to any State, through its respective State agency, which has entered into a cooperative agreement pursuant to subsection (c) of this section to assist in development of programs for the conservation of endangered and threatened species or to assist in monitoring the status of candidate species pursuant to subparagraph (C) of section 4(b)(3) of this Act and recovered species pursuant to section 4(g) of this Act. The Secretary shall make an allocation of each annual appropriation made in accordance with the provisions of subsection (i) of this section to such States based on consideration of—

(A) the international commitments of the United States to protect endangered species or threatened species;

(B) the readiness of a State to proceed with a conservation program consistent with the objectives and purposes of this Act;

(C) the number of endangered species and threatened species within a State;

(D) the potential for restoring endangered species and threatened species within a State;

(E) the relative urgency to initiate a program to restore and protect an endangered species or threatened species in terms of survival of the species.

(F) the importance of monitoring the status of candidate species within a State to prevent a significant risk to the well being of any such species; and

(G) the importance of monitoring the status of recovered species within a State to assure that such species do not return to the point at which the measures provided pursuant to this Act are again necessary. So much of the annual appropriation made in accordance with provisions of subsection (i) of this section allocated for obligation to any State for any fiscal year as remains unobligated at the close thereof is authorized to be made available to that State until the close of the succeeding fiscal year. Any amount allocated to any State which is unobligated at the end of the period during which it is available for expenditure is authorized to be made available for expenditure by

the Secretary in conducting programs under this section.

(2) Such cooperative agreements shall provide for—

(A) the actions to be taken by the Secretary and the States;

(B) the benefits that are expected to be derived in connection with the conservation of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States; except that—

(i) the Federal share of such program costs shall not exceed 66 2/3 per centum of the estimated program cost stated in the agreement; and

(ii) the Federal share may be increased to 75 per centum whenever two or more States having a common interest in one or more endangered or threatened species, the conservation of which may be enhanced by cooperation of such States, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of money or real property, the value of which will be determined by the Secretary, whose decision shall be final.

(e) Review of State Programs. Any action taken by the Secretary under this section shall be subject to his periodic review at no greater than annual intervals.

(f) Conflicts Between Federal and State Laws.—Any State law or regulation which applies with respect to the importation or exportation of, or interstate or foreign commerce in, endangered species or threatened species is void to the extent that it may effectively (1) permit what is prohibited by this chapter or by any regulation which implements this chapter, or (2) prohibit what is authorized pursuant to an exemption permit provided for in this chapter or in any regulation which implements this chapter. This chapter shall not otherwise be construed to void any State law or regulation which is intended to conserve migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife. Any State law or regulation respecting the taking of an endangered species or threatened species may be more restrictive than the exemptions or permits provided for in this chapter or in any regulation which implements this chapter but not less restrictive than the prohibitions so defined.

(g) Transition.—

(1) For purposes of this subsection, the term "establishment period" means, with respect to any State, the period beginning on December 28, 1973 and ending on whichever of the following dates first occurs: (A) the date of the close of the 120-day period following the adjournment of the first regular session of the legislature of such State which commences after December 28, 1973, or (B) the date of the close of the 15-month period following December 28, 1973.

(2) The prohibitions set forth in or authorized pursuant to sections 1533(d) and 1538(a)(1)(B) of this title shall not apply with respect to the taking of any resident endangered species or threatened species (other than species listed in Appendix I to the Convention or otherwise specifically covered by any other treaty or Federal law) within the State—

(A) which is then a party to a cooperative agreement with the Secretary pursuant to subsection (c) of this section (except to the extent that the taking of any such species is contrary to the law of such State); or

(B) except for any time within the establishment period when—

(i) the Secretary applies such prohibition to such species at the request of the State, or

(ii) the Secretary applies such prohibition after he finds, and publishes his finding, that an emergency exists posing a significant risk to the well-being of such species and that the prohibition must be applied to protect such species. The Secretary's finding and publication may be made without regard to the public hearing or comment provisions of section 553 of Title 5 or any other provision of this chapter; but such prohibition shall expire 90 days after the date of its imposition unless the Secretary further extends such prohibition by publishing notice and a statement of justification of such extension.

(h) Regulations. The Secretary is authorized to promulgate such regulations as may be appropriate to carry out the provisions of this section relating to financial assistance to States.

(i) Appropriations.

(1) To carry out the provisions of this section for fiscal years after September 30, 1988, there shall be deposited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an amount equal to 5 percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 669b of this title, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section. (16 U.S.C. 1535)

Interagency Cooperation

Sec. 7. (a) Federal Agency Actions and Consultations.—

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this title.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and

in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary of any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 1533 of this title or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d) of this section.

(b) Opinion of Secretary.—

(1)(A) Consultation under subsection (a)(2) with respect to any agency shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.

(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)—

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth—

(I) the reasons why a longer period is required.

(II) the information that is required to complete the consultation, and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion issued by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies

such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2), the Secretary concludes that—

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection; and

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection;

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of Title 16;

the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that—

(i) specifies the impact of such incidental taking on the species.

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact; and

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of Title 16 with regard to such taking; and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clause (ii).

(c) Biological Assessment.—

(1) To facilitate compliance with the requirements of subsection (a)(2) of this section, each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on November 10, 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such period as is mutually agreed to by the Secretary and such agency) except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the

supervision of the appropriate Federal agency.

(d) Limitation on commitment of resources.—After initiation of consultation required under subsection (a)(2) of this section, the Federal agency and the permit of license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2) of this section.

(e)(1) There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this section for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) of this section shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of Title 5.

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act (5 U.S.C. 552a), the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(g) of this subsection, be eligible to cast a vote on behalf of any member.

(f) Not later than 90 days after November 10, 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include, but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g)(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2) of this section, the Secretary's opinion under subsection (b) of this section indicates that the agency action would violate subsection (a)(2) of this section. An application for an exemption shall be considered initially by the Secretary in the manner provided for in determination under subsection (h) of this section after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the

completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) of this section in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2) of this section;

(ii) conducted any biological assessment required by subsection (c) of this section; and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of Title 5.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A)(i), (ii), and (iii) he shall, in consultation the Members of the Committee, hold a hearing on the application for exemption in accordance with section 554, 555, and 556 (other than subsection (b)(1) and (2) thereof) of Title 5 and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and

the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section.

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of Title 5.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) all meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h)(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5) of this section. The committee shall grant an exemption from the requirements of subsection (a)(2) of this section for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4) of this section on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of Title 5.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect

to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) of this section with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) of this section or was not identified in any biological assessment conducted under subsection (c) of this section, and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) Notwithstanding any other provision of this chapter, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided,* That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(*l*)(1) If the Committee determines under subsection (h) of this section that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) of this section which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs

incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) The 60-day notice requirement of section 1540(g) of this title shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) Any person, as defined by section 1532(13) of this title, may obtain judicial review, under chapter 7 of Title 5, of any decision of the Endangered Species committee under subsection (h) of this section in the United States Court of Appeals for—

(1) any circuit wherein the agency action concerned will be, or is being, carried out, or

(2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of Title 28. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement either such section—

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.), the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5171 or 5172), and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection. (16 U.S.C. 1536)

International Cooperation

Sec. 8. (a) Financial Assistance. As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691) or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) Encouragement of Foreign Programs. In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State, shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife and their habitat.

(c) Personnel. After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) Investigations. After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act. (16 U.S.C. 1537)

Sec. 8a. . . .

Prohibited Acts

Sec. 9. (a) General.—

(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this title, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this title and promulgated by the Secretary pursuant to authority provided by this chapter. (16 U.S.C. 1538)

(b) Species Held in Captivity or Controlled Environment. The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from the effective date of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on such effective date.

(c) Violation of Convention.—

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) Imports and Exports.—

(1) In general—It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, or plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, or plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish, wildlife, or plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) Restriction on consideration of value or amount of African elephant ivory imported or exported.—In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) Reports. It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) Designation of Ports.—

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which—

(A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and

(B) are imported for purposes of human or animal consumption

or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations. It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section. (16 U.S.C. 1538)

Exceptions

Sec. 10. (a) Permits.—

(1) The Secretary may permit under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1) (B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) What steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding of the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) Hardship Exemptions.—

(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this title to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that—

(A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary;

(B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and

(C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity. (16 U.S.C. 668cc-3)

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the

Secretary in his discretion as to time, area, or other factor of applicability.

(c) Notice and Review.—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) Permit and Exemption Policy.—The Secretary may grant exemptions under subsections (a) and (b) of this section only if he finds and publishes his findings in the Federal Register that—

(1) such exceptions were applied for in good faith,

(2) if granted and exercised will not operate to the disadvantage of such endangered species, and

(3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) Alaska Natives.—

(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or (B) any non-native permanent resident of an Alaskan native village; if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this

subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1373), and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) As used in this subsection—

(A) The term "pre-Act endangered species part" means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 1538(a)(1)(A) of this title.

(B) Any prohibition set forth in section 1538(a)(1)(E) or (F) of this title.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 1538(a) of this title which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8);

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this chapter. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 1533(f)(2)(A)(i) of this title.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 1538(a)(1)(F) of this title.

(B) In the event that this paragraph is held invalid, the validity of the remainder of this chapter, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 1538(a) of this title prior to July 12, 1976; or

(B) immunize any person from prosecution for any such act.

(8)(A)(i)[1] Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a six-month period beginning on October 7, 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on October 7, 1988.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for

sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.

(9) Repealed. P.L. 100-478, Title I, Sec. 1101(d), Oct. 7, 1988, 102 Stat. 2314.

(g) In connection with any action alleging a violation of section 1538 of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) Sections 1533(d) and 1538(a) and (c) of this title do not apply to any article which—

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 1533 of this title;

(C) has not been repaired or modified with any part of any such species on or after December 28, 1973; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before November 10, 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 1533 of this title;

(B) was forfeited to the United States before November 10, 1978, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 1540 of this title; and

(C) is in the custody of the United States on November 10, 1978; may, before the close of the one-year period beginning on November 10, 1978, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this chapter.

(i) Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter while such fish or wildlife remains in the control of the United States Customs Service.

(j) Experimental Populations.—

(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species if the Secretary determines that such release will further the conservation of such species.

(B) before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species. (16 U.S.C. 1539)

Penalties and Enforcement

Sec. 11. (a) Civil Penalties.—

(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this chapter,

or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 1538 of this title, may be assessed a civil penalty by the Secretary of not more than $25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this chapter may be assessed a civil penalty by the Secretary of not more than $12,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this chapter, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) Criminal Violations.—

(1) Any person who willfully commits an act which violates any provision of this Act, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 9 of this Act shall, upon conviction, be fined not more than

$50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this Act shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this Act or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(c) District Court Jurisdiction.—The several district courts of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. For the purpose of this Act, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) Rewards.—The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection. Whenever the balance of sums received under this section and section 3375(d) of this title, a penalties or fines, or from forfeitures of property, exceed $500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 1535(i) of this title.

(e) Enforcement.—

(1) The provisions of this Act and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may,

within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this Act may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this Act. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this Act, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this Act, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to section 11(b)(1) of this Act.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(f) Regulations.—The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections, and with

the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this Act. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen Suits.—

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf—

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this Act or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 6(g)(2)(B)(ii) of this Act, the prohibitions set forth in or authorized pursuant to section 4(d) or section 9(a)(1)(B) of this Act with respect to the taking of any resident endangered species or threatened species within any State.

The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section—

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section—

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 6(g)(2)(B)(ii) of this Act to determine whether any such emergency exists.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to

seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) Coordination With Other Laws.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country. (16 U.S.C. 1540)

Endangered Plants

Sec. 12. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress, within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation. (16 U.S.C. 1541)

* * * *

Conforming Amendments

Sec. 13. (a) Subsection 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system."

(b) Subsection 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and subsection 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)), are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species,".

(c) Section 7(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l—9(a)(1)) is amended by striking out: "Threatened Species. For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction." and inserting in lieu thereof the following: "Endangered Species and Threatened Species.

For lands, waters, or interests therein, the acquisition of which is authorized under section 5(a) of the Endangered Species Act of 1973, needed for the purpose of conserving endangered or threatened species of fish or wildlife or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962, as amended (76 Stat. 653, 16 U.S.C. 460k-1), is amended to read as follows: "The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered species or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section 3(1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973"; (16 U.S.C. 1362)

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973"; (16 U.S.C. 1371)

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered species or threatened species pursuant to the Endangered Species Act of 1973"; and (16 U.S.C. 1372)

(4) by striking out "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "such revisions of the endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973". (16 U.S.C. 1402)

(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91-135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973". (7 U.S.C. 136 note)

Repealer

Sec. 14. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa-668cc-6), is repealed.

Authorization of Appropriations

Sec. 15. Except as authorized in section 6 of this Act, there are authorized to be appropriated—

(A) not to exceed $4,000,000 for fiscal year 1974, not to exceed $8,000,000 for fiscal year 1975 and not to exceed $10,000,000 for fiscal year 1976, to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act; and

(B) not to exceed $2,000,000 for fiscal year 1974, $1,500,000 for fiscal year 1975 and not to exceed $2,000,000 for fiscal year 1976, to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act.

Effective Date

Sec. 16. This Act shall take effect on the date of its enactment.

Marine Mammal Protection Act of 1972

Sec. 17. Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972. (16 U.S.C. 1361(note))

[1]So in original No. cl.(11) has been enacted.

Disaster Relief Act of 1974

- **Act of May 22, 1974 (P.L. 93-288, 88 Stat. 143; 42 U.S.C. 5121, 5122, 5131, 5132, 5143-5150, 5156, 5170, 5170a, 5170b, 5171, 5171(note), 5173, 5175, 5185, 5187, 5188, 5201, 5202)**

Purpose and Declaration

Sec. 101. (a) The Congress hereby finds and declare that—

(1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and

(6) providing Federal assistance programs for both public and private losses sustained in disasters.

(7) Repealed P.L. 100-707, Title I, Sec. 103(a)(1), November 23, 1988, 102 Stat. 4689. (42 U.S.C. 5121)

Definitions

Sec. 102. As used in this Act—

(1) "Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) Major disaster—"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought), or, regardless of cause, any fire, flood, explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this

chapter, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

(6) "Local government" means (A) any county, city, village, town, district, or other political subdivision of any State, any Indian tribe or authorized tribal organization, or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

(7) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(8) Public facility.—"Public facility" means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(9) Private nonprofit facility—"Private nonprofit facility" means private nonprofit educational, utility, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled), other private nonprofit facilities which provide essential services of a governmental nature to the general public, and facilities on Indian reservations as defined by the President. (42 U.S.C. 5122)

* * * *

Disaster Preparedness Programs

Sec. 201. (a) The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies and includes—

(1) preparation of disaster preparedness plans for mitigation, waning, emergency operations, rehabilitation, and recovery;

(2) training and exercises;

(3) postdisaster critiques and evaluations;

(4) annual review of programs;

(5) coordination of Federal, State, and local preparedness programs;

(6) application of science and technology;

(7) research.

(b) The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals,

businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State $250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall—

(1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments, and

(2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards; except that no such grant shall exceed $50,000 per annum to any State. (42 U.S.C. 5131)

Disaster Warnings

Sec. 202. (a) The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 201 (c) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281(c)), or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters. . . . (42 U.S.C. 5132)

* * * *

Federal Assistance

Sec. 302. Repealed. P.L. 100-707, Title I, Sec. 105(a)(2), November 23, 1988, 102 Stat. 4691.

Coordinating Officers

Sec. 303. (a) Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) In order to effectuate the purposes of this chapter, the Federal coordinating officer, within the affected area, shall—

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite

Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this chapter shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599) (36 U.S.C. 1 et seq.); and

(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this chapter, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government. (42 U.S.C. 5143)

Emergency Support Teams

Sec. 304. The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this Act. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status. (42 U.S.C. 5144)

Emergency Assistance

Sec. 305. Repealed. P.L. 100-707, Title I, Sec. 105(d), November 23, 1988, 102 Stat. 4691 (42 U.S.C. 5145)

Providing Equipment, Supplies, and Work

Sec. 306. Repealed. P.L. 100-707, Title I, Section 105(d), November 23, 1988, 102 Stat. 4691 (42 U.S.C. 5146)

Reimbursement of Federal Agencies

Sec. 307. Federal agencies may be reimbursed for expenditures under this Act from funds appropriated for the purposes of this Act. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this Act shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies. (42 U.S.C. 5147)

Nonliability of Federal Government

Sec. 308. The Federal Government shall not be liable for any claim based upon the exercise of performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this Act. (42 U.S.C. 5148)

Accepting Use of Services and Facilities of States

Sec. 309. (a) In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office or employee thereof, with the consent of such government.

(b) In performing any services under this Act, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President. (42 U.S.C. 5149)

Use of Local Firms and Individuals

Sec. 310. In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This section shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under this Act. (42 U.S.C. 5150)

* * * *

Review and Reports

Sec. 316. The President shall establish comprehensive standards which shall be used to assess the effectiveness of Federal major disaster and emergency assistance programs administered under this Act. The President shall conduct annual reviews of the activities of Federal agencies and State and local governments in major disaster and emergency preparedness and in providing major disaster and emergency assistance, in order to assure maximum coordination and effectiveness of such programs, and consistency in policies for reimbursement of States under this Act. (42 U.S.C. 5156)

* * * *

Procedure for Declaration

Sec. 401. All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that

Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists. (16 U.S.C. 5170)

General Federal Assistance

Sec. 402. In any major disaster, the President may—

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for—

(A) the performance of essential community services;

(B) issuance of warnings of risks and hazards;

(C) public health and safety information, including dissemination of such information;

(D) provision of health and safety measures; and

(E) management, control, and reduction of immediate threats to public health and safety; and

(4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance. (16 U.S.C. 5170a)

Essential Assistance

Sec. 403. (a) In general—Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) Federal resources, generally—Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this chapter.

(2) Medicine, food, and other consumables—Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) Work and services to save lives and protect property—Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies and persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

(4) Contributions—Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) Federal share—The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) Utilization of DOD resources.—

(1) General rule.—During the immediate aftermath of an incident which may ultimately qualify for assistance under this subchapter or subchapter IV-A of this chapter, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) Rules applicable to debris removal.—Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.

(3) Expenditures out of disaster relief funds.—The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this chapter.

(4) Federal share.—The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) Guidelines.—Not later than 180 days after November 23, 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this chapter.

(6) Definitions.—For purposes of this section—

(A) Department of Defense.—The term "Department of Defense" has the meaning the term "department" has under section 101 of Title 10.

(B) Emergency work.—The term "emergency work" includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services. (16 U.S.C. 5170b)

Hazard Mitigation

Sec. 404. The President may contribute up to 50 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster. Such measures shall be identified following the evaluation of natural hazards under section 5176 of this title and shall be subject to approval by the President. The total of contributions under this section for a major disaster shall not exceed 10 percent of the estimated aggregate amounts of grants to be made under section 5172 of this title with respect to such major disaster.

Restoration of Lost Federal Facilities

Sec. 405. (a) The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President. (42 U.S.C. 5171)

* * * *

Debris Removal

Sec. 407. (a) The President may make contributions—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters;

(b) No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) The Federal share of assistance under this section shall not be less than 75 percent of the eligible costs of debris and wreckage removal carried out under this section. (42 U.S.C. 5173)

* * * *

Protection of Environment

Sec. 405. (former Sec. 405) Repealed. P.L. 100-707, Title I, Sec. 105(m)(2), November 23, 1988, 102 Stat. 4696 (42 U.S.C. 5171 (note)).

* * * *

Emergency Communications

Sec. 418. The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate. (42 U.S.C. 5185)

* * * *

Fire Suppression Assistance

Sec. 420. The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland which threatens such destruction as would constitute a major disaster. (42 U.S.C. 5187)

Timber Sale Contracts

Sec. 421. (a) Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary—

(1) of more than $1,000 for sales under one million board feet,

(2) of more than $1 per thousand board feet for sales of one to three million board feet, or

(3) of more than $3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.

(c) The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by the first section of the Act of June 4, 1987 (16 U.S.C. 476), in connection with the sale of timber from National Forests, whenever the Secretary determines that—

(1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster,

(2) the sale of such timber will assist in sustaining the economy of such area, or

(3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized, upon application, to make

payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber. (42 U.S.C. 5188)

* * * *

Preservation of Historical and Archaeological Data

- **Act of May 24, 1974 (P.L. 93-291, 88 Stat. 174; 16 U.S.C., 469a-l)**

Sec. 3. (a) Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands. (16 U.S.C. 469a-1)

Woodsy Owl-Smokey Bear Act

- **Act of June 22, 1974 (P.L. 93-318, 88 Stat. 244; 16 U.S.C. 580p, 580p-1 thru p-4; 18 U.S.C. 711, 711a)**

Definitions

Sec. 1. As used in this Act—

(1) the term "Woodsy Owl" means the name and representation of a fanciful owl, who wears slacks (forest green when colored), a belt (brown when colored), and a Robin Hood style hat (forest green when colored) with a feather (red when colored), and who furthers the slogan, "Give a Hoot, Don't Pollute", originated by the Forest Service of the United States Department of Agriculture;

(2) the term "Smokey Bear" means the name and character "Smokey Bear" originated by the Forest Service of the United States Department of Agriculture in cooperation with the Association of State Foresters and the Advertising Council.

(3) the term "Secretary" means the Secretary of Agriculture. (16 U.S.C. 580p)

Property of the United States

Sec. 2. The following are hereby declared the property of the United States—

(1) The name and character "Smokey Bear".

(2) The name and character "Woodsy Owl" and the associated slogan, "Give a Hoot, Don't Pollute". (16 U.S.C. 580p-1)

Sec. 3. (a) The Secretary may establish and collect use or royalty fees for the manufacture, reproduction, or use of the name or character "Woodsy Owl" and the associated slogan "Give a Hoot, Don't Pollute", as a symbol for a public service campaign to promote wise use of the environment and programs which foster maintenance and improvement of environmental quality.

(b) The Secretary shall deposit into a special account all fees collected pursuant to this Act. Such fees are hereby made available for obligation and expenditure for the purpose of furthering the "Woodsy Owl" campaign. (16 U.S.C. 580p-3)

Note—See Smokey Bear Act of 1952.

Unauthorized Use

Sec. 4. (a) Whoever, except as provided by rules and regulations issued by the Secretary, manufactures, uses, or reproduces the character "Smokey Bear" or the name "Smokey Bear", or a facsimile or simulation of such character or name in such a manner as suggests "Smokey Bear" may be enjoined from such manufacture, use, or reproduction at the suit of the Attorney General upon complaint by the Secretary.

(b) Whoever, except as provided by rules and regulations issued by the Secretary, manufactures, uses, or reproduces the character "Woodsy Owl", the name "Woodsy Owl", or the slogan "Give a Hoot, Don't Pollute", or a facsimile or simulation of such character, name, or slogan in such a manner as suggests "Woodsy Owl" may be enjoined from such manufacture, use, or reproduction at the suit of the

Attorney General upon complaint by the Secretary. (16 U.S.C. 580p-4)

Sec. 5. Section 711 of title 18 of the United States code is amended—

(1) by inserting "and for profit" immediately after "knowingly", and

(2) by deleting "as a trade name or in such manner as suggests the character 'Smokey Bear'". (18 U.S.C. 711)

Sec. 6. Chapter 33 of title 18 of the United States Code is amended by adding after section 711 a new section, as follows:

"Sec. 711a. 'Woodsy Owl' character, name, or slogan"

"Whoever, except as authorized under rules and regulations issued by the Secretary, knowingly and for profit manufactures, reproduces, or uses the character 'Woodsy Owl', the name 'Woodsy Owl', or theassociated slogan, 'Give a Hoot, Don't Pollute' shall be fined not more than $250 or imprisoned not more than six months, or both." (18 U.S.C. 711a)

Sec. 7. Section 3 of the Act entitled "An Act prohibiting the manufacture or use of the character "Smokey Bear" by unauthorized persons" (31 U.S.C. 488a) is amended by striking out "under the provisions of section 711 of title 18". (16 U.S.C. 580p-2)

Sec. 8. The table of sections of chapter 33 of title 18, United States Code, is amended by inserting immediately after the item relating to section 711 the following:

"Sec. 711a. 'Woodsy Owl' character, name, or slogan."

Forest and Rangeland Renewable Resources Planning Act of 1974

- **Act of August 17, 1974 (P.L. 93-378, 88 Stat. 476, as amended; 16 U.S.C. 1600(note), 1600-1614)**

Sec. 1. This Act may be cited as the "Forest and Rangeland Renewable Resources Planning Act of 1974". (16 U.S.C. 1600(note))

Findings

Sec. 2. The Congress finds that—

(1) the management of the Nation's renewable resources is highly complex and the uses, demand for, and supply of the various resources are subject to change over time;

(2) the public interest is served by the Forest Service, Department of Agriculture, in cooperation with other agencies, assessing the Nation's renewable resources, and developing and preparing a national renewable resource program, which is periodically reviewed and updated;

(3) to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use Sustained-Yield Act of 1960 (74 Stat. 15; 16 U.S.C. 528-531), and public participation in the development of the program;

(4) the new knowledge derived from coordinated public and private research programs will promote a sound technical and ecological base for effective management, use, and protection of the Nation's renewable resources;

(5) inasmuch as the majority of the Nation's forests and rangeland is under private, State, and local governmental management and the Nation's major capacity to produce goods and services is based on these nonfederally managed renewable resources, the Federal Government should be a catalyst to encourage and assist these owners in the efficient long-term use and improvement of these lands and their renewable resources consistent with the principles of sustained yield and multiple use;

(6) the Forest Service, by virtue of its statutory authority for management of the National Forest System, research and cooperative programs, and its role as an agency in the Department of Agriculture, has both a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity; and

(7) recycled timber product materials are as much a part of our renewable forest resources as are the trees from which they originally came, and in order to extend our timber and timber fiber resources and reduce pressures for timber production from Federal lands, the Forest Service should expand research in the use of recycled and waste timber product materials, develop techniques for the

substitution of these secondary materials for primary materials, and promote and encourage the use of recycled timber product materials. (16 U.S.C. 1600)

Renewable Resource Assessment

Sec. 3. (a) In recognition of the vital importance of America's renewable resources of the forest, range, and other associated lands to the Nation's social and economic well-being, and of the necessity for a long term perspective in planning and undertaking related national renewable resource programs administered by the Forest Service, the Secretary of Agriculture shall prepare a Renewable Resource Assessment (hereinafter called the "Assessment"). The Assessment shall be prepared not later than December 31, 1975, and shall be updated during 1979 and each tenth year thereafter, and shall include but not be limited to—

(1) an analysis of present and anticipated uses, demand for, and supply of the renewable resources, with consideration of the international resource situation, and an emphasis of pertinent supply and demand and price relationship trends;

(2) an inventory, based on information developed by the Forest Service and other Federal agencies, of present and potential renewable resources, and an evaluation of opportunities for improving their yield of tangible and intangible goods and services, together with estimates of investment costs and direct and indirect returns to the Federal Government;

(3) a description of Forest Service programs and responsibilities in research, cooperative programs and management of the National Forest System, their interrelationships, and the relationship of these programs and responsibilities to public and private activities;

(4) a discussion of important policy considerations, laws, regulations, and other factors expected to influence and affect significantly the use, ownership, and management of forest, range, and other associated lands; and

(5) an analysis of the potential effects of global climate change on the condition of renewable resources on the forests and rangelands of the United States; and

(6) an analysis of the rural and urban forestry opportunities to mitigate the buildup of atmospheric carbon dioxide and reduce the risk of global climate change,

(b) To assure the availability of adequate data and scientific information needed for development of the Assessment, section 9 of the McSweeney-McNary Act of May 22, 1928 (45 Stat. 702, as amended, 16 U.S.C. 581h), is hereby amended to ready as follows:

"The Secretary of Agriculture is hereby authorized and directed to make and keep current a comprehensive survey and analysis of the present and prospective conditions of and requirements for the renewable resources of the forest and range lands of the United States, its territories and possessions, and of the supplies of such renewable resources, including a determination of the present and potential productivity of the land, and of such other facts as may be necessary and useful in the determination of ways and means needed to balance the demand for and supply of these renewable resources, benefits and uses in meeting the needs of the people of the United States. The Secretary shall carry out the survey and analysis under such plans as he may determine to be fair and equitable, and cooperate with appropriate officials of each State, territory, or

possession of the United States, and either through them or directly with private or other agencies. There is authorized to be appropriated not to exceed $20,000,000 in any fiscal year to carry out the purposes of this section."

(c) The Secretary shall report in the 1979 and subsequent Assessments on—

(1) the additional fiber potential in the National Forest System including, but not restricted to, forest mortality, growth, salvage potential, potential increased forest products sales, economic constraints, alternate markets, contract considerations, and other multiple use considerations;

(2) the potential for increased utilization of forest and wood product wastes in the National Forest System and on other lands, and of urban wood wastes and wood product recycling, including recommendations to Congress for actions which would lead to increased utilization of material now being wasted both in the forests and in manufactured products; and

(3) the milling and other wood fiber product fabrication facilities and their location in the United States, noting the public and private forested areas that supply such facilities, assessing the degree of utilization into product form of harvested trees by such facilities, and setting forth the technology appropriate to the facilities to improve utilization either individually or in aggregate units of harvested trees and to reduce wasted wood fibers. The Secretary shall set forth a program to encourage the adoption by these facilities of these technologies for improving wood fiber utilization.

(d) In developing the reports required under subsection (c) of this section, the Secretary shall provide opportunity for public involvement and shall consult with other interested governmental departments and agencies.

Note—The National Forest Management Act of October 22, 1976, mistakenly added another subsection (d). This mistake is preserved in this text.

(d)(1) It is the policy of the Congress that all forested lands in the National Forest System be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stand designed to secure the maximum benefits of multiple use sustained yield management in accordance with land management plans. Accordingly, the Secretary is directed to identify and report to the Congress annually at the time of submission of the President's budget together with the annual report provided for under section 8(c) of this Act, beginning with submission of the President's budget for fiscal year 1978, the amount and location by Forests and States and by productivity class, where practicable, of all lands in the National Forest System where objectives of land management plans indicate the need to reforest areas that have been cut-over or otherwise denuded or deforested, and all lands with stands of trees that are not growing at their best potential rate or growth. All National Forest lands treated from year to year shall be examined after the first and third growing seasons and certified by the Secretary in the report provided for under this subsection as to stocking rate, growth rate in relation to potential and other pertinent measures. Any lands not certified as satisfactory shall be returned to the backlog and scheduled for prompt treatment. The level and types of treatment shall be

those which secure the most effective multiple use benefits.

(2) Notwithstanding the provisions of section 9 of this Act, the Secretary shall annually for eight years following the enactment of this subsection, transmit to the Congress in the manner provided in this subsection an estimate of the sums necessary to be appropriated, in addition to the funds available from other sources, to replant and otherwise treat an acreage equal to the acreage to be cut over that year, plus a sufficient portion of the backlog of lands found to be in need of treatment to eliminate the backlog within the eight-year period. After such eight-year period, the Secretary shall transmit annually to the Congress an estimate of the sums necessary to replant and otherwise treat all lands being cut over and maintain planned timber production on all other forested lands in the National Forest System so as to prevent the development of a backlog of needed work larger than the needed work at the beginning of the fiscal year. The Secretary's estimate of sums necessary, in addition to the sums available under other authorities, for accomplishment of the reforestation and other treatment of National Forest System lands under this section shall be provided annually for inclusion in the President's budget and shall also be transmitted to the Speaker of the House and the President of the Senate together with the annual report provided for under section 8(c) of this Act at the time of submission of the President's budget to the Congress beginning with the budget for fiscal year 1978. The sums estimated as necessary for reforestation and other treatment shall include moneys needed to secure seed, grow seedlings, prepare sites, plant trees, thin, remove deleterious growth and underbrush, build fence to exclude livestock and adverse wildlife from regeneration areas and otherwise establish and improve growing forests to secure planned production of trees and other multiple use values.

(3) Effective for the fiscal year beginning October 1, 1977, and each fiscal year thereafter, there is hereby authorized to be appropriated for the purpose of reforesting and treating lands in the National Forest System $200,000,000 annually to meet requirements of this subsection (d). All sums appropriated for the purposes of this subsection shall be available until expended.

(e) The Secretary shall submit an annual report to the Congress on the amounts, types, and uses of herbicides and pesticides used in the National Forest System, including the beneficial or adverse effects of such uses. (16 U.S.C. 1601)

Renewable Resource Program

Sec. 4. In order to provide for periodic review of programs for management and administration of the National Forest System for research, for cooperative State and private Forest Service programs, and for conduct of other Forest Service activities in relation to the findings of the Assessment, the Secretary of Agriculture, utilizing information available to the Forest Service and other agencies within the Department of Agriculture, including data prepared pursuant to section 302 of the Rural Development Act of 1972, shall prepare and transmit to the President a recommended Renewable Resource Program (hereinafter called the "Program"). The Program transmitted to the President may include alternatives, and shall provide in appropriate detail for protection, management, and development of the National Forest System, including forest development roads

and trails; for cooperative Forest Service programs; and for research. The Programs shall be developed in accordance with principles set forth in the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215; 16 U.S.C. 528-531), and the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321-4347). The Program shall be prepared not later than December 31, 1975, to cover the four-year period beginning October 1, 1976, and at least each of the four fiscal decades next following such period, and shall be updated no later than during the first half of the fiscal year ending September 30, 1980, and the first half of each fifth fiscal year thereafter to cover at least each of the four fiscal decades beginning next after such updating. The Program shall include, but not be limited to—

(1) an inventory of specific needs and opportunities for both public and private program investments. The inventory shall differentiate between activities which are of a capital nature and those which are of an operational nature;

(2) specific identification of Program outputs, results anticipated, and benefits associated with investments in such a manner that the anticipated costs can be directly compared with the total related benefits and direct and indirect returns to the Federal Government;

(3) a discussion of priorities for accomplishment of inventoried Program opportunities, with specified costs, outputs, results, and benefits;

(4) a detailed study of personnel requirements as needed to implement and monitor existing and ongoing programs; and

(5) Program recommendations which—

(A) evaluate objectives for the major Forest Service programs in order that multiple-use and sustained-yield relationships among and within the renewable resources can be determined;

(B) explain the opportunities for owners of forests and rangeland to participate in the programs to improve and enhance the condition of the land and the renewable resource products therefrom;

(C) recognize the fundamental need to protect and, where appropriate, improve the quality of soil, water, and air resources;

(D) state national goals that recognize the interrelationships between and interdependence within the renewable resources;

(E) evaluate the impact of the export and import of raw logs upon domestic timber supplies and prices; and

(F) account for the effects of global climate change on forest and rangeland conditions, including potential effects on the geographic ranges of species, and on forest and rangeland products. (16 U.S.C. 1602)

National Forest System Resource Inventories

Sec. 5. As a part of the Assessment, the Secretary of Agriculture shall develop and maintain on a continuing basis a comprehensive and appropriately detailed inventory of all National Forest System lands and renewable resources. This inventory shall be kept current so as to reflect changes in conditions and identify new and emerging resources and values. (16 U.S.C. 1603)

National Forest System Resource Planning

Sec. 6. (a) As a part of the Program provided for by section 3 of this Act, the Secretary of Agriculture shall develop, maintain, and, as

appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.

(b) In the development and maintenance of land management plans for use on units of the National Forest System, the Secretary shall use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences.

(c) The Secretary shall begin to incorporate the standards and guidelines required by this section in plans for units of the National Forest System as soon as practicable after enactment of this subsection and shall attempt to complete such incorporation for all such units by no later than September 30, 1985. The Secretary shall report to the Congress on the progress of such incorporation in the annual report required by section 8(c) of this Act. Until such time as a unit of the National Forest System is managed under plans developed in accordance with this Act, the management of such unit may continue under existing land and resource management plans.

(d) The Secretary shall provide for public participation in the development, review, and revision of land management plans including, but not limited to, making the plans or revisions available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings of comparable processes at locations that foster public participation in the review of such plans or revisions.

(e) In developing, maintaining, and revising plans for units of the National Forest System pursuant to this section, the Secretary shall assure that such plans—

(1) provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the Multiple-Use Sustained-Yield Act of 1960, and, in particular, include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and

(2) determine forest management systems, harvesting levels, and procedures in the light of all of the uses set forth in subsection (c)(1), the definition of the terms "multiple use" and "sustained yield" as provided in the Multiple-Use Sustained-Yield Act of 1960, and the availability of lands and their suitability for resource management.

(f) Plans developed in accordance with this section shall—

(1) form one integrated plan for each unit of the National Forest System, incorporating in one document or one set of documents, available to the public at convenient locations, all of the features required by this section;

(2) be embodied in appropriate written material, including maps and other descriptive documents, reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan;

(3) be prepared by an interdisciplinary team. Each team shall prepare its plan based on inventories of the applicable resources of the forest;

(4) be amended in any manner whatsoever after final adoption after public notice, and, if such amendment would result in a significant change in such plan, in accordance with the provisions of subsections (e) and (f) of this section and public

involvement comparable to that required by subsection (d) of this section; and

(5) be revised—

(A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years, and

(B) in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.

(g) As soon as practicable, but not later than two years after enactment of this subsection, the Secretary shall in accordance with the procedures set forth in section 553 of title 5, United States Code, promulgate regulations, under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set out the process for the development and revision of the land management plans, and the guidelines and standards prescribed by this subsection. The regulations shall include, but not be limited to—

(1) specifying procedures to insure that land management plans are prepared in accordance with the National Environmental Policy Act of 1969, including, but not limited to, direction on when and for what plans an environmental impact statement required under section 102(2)(C) of that Act shall be prepared;

(2) specifying guidelines which—

(A) require the identification of the suitability of lands for resource management;

(B) provide for obtaining inventory data on the various renewable resources, and soil and water, including pertinent maps, graphic material, and explanatory aids; and

(C) provide for methods to identify special conditions or situations involving hazards to the various resources and their relationship to alternative activities;

(3) specifying guidelines for land management plans developed to achieve the goals of the Program which—

(A) insure consideration of the economic and environmental aspects of various systems of renewable resource management, including the related systems of silviculture and protection of forest resources, to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;

(B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan;

(C) insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land;

(D) permit increases in harvest levels based on intensified management practices, such as reforestation, thinning, and tree improvement if—

(i) such practices justify increasing the harvests in accordance with the Multiple-Use Sustained-Yield Act of 1960, and

(ii) such harvest levels are decreased at the end of each planning period if such practices cannot be successfully implemented or funds are not received to permit such practices to continue substantially as planned;

(E) insure that timber will be harvested from National Forest System lands only where—

(i) soil, slope, or other watershed conditions will not be irreversibly damaged;

(ii) there is assurance that such lands can be adequately restocked within five years after harvest;

(iii) protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat; and

(iv) the harvesting system to be used is not selected primarily because it will give the greatest dollar return or the greatest unit output of timber; and

(F) insure that clearcutting, seed tree cutting, shelterwood cutting, and other cuts designed to regenerate an even-aged stand of timber will be used as a cutting method on National Forest System lands only where—

(i) for clearcutting, it is determined to be the optimum method, and for other such cuts it is determined to be appropriate, to meet the objectives and requirements of the relevant land management plan;

(ii) the interdisciplinary review as determined by the Secretary has been completed and the potential environmental, biological, esthetic, engineering, and economic impacts on each advertised sale area have been assessed, as well as the consistency of the sale with the multiple use of the general area;

(iii) cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain;

(iv) there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for areas to be cut in one harvest operation, including provision to exceed the established limits after appropriate public notice and review by the responsible Forest Service officer one level above the Forest Service officer who normally would approve the harvest proposal; *Provided,* That such limits shall not apply to the size of areas harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm; and

(v) such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.

(h)(1) In carrying out the purposes of subsection (g) of this section, the Secretary of Agriculture shall appoint a committee of scientists who are not officers or employees of the Forest Service. The committee shall provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted. The committee shall terminate upon promulgation of the regulations, but the Secretary may, from time to time, appoint similar committees when considering revisions of the regulations. The views of the committees shall be included in the public information supplied when the regulations are proposed for adoption.

(2) Clerical and technical assistance, as may be necessary to discharge the duties of the committee, shall be provided from the personnel of the Department of Agriculture.

(3) While attending meetings of the committee, the members shall be entitled to receive compensation at a rate of $100 per diem, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(i) Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. Those resource plans and permits, contracts, and other such instruments currently in existence shall be revised as soon as practicable to be made consistent with such plans. When land management plans are revised, resource plans and permits, contracts, and other instruments, when necessary shall be revised as soon as practicable. Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights.

(j) Land management plans and revisions shall become effective thirty days after completion of public participation and publication of notification by the Secretary as required under section 6(d) of this Act.

(k) In developing land management plans pursuant to this Act, the Secretary shall identify lands within the management area which are not suited for timber production, considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary, and shall assure that, except for salvage sales or sales necessitated to protect other multiple-use values, no timber harvesting shall occur on such lands for a period of 10 years. Lands once identified as unsuitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of other multiple-use values. The Secretary shall review his decision to classify these lands as not suited for timber production at least every 10 years and shall return these lands to timber production whenever he determines that conditions have changed so that they have become suitable for timber production.

(*l*) The Secretary shall—

(1) formulate and implement, as soon as practicable, a process for estimating long-terms costs and benefits to support the program evaluation requirements of this Act. This process shall include requirements to provide information on a representative sample basis of estimated expenditures associated with the reforestation, timber stand improvement, and sale of timber from the National Forest System, and shall provide a comparison of these expenditures to the return to the Government resulting from the sale of timber; and

(2) include a summary of data and findings resulting from these estimates as a part of the annual report required pursuant to section 8(c) of this Act, including an identification on a representative sample basis of those advertised timber sales made below the estimated expenditures for such timber as determined by the above cost process; and

(m) The Secretary shall establish—

(1) standards to insure that, prior to harvest, stands of trees throughout the National Forest System shall generally have reached the culmination of mean annual increment of growth (calculated on the basis of cubic measurement or other methods of calculation at the

discretion of the Secretary): *Provided,* That these standards shall not preclude the use of sound silvicultural practices, such as thinning or other stand improvement measures: *Provided further,* That these standards shall not preclude the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack; and

(2) exceptions to these standards for the harvest of particular species of trees in management units after consideration has been given to the multiple uses of the forest including, but not limited to, recreation, wildlife habitat, and range and after completion of public participation processes utilizing the procedures of subsection (d) of this section. (16 U.S.C. 1604)

Cooperation in Resource Planning

Sec. 7. The Secretary of Agriculture may utilize the Assessment, resource surveys, and Program prepared pursuant to this Act to assist States and other organizations in proposing the planning for the protection, use, and management of renewable resources on non-Federal land. (16 U.S.C. 1605)

President Budget Requests

Sec. 8. (a) On the date Congress first convenes in 1976 and thereafter following each updating of the Assessment and the Program, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate, when Congress convenes, the Assessment as set forth in section 3 of this Act and the Program as set forth in section 4 of this Act, together with a detailed Statement of Policy intended to be used in framing budget requests by that Administration for Forest Service activities for the five- or ten-year program period beginning during the term of such Congress for such further action deemed appropriate by the Congress. Following the transmission of such Assessment, Program, and Statement of Policy, the President shall, subject to other actions of the Congress, carry out programs already established by law in accordance with such Statement of Policy or any subsequent amendment or modification thereof approved by the Congress, unless, before the end of the first period of ninety calendar days of continuous session of Congress after the date on which the President of the Senate and the Speaker of the House are recipients of the transmission of such Assessment, Program, and Statement of Policy, either House adopts a resolution reported by the appropriate committee or jurisdiction disapproving the Statement of Policy. For the purpose of this subsection, the continuity of a session shall be deemed to be broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the ninety-day period. Notwithstanding any other provision of this Act, Congress may revise or modify the Statement of Policy transmitted by the President, and the revised or modified Statement of Policy shall be used in framing budget requests.

(b) Commencing with the fiscal budget for the year ending September 30, 1977, requests presented by the President to the Congress governing Forest Service activities shall express in qualitative and quantitative terms the extent to which the programs and policies projected

under the budget meet the policies approved by the Congress in accordance with subsection (a) of this section. In any case in which such budget so presented recommends a course which fails to meet the policies so established, the President shall specifically set forth the reason or reasons for requesting the Congress to approve the lesser programs or policies presented. Amounts appropriated to carry out the policies approved in accordance with subsection (a) of this section shall be expended in accordance with the Congressional Budget and Impoundment Control Act of 1974 Public Law 93-344.

(c) For the purpose of providing information that will aid Congress in its oversight responsibilities and improve the accountability of agency expenditures and activities, the Secretary of Agriculture shall prepare an annual report which evaluates the component elements of the Program required to be prepared by section 4 of this Act which shall be furnished to the Congress at the time of submission of the annual fiscal budget commencing with the third fiscal year after the enactment of this Act. With regard to the research component of the program, the report shall include, but not be limited to, a description of the status of major research programs, significant findings, and how these findings will be applied in National Forest System management and in cooperative State and private Forest Service programs. With regard to the cooperative forestry assistance part of the Program, the report shall include, but not be limited to, a description of the status, accomplishments, needs, and work backlogs for the programs and activities conducted under the Cooperative Forestry Assistance Act of 1978.

(d) These annual evaluation reports shall set forth progress in implementing the Program required to be prepared by section 3 of this Act, together with accomplishments of the Program as they relate to the objectives of the Assessment. Objectives should be set forth in qualitative and quantitative terms and accomplishments should be reported accordingly. The report shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. Program benefits shall include, but not be limited to, environmental quality factors such as esthetics, public access, wildlife habitat, recreational and wilderness use, and economic factors such as the excess of cost savings over the value of foregone benefits and the rate of return on renewable resources.

(e) The report shall indicate plans for implementing corrective action and recommendations for new legislation where warranted.

(f) The reports shall be structured for Congress in concise summary form with necessary detailed data in appendices. (16 U.S.C. 1606)

National Forest System Renewable Resources

Sec. 9. The Secretary of Agriculture shall take such action as will assure that the development and administration of the renewable resources of the National Forest System are in full accord with the concepts for multiple use and sustained yield of products and services as set forth in the Multiple-Use Sustained-Yield Act of 1960. To further these concepts, the Congress hereby sets the year 2000 as the target year when the renewable resources of the National Forest System shall be in an operating posture whereby all backlogs of needed treatment for their restoration shall be reduced to

a current basis and the major portion of planned intensive multiple-use sustained-yield management procedures shall be installed and operating on an environmentally-sound basis. The annual budget shall contain requests for funds for an orderly program to eliminate such backlogs: *Provided,* That when the Secretary finds that (1) the backlog of areas that will benefit by such treatment has been eliminated, (2) the cost of treating the remainder of such area exceeds the economic and environmental benefits to be secured from their treatment, or (3) the total supplies of the renewable resources of the United States are adequate to meet the future needs of the American people, the budget request for these elements of restoration may be adjusted accordingly. (16 U.S.C. 1607)

Transportation System

Sec. 10. (a) The Congress declares that the installation of a proper system of transportation to service the National Forest System, as is provided for in Public Law 88-657, the Act of October 13,1964 (16 U.S.C. 532-538), shall be carried forward in time to meet anticipated needs on an economical and environmentally sound basis, and the method chosen for financing the construction and maintenance of the transportation system should be such as to enhance local, regional, and national benefits. *Provided further,* That no more than $242,542,000 shall be obligated for the construction of forest roads by timber purchasers. (95 Stat. 1391)

(b) Unless the necessity for a permanent road is set forth in the forest development road system plan, any road constructed on land of the National Forest System in connection with a timber contract or other permit or lease shall be designed with the goal of reestablishing vegetative cover on the roadway and areas where the vegetative cover has been disturbed by the construction of the road, within ten years after the termination of the contract, permit, or lease either through artificial or natural means. Such action shall be taken unless it is later determined that the road is needed for use as a part of the National Forest Transportation System.

(c) Roads constructed on National Forest System lands shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources. (16 U.S.C. 1608)

National Forest System Defined

Sec. 11. (a) Congress declares that the National Forest System consists of units of federally owned forest, range, and related lands throughout the United States and its territories, united into a nationally significant system dedicated to the long-term benefit for present and future generations, and that it is the purpose of this section to include all such areas into one integral system. The "National Forest System" shall include all National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525, 7 U.S.C. 1010-1012), and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system. Notwithstanding the provisions of the Act of June 4, 1897 (30 Stat. 34; 16 U.S.C. 473),

no land now or hereafter reserved or withdrawn from the public domain as National Forests pursuant to the Act of March 3, 1891 (26 Stat. 1103; 16 U.S.C. 471), or any act supplementary to and amendatory thereof, shall be returned to the public domain except by an act of Congress.

(b) The on-the-ground field offices, field supervisory offices, and regional offices of the Forest Service shall be so situated as to provide the optimum level of convenient, useful services to the public, giving priority to the maintenance and location of facilities in rural areas and towns near the National Forest and Forest Service program locations in accordance with the standards in section 901(b) of the Act of November 30, 1970 (84 Stat. 1383), as amended. (16 U.S.C. 1609)

Renewable Resources Defined

Sec. 12. In carrying out this Act, the Secretary of Agriculture shall utilize information and data available from other Federal, State, and private organizations and shall avoid duplication and overlap of resource assessment and program planning efforts of other Federal agencies. The term "renewable resources" shall be construed to involve those matters within the scope of responsibilities and authorities of the Forest Service on the date of this Act and on the date of enactment of any legislation amendatory or supplementary thereto. (16 U.S.C. 1610)

Limitations on Timber Removal

Sec. 13. (a) The Secretary of Agriculture shall limit the sale of timber from each National Forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis: *Provided,* That, in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established: *Provided further,* That any such planned departure must be consistent with the multiple-use management objectives of the land management plan. Plans for variations in the allowable sale quantity must be made with public participation as required by section 6(d) of this Act. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section in the case of any National Forest so long as the average sale quantities of timber from such National Forest over the decade covered by the plan do not exceed such quantity limitation. In those cases where a Forest has less than two hundred thousand acres of commercial forest land, the Secretary may use two or more Forests for purposes of determining the sustained yield.

(b) Nothing in subsection (a) of this section shall prohibit the Secretary from salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack. The Secretary may either substitute such timber for timber that would otherwise be sold under the plan or, if not feasible, sell such timber over and above the plan volume. (16 U.S.C. 1611)

Public Participation and Advisory Boards

Sec. 14. (a) In exercising his authorities under this Act and other laws applicable to the Forest Service, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs.

(b) In providing for public participation in the planning for and management of the National Forest System, the Secretary, pursuant to the Federal Advisory Committee Act (86 Stat. 770) and other applicable law, shall establish and consult such advisory boards as he deems necessary to secure full information and advice on the execution of his responsibilities. The membership of such boards shall be representative of a cross section of groups interested in the planning for and management of the National Forest System and the various types of use and enjoyment of the lands thereof. (16 U.S.C. 1612)

Regulations

Sec. 15. The Secretary of Agriculture shall prescribe such regulations as he determines necessary and desirable to carry out the provisions of this Act. (16 U.S.C. 1613)

Severability

Sec. 16. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (16 U.S.C. 1614)

Federal Procurement Policy Act

- **Act of August 30, 1974 (P.L. 93-400, 88 Stat. 796, as amended; 41 U.S.C. 401(note), 401-418, 418a, 418b, 419-420)**

Short Title

Sec. 1. This Act may be cited as the "Office of Federal Procurement Policy Act." (41 U.S.C. 401(note))

Declaration of Policy

Sec. 2. It is the policy of the United States Government to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

(1) promoting full and open competition;

(2) establishing policies, procedures, and practices which will provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost;

(3) promoting the development of simplified uniform procurement processes;

(4) promoting the participation of small business concerns;

(5) supporting the continuing development of a competent, professional work force;

(6) eliminating fraud and waste in the procurement process;

(7) eliminating redundant administrative requirements placed on contractor and Federal procurement officers;

(8) promoting fair dealings and equitable relationships with the private sector;

(9) ensuring that payment is made in a timely manner and only for the value received;

(10) requiring, to the extent practicable, the use of commercial products to meet the Government's needs;

(11) requiring that personal services are obtained in accordance with applicable personnel procedures and not by contract;

(12) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements; and

(13) promoting, whenever feasible, the use of specifications which describe needs in terms of functions to be performed or the performance required. (41 U.S.C. 401)

Congressional Findings and Purpose

Sec. 3. (a) The Congress finds that economy, efficiency, and the effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement for Government-wide procurement policies, regulations, procedures, and forms.

(b) The purpose of this chapter is to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws. (41 U.S.C. 402)

Definitions

Sec. 4. As used in this chapter—

(1) the term "executive agency" means—

(A) an executive department specified in section 101 of Title 5 of the U.S.C.

(B) a military department specified in section 102 of such Title;

(C) an independent establishment as defined in section 104(1) of such Title; and

(D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of Title 31;

(2) the term "procurement" includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout;

(3) the term "procurement system" means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement functions;

(4) the term "standards" means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system; and

(5) the term "competitive procedures" means procedures under which an agency enters into a contract pursuant to full and open competition;

(6) the term "full and open competition", when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement;

(7) the term "responsible source" means a prospective contractor who—

(A) has adequate financial resources to perform the contract or the ability to obtain such resources;

(B) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(C) has a satisfactory performance record;

(D) has a satisfactory record of integrity and business ethics;

(E) has the necessary organization, experience, accounting and operational controls, and the technical skills, or the ability to obtain such organization, experience, controls, and skills;

(F) has the necessary production, constriction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(G) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

(8) the term "technical date" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration;

(9)(a) the term "major system" means a combination of elements that will function together to produce the capability required to fulfill a mission need, which elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property; and

(B) a system shall be considered a major system if (i) the Department of Defense is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (ii) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled "Major Systems Acquisitions", whichever is greater; or (iii) the system is designated a "major system" by the head of the agency responsible for the system;

(10) the term "item", "item of supply", or "supplies" means any individual part, component, subassembly, assembly, or subsystem integral to a major system and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of any "item", and

(11) the term "small purchase threshold" means $25,000, adjusted on October 1 of each year divisible by 5 to the amount equal to $25,000 in constant fiscal year 1990 dollars (rounded to the nearest $1,000). (41 U.S.C. 403)

Establishment of Office of Federal Procurement Policy; appointment of Administrator

Sec. 5. (a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate. (41 U.S.C. 404)

Authority and Function of Administrator

Sec. 6. (a) Development of procurement policy; leadership.—The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies. To the extent that the Administrator considers appropriate, in carrying out the policies and functions set forth in this chapter, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide procurement policies. These policies shall be implemented in a single Government-wide procurement regulation called the Federal Acquisition Regulations and shall be followed by executive agencies in the procurement of—

(1) property other than real property in being;

(2) services, including research and development; and

(3) construction, alteration, repair, or maintenance of real property.

(b) Government-wide procurement regulations.—In an instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue

Government-wide regulations, procedures and forms in a timely manner including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a) of this section, the Administrator shall, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this chapter, prescribe Government-wide regulations, procedures and forms which shall be followed by executive agencies in the procurement of—

(1) property other than real property in being;

(2) services, including research and development; and

(3) constriction, alternation, repair, or maintenance of real property.

(c) Noninterference with executive agencies.—The authority of the Administrator under this chapter shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award of administration of procurement contracts.

(d) Enumeration of included functions.—The functions of the Administrator shall include—

(1) providing leadership and ensuring action by the executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations and resolving differences among the executive agencies in the development of simplified Government-wide procurement regulations, procedures and forms;

(2) coordinating the development of Government-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;

(3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;

(4) Providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and

(B) ensuring executive agency compliance with the record requirements of title V, section 401 of the Act of October 25, 1988 (P.L. 100-533);

(5) providing for an directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to—

(A) foster and promote Government-wide career management programs for a professional procurement work force; and

(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies;

(6) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the

development of procurement policies, regulations, procedures, and forms;

(7) developing standard contract forms and contract language in order to reduce the Government's cost of procuring property and services and the private sector's cost of doing business with the Government; and

(8) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

(e) Consultation; assistance of existing executive agencies; advisory committees and interagency groups.—In carrying out the functions set forth in subsection (d) of this section, the Administrator—

(1) shall consult with the affected executive agencies, including the Small Business Administration;

(2) may, with the concurrence of the heads of affected executive agencies, designate an executive agency or executive agencies to assist in the performance of such functions; and

(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in the performance of any of the other functions which the Administrator considers appropriate.

(f) Oversight of regulations promulgated by other agencies relating to procurement.—The Administrator, with the concurrent of the Director of the Office of Management and Budget, and with consultation with the head of the agency or agencies concerned, may deny the promulgation of or rescind any Government-wide regulation or final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with the policies set forth in section 2 of this act or any policies, regulations, or procedures issued pursuant to subsection (a) of this section.

(g) Assignment, delegation, or transfer of functions prohibited.—Except as otherwise provided by laws, no duties, functions, or responsibilities, other than those expressly assigned by this chapter, shall be assigned, delegated, or transferred to the Administrator.

(h) Automatic data processing and telecommunications equipment; real property procurement; Office of Management and Budget.—Nothing in this chapter shall be construed to—

(1) impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 25 et seq.) with respect to the procurement of automatic data processing and telecommunications equipment and service or of real property; or

(2) limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

(i) With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which the Administrator considers appropriate and which shall be followed by such executive agencies in providing for the procurement, to the extent required under such programs of property or services referred to in clauses (1), (2), and (3) of subsection (a) of this section by recipients of Federal grants or assistance under such programs.

(2) Nothing in paragraph (1) shall be construed to—

(A) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(B) authorize any action by such recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to State and political subdivisions. (41 U.S.C. 405)

Administrative Powers

Sec. 7. Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this chapter; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office. (41 U.S.C. 406)

Responsiveness to Congress

Sec. 8. (a) Annual reports on activities—The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

(b) Submission of policy matter or regulation to Congressional committees.—At least 30 days prior to the effective date of any policy or regulation prescribed under Title II, Section 222 of the Act of October 24, 1978 (P.L. 95-507), the Administrator shall transmit to the Congress a report on the proposed policy or regulation. Such report shall include—

(1) a full description of the policy or regulation;

(2) a summary of the reasons for the issuance of such policy or regulations; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.

(c) Waiver of notice requirement by President.—In the case of an emergency, the President may waiver the notice requirement of subsection (b) of this section by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy or regulation. (41 U.S.C. 407)

Applicability of Existing Laws

Sec. 9. The authority of an executive agency under any other laws to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in section 6 of this act. (41 U.S.C. 408)

Effect on Existing Regulations

Sec. 10. Procurement policies, regulations, procedures, or forms in effect on December 1, 1983 shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administration. (41 U.S.C. 409)

Authorization of Appropriations

Sec. 11. There are authorized to be appropriated to carry out the provisions of this act, and for no other purpose, $4,5000,000 for the fiscal year ending September 30, 1984, and such sums as ma be necessary for each succeeding fiscal year. (41 U.S.C. 410)

Delegation of Authority by Administrator

Sec. 12. (a) The Administrator may delegate, and authorize successive redelegations of any authority, function, or power to the Administrator under this act (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out such policy), to any other executive agency with the consent of the head of such executive agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this act. (41 U.S.C. 411)

Rule Making Procedure

Sec. 13. (a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him for the purpose of developing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto. (41 U.S.C. 412)

Tests of Innovative Procurement Methods and Procedures

Sec. 14. (a) The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. The innovative procurement methods and procedures tested under this subsection shall be consistent with the policies set forth in section 2 of this act. In developing any program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

(1) ascertain the need for and specify the objectives of such program;

(2) develop the guidelines and procedures for carrying out such program and the criteria to be used in measuring the success of such program;

(3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under such program;

(4) select the appropriate executive agencies or components of executive agencies to carry out such program;

(5) specify the categories and types of products or services to be procured under such program; and

(6) develop the methods to be used to analyze the results of such program. A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such program.

(b) If the Administrator determines that it is necessary to waive the application of any provision of

law in order to carry out a proposed program to test innovative procurement methods and procedures under subsection (a) of this section, the Administration shall transmit notice of the proposed program to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and request that such committees take such action as may be necessary to provide that such provision of law does not apply with respect to the proposed program. The notification to Congress shall include a description of the proposed program (including the scope and purpose of the proposed program), the procedures to be followed in carrying out the proposed program, the provisions of law affected and by any provision of law the application of which must be waived in order to carry out the proposed program, and the executive agencies involved in carry out the proposed program. (41 U.S.C. 413)

Executive Agency Responsibilities

Sec. 16. To further achieve effective, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices—

(1) increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;

(2) establish clear lines of authority, accountability, and responsibility for procurement decision making within the executive agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

(A) direct access to the head of the major organizational element of the executive agency served; and

(B) comparative equality with organizational counter-parts;

(3) designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force. (41 U.S.C. 414)

Studies and Reports

Sec. 17. (a) The administrator shall conduct studies and issue a report on the extent of competition in the award of subcontracts by Federal prime contractors including an evaluation of the data available on subcontracts awarded in the fiscal year 1982 with respect to (1) the source selection method used in awarding such subcontracts, (2) the type of subcontracts awarded, (3) the dollar value of such subcontracts, (4) the size of the subcontractors which were awarded the subcontract (by number of employees), and (5) the geographical location of such subcontractors. The report shall also include recommendation for improvements, if appropriate, in the extent of competition in the

awarding of subcontracts and in the collection of data on such subcontract awards.

(b) The report required under subsection (a) of this section shall be completed by April 1, 1984, and shall be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives not later than April 15, 1984. (41 U.S.C. 415)

Procurement Notice

Sec. 18. (a) Covered executive agency activities; publication of notice; time limitation.—

(1) Except as provided in subsection (c) of this section—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed the small purchase threshold; or

(ii) place an order, expected to exceed the small purchase threshold, under the basic agreement, or similar agreement, shall furnish for publication by the Secretary of Commerce a notice described in subsection (b) of this section;

(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed $10,000, but not to exceed the small purchase threshold; and

(ii) in the case of the Department of Defense, if the contract is for a price to exceed $5,000, but not to exceed the small purchase threshold; and

(C) an executive agency awarding a contract for property or services for a price exceeding the small purchase threshold, or placing an order referred to in clause (A)(ii) exceeding the small purchase threshold, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

(3) Whenever an executive agency if required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

(B) establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar agreement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date of solicitation is issued.

(b) Contents of notice.—Each notice of solicitation required by subparagraph (a)(1) of this section shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall

include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material or manufacture, or similar information that will assist a prospective contractor to make an informed business judgement as to whether a copy of the solicitation should be requested;

(2) provision that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which the qualification may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency; and

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.

(c) Exempted, etc., activities of executive agency.—

(1) A notice is not required under subsection (a)(1) of this section if—

(A) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(B) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of Title 15;

(2) The requirements of subsection (a)(1)(A) of this section do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), of (7) of section 253(c) of this title or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of Title 10.

(3) The requirements of subsection (a)(1)(A) of this section shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator for Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(d) Availability of complete solicitation package; payment of fee.—An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any ongoing procurement announced pursuant to a notice under subsection (e) of this section. An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package. (41 U.S.C. 416)

Record Requirements

Sec. 19. (a) Establishment and maintenance of computer file by executive agency; time period coverage.— Each executive agency

shall establish and maintain for a period of five years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases, in such fiscal year.

(b) Contents.—The record established under subsection (a) of this section shall include—

(1) with respect to each procurement carried out using competitive procedures—

(A) the date of contract award;

(B) information identifying the source to whom the contract was awarded;

(C) the property or services obtained by the Government under the procurement; and

(D) the total cost of the procurement;

(2) with respect to each procurement carried out using procedures other than competitive procedures—

(A) the information described in clauses (1)(A), (1)(B), (1)(C), and (1)(D);

(B) the reason under section 253(c) of this title or section 2304(c) of Title 10, as the case may be, for the use of such procedures; and

(C) the identity of the organization or activity which conducted the procurement.

(c) Record categories.—The information that is included in such record pursuant to subsection (b)(1) of this section and relates to procurements resulting in submission of a bid or proposal by only one responsible source shall be separately categorized from the information relating to other procurements included in such record. The record of such information shall be designated "noncompetitive procurement using competitive procedures".

(d) Transmission and data system entry of information.—The information included in the record established and maintained under subsection (a) of this section shall be transmitted to the General Services Administration and shall be entered in the Federal Procurement Data System referred to in section 405(d)(4) of this title. (41 U.S.C. 417)

Advocates for Competition

Sec. 20. (a) Establishment, designation, etc, in executive agency.—

(1) There is established in each executive agency an advocate for competition.

(2) The head of each executive agency shall—

(A) designate for the executive agency and for each procuring activity of the executive agency one officer or employee serving in a position authorized for such executive agency on July 18, 1984, (other than the senior procurement executive designated pursuant to section 414(3) of this title) to serve as the advocate for competition;

(B) not assign such officers or employees any duties or responsibilities that are inconsistent with the duties and responsibilities of the advocates for competition; and

(C) provide such officers or employees with such staff or assistance as may be necessary to carry out the duties and responsibilities of the advocate for competition, such as persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

(b) Duties and function.—The advocate for competition of an executive agency shall—

(1) be responsible for challenging barriers to and promoting full and open competition in the

procurement of property and services by the executive agency;

(2) review the procurement activities of the executive agency;

(3) identify and report to the senior procurement executive of the executive agency designated pursuant to section 414(3) of this title—

(A) opportunities and actions taken to achieve full and open competition in the procurement activities of the executive agency; and

(B) any condition or action which has the effect of unnecessarily restricting competition in the procurement actions of the executive agency; and

(4) prepare and transmit to such senior procurement executive and annual report describing—

(A) such advocate's activities under this section;

(B) new initiatives required to increase competition; and

(C) barriers to full and open competition that remain;

(5) recommend to the senior procurement executive of the executive agency goals and the plans for increasing competition on a fiscal year basis;

(6) recommend to the senior procurement executive of the executive agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in procurement programs; and

(7) describe other ways in which the executive agency has emphasized competition in programs for procurement training and research.

(c) Responsibilities.—The advocate for competition for each procuring activity shall be responsible for challenging barriers to and promoting full and open competition in the procuring activity, including unnecessarily detailed specifications and unnecessarily restrictive statements of needs. (41 U.S.C. 418)

Rights in Technical Data

Sec. 21. (a) Regulations; legitimate proprietary interest of United States.—The legitimate proprietary interest of the United States and of a contractor in technical or other data shall be defined in regulations prescribed as part of the single system of Government-wide procurement regulations as defined in section 403(4) of this title. Such regulations may not impair any right of the United States or of any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations shall provide, with respect to executive agencies that are subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), that the United States may not require persons who have developed products or processes offered or to be offered for sale to the public as a condition for the procurement of such products or processes by the United Sates, to provide the United States technical data relating to the design, development, or manufacture of such products or processes (except for such data as may be necessary for the United States to operate and maintain the product or use the process if obtained by the United States as an element of performance under the contract).

(b) Unlimited rights; technical data; developed with Federal funds; unrestricted, royalty-free right to use; rights under law.—

(1) Except as otherwise expressly provided by Federal statute, the regulations prescribed pursuant to subsection (a) of this section shall

provide, with respect to executive agencies that are subject to the provision of Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), that the United States shall have unlimited rights in technical data developed exclusively with Federal funds if delivery of such data—

(A) was required as an element of performance under a contract; and

(B) is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future.

(2) Except as otherwise expressly provided by Federal Statute, the regulation prescribed pursuant to subsection (a) of this section shall provide, with respect to executive agencies that are subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), that the United States (and each agency thereof) shall have an unrestricted, royalty free right of use, or to have its contractors use, for governmental purposes (excluding publication outside the Government) technical data developed exclusively with Federal funds.

(c) Factors; regulations.—The following factors shall be considered in prescribing regulations pursuant to subsection (a) of this section:

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of Title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (P.L. 97-219; 15 U.S.C. 638(note)), and the declaration of policy in section 631 of Title 15.

(3) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(d) Provisions; contracts; regulation.—Regulations prescribed under subsection (a) of this section shall require that a contract for property or services entered into by an executive agency contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract;

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance at the time

the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning the technical data;

(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data. (41 U.S.C. 418a)

Publications of Proposed Regulations

Sec. 22. (a) Effective date; procurement policy, regulations, procedure or form; publication in Federal Register.—Except as provided in subsection (d) of this section, no procurement policy, regulation, procedure, or form (including amendment or modifications thereto) relating to the expenditure of appropriated funds that has (1) a significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure, or form, or (2) a significant cost or administrative impact on contractors or offerors, may take effect until 30 days after the procurement policy, regulation, procedure, or form is published for public comment in the Federal Register pursuant to subsection (b) of this section.

(b) Publication in Federal Register.—Subject to subsection (c) of this section, the head of the agency shall cause to be published in the Federal Register a notice of the proposed procurement policy, regulation, procedures, or form and provide for a public comment period for receiving and considering the views of all interested parties on such proposal. The length of such comment period may not be less than 30 days.

(c) Notice; proposed policy; contents.—Any notice of a proposed procurement policy, regulation, procedure, or form prepared for publication in the Federal Register shall include—

(1) the text of the proposal or, if it is impracticable to publish the full text of the proposal, a summary of the proposal and a statement specifying the name, address, and telephone number of the officer, or employee of the executive agency from whom the full text may be obtained; and

(2) a request for interested parties to submit comments on the proposal and shall include the name and address of the officer or employee of the Government designated to receive such comments.

(d) Waiver.—

(1) The requirements of subsections (a) and (b) of this section may be waived by the officer authorized to issue a procurement policy, regulation, procedure, or form if urgent and compelling circumstances make compliance with such requirements impracticable.

(2) A procurement policy, regulation, procedure, or form with respect to which the requirements of subsections (a) and (b) of this section are waived under paragraph (1) shall be effective on a temporary basis if—

(A) a notice of such procurement policy, regulation, procedure, or form is published in the Federal Register and includes a statement that the procurement

policy, regulation, procedure, or form is temporary; and

(B) provision is made for a public comment period of 30 days beginning on the date on which the notice is published.

After considering the comment received, the head of the agency waiving the requirements of subsections (a) and (b) of this section under paragraph (1) may issue the final procurement policy, regulation, procedure, or form. (41 U.S.C. 418b)

Annual Report on Competition

Sec. 23. (a) Transmission to Congress by executive agency heads.—Not later than January 31 of each of 1986, 1987, 1988, 1989, and 1990, the head of each executive agency shall transmit to each House of Congress a report including the information specified in subsection (b) of this section.

(b) Contents.—Each report under subsection (a) of this section shall include—

(1) a specific description of all action that the head of the executive agency intends to take during the current fiscal year to—

(A) increase competition for contracts with the executive agency on the basis of cost and other significant factors; and

(B) reduce the number and dollar value of noncompetitive contracts entered into by the executive agency; and

(2) a summary of the activities and accomplishments of the advocate of competition of the executive agency during the preceding fiscal year. (41 U.S.C. 419)

Travel Expenses of Government Contractors

Sec. 24. (a) Reasonable and allowable costs.—Under any contract with any executive agency, costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered to be reasonable and allowable only to the extent that they do not exceed the rates and amounts set by subchapter I of chapter 57 of Title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provision of such subchapter. This section shall be implemented in regulations prescribed as a part of the single system of Government-wide procurement regulation as defined in section 403 of this title.

(b) Agreements, between executive agency and State institutions for conducting research.—

(1) The provisions of subsection (a) of this section shall not apply to any agreement between an executive agency and a State institution, or an executive agency and a nonprofit institution, entered into for the purpose for conducting federally sponsored research and related activities.

(2) Under any agreement described under paragraph (1), costs incurred by personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent that such costs do not exceed—

(A) charges normally allow by the respective institution in its regular operations as a result of an institutional policy; and

(B) the limits and principles as are provided by government-wide regulation of such costs established by the Director of the Office of Management and Budget.

(3) The regulation under paragraph (2)(B) shall specifically provide that in the absence of an institutional policy regarding travel

costs, the rates and amounts established under subchapter I of chapter 57 of Title 5, or by the Administrator of General Services or the President (or his designee) pursuant to any provisions of such subchapter shall apply to agreements between an executive agency and a State institution, or an executive agency and a nonprofit institution, entered into for the purpose of conducting federally sponsored research and related activities. (41 U.S.C. 420)

Freedom of Information Act

- **Act of November 21, 1974 (P.L. 93-502, 88 Stat. 1561, as amended; 5 U.S.C. 552)**

Note—Provisions of other acts have been codified into 5 U.S.C. 552. In order to provide a more complete picture of agency requirements, the entire section of the U.S.C. is included here as Section 552 of title 5 of the U.S. Code.

Public information; agency rules, opinion, orders, records, and proceedings

Sec. 552. (a) Each agency shall make available to the public information as follows—

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

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

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

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

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

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

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

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

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

(C) administrative staff manuals and instructions to staff that affect a member of the public; unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it

makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

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

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

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which—

(A) reasonably describes such records and

(B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

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

(ii) Such agency regulations shall provide that—

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

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

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

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

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

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

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

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

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

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

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

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

(D) Repealed 98 stat. 3357, P.L. 98-620, Nov. 8, 1984.

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

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration

of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

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

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

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

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

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

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

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

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

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

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

records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

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

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

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

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

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

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

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

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a part other than an agency in litigation with an agency;

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

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

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

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

Any reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

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

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

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the

records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

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

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

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

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

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

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

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

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military

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

Privacy Act of 1974

- **Act of December 31, 1974 (P.L. 93-579, 88 Stat. 1896 as amended; 5 U.S.C. 552a)**

Sec. 1. That this Act may be cited as the "Privacy Act of 1974". (5 U.S.C. 552a(note))

Sec. 2. (a) The Congress finds that—

(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act. (5 U.S.C. 552a(note))

Sec. 3. Title 5, United States Code, is amended by adding after section 552 the following new section:

Note—Section 552a below has been amended to show here the updated version of 5 U.S.C. 552a through 1991.

Records Maintained on Individuals

Sec. 552a. (a) Definitions.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"—

(A) Means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of

1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (c)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual.

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress of subcommittee of any such joint committee:

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to records.—Each agency that maintains a system of records shall—

(1) upon request by an individual to gain access to his record or to any information pertaining to him which is contained in the system,

permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date or receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determinations under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of his subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency requirements.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which

authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name of location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him:

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security

or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency rules.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record of information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil remedies.—Whenever any agency—

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in

such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

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

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

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

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of legal guardians.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties.—Any officer or employee of an agency,

who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsection (b), (c), (1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of—

(A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b), (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c), (3), (d), (e), (1), (e)(4), (G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided,* however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual,

except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence. At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(*l*)(1) Archival records.—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National

Archives of the United States is a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G), and (e)(9) of this section.

(m)(1) Government contractors.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing lists.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require with withholding of names and addresses otherwise permitted to be made public.

(o) Matching agreements.—

(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and opportunity to contest findings.—

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by stature or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions.—

(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on new systems and matching programs.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Government Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial report.—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t) Effect of other laws.—

(1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards.—

(1) Every agency conduction or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs—

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearing house for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data

Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, and party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of the Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget responsibilities.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies. (5 U.S.C. 552a)

Sec. 4. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals." immediately below:

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

Sec. 5. (a)(1) There is established a Privacy Protection Study Commission (hereinafter referred to as the "Commission") which shall be composed of seven members as follows:

(A) three appointed by the President of the United States,

(B) two appointed by the President of the Senate, and

(C) two appointed by the Speaker of the House of Representatives. Members of the Commission shall be chosen from among persons who, by reason of their knowledge and expertise in any of the following areas—civil rights and liberties, law, social sciences, computer technology, business, records management, and State and local government—are well qualified for service on the Commission. (5 U.S.C. 552a(note))

(2) The members of the Commission shall elect a Chairman from among themselves.

(3) Any vacancy in the membership of the Commission, as long as there are four members in office, shall not impair the power of the Commission but shall be filled in the same manner in which the original appointment was made.

(4) A quorum of the Commission shall consist of a majority of the members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony. The Commission is authorized to establish such committees and delegate such authority to them as may be necessary to carry out its functions. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information necessary to the performance of their functions, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or a member designated by the Chairman to be acting Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, other persons, and the public, and, on behalf of the Commission, shall see to the faithful execution of the administrative policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct.

(5)(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that request to Congress.

(B) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to

require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(b) The Commission shall—

(1) make a study of the data banks, automated data processing programs, and information systems of governmental, regional, and private organizations, in order to determine the standards and procedures in force for the protection of personal information; and

(2) recommend to the President and the Congress the extent, if any, to which the requirements and principles of section 552a of title 5, United States Code, should be applied to the information practices of those organizations by legislation, administrative action, or voluntary adoption of such requirements and principles, and report on such other legislative recommendations as it may determine to be necessary to protect the privacy of individuals while meeting the legitimate needs of government and society for information.

(c)(1) In the course of conducting the study required under subsection (b)(1) of this section, and in its reports thereon, the Commission may research, examine, and analyze—

(A) interstate transfer of information about individuals that is undertaken through manual files or by computer or other electronic or telecommunications means;

(B) data banks and information programs and systems the operation of which significantly or substantially affect the enjoyment of the privacy and other personal and property rights of individuals;

(C) the use of social security numbers, license plate numbers, universal identifiers, and other symbols to identify individuals in data banks and to gain access to, integrate, or centralize information systems and files; and

(D) the matching and analysis of statistical data, such as Federal census data, with other sources of personal data, such as automobile registries and telephone directories, in order to reconstruct individual responses to statistical questionnaires for commercial or other purposes, in a way which results in a violation of the implied or explicitly recognized confidentiality of such information.

(2)(A) The Commission may include in its examination personal information activities in the following areas: medical; insurance; education; employment and personnel; credit, banking and financial institutions; credit bureaus; the commercial reporting industry; cable television and other telecommunications media; travel, hotel and entertainment reservations; and electronic check processing.

(B) The Commission shall include in its examination a study of—

(i) whether a person engaged in interstate commerce who maintains a mailing list should be required to remove an individual's name and address from such list upon request of that individual;

(ii) whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other agencies and to agencies of State governments;

(iii) whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a (g)(1)(C) or (D) of title 5, United States Code; and

(iv) whether and how the standards for security and confidentiality of records required under section 552a (e)(10) of such title should be applied when a record is disclosed to a person other than an agency.

(C) The Commission may study such other personal information activities necessary to carry out the congressional policy embodied in this Act, except that the Commission shall not investigate information systems maintained by religious organizations.

(3) In conducting such study, the Commission shall—

(A) determine what laws, Executive orders, regulations, directives, and judicial decisions govern the activities under study and the extent to which they are consistent with the rights of privacy, due process of law, and other guarantees in the Constitution;

(B) determine to what extent governmental and private information systems affect Federal-State relations or the principle of separation of powers;

(C) examine the standards and criteria governing programs, policies, and practices relating to the collection, soliciting, processing, use, access, integration, dissemination, and transmission of personal information; and

(D) to the maximum extent practicable, collect and utilize findings, reports, studies, hearing transcripts, and recommendations of governmental, legislative and private bodies, institutions, organizations, and individuals which pertain to the problems under study by the Commission.

(d) In addition to its other functions the Commission may—

(1) request assistance of the heads of appropriate departments, agencies, and instrumentalities of the Federal Government, of State and local governments, and other persons in carrying out its functions under this Act;

(2) upon request, assist Federal agencies in complying with the requirements of section 552a of title 5, United States Code;

(3) determine what specific categories of information, the collection of which would violate an individual's right of privacy, should be prohibited by statute from collection by Federal agencies; and

(4) upon request, prepare model legislation for use by State and local governments in establishing procedures for handling, maintaining, and disseminating personal information at the State and local level and provide such technical assistance to State and local governments as they may require in the preparation and implementation of such legislation.

(e)(1) The Commission may, in carrying out its functions under this section, conduct such inspections, sit and act at such times and places, hold such hearings, take such testimony, require by subpena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, administer such oaths, have such printing and binding done, and make such expenditures as the Commission deems advisable. A subpeona shall be issued only upon an affirmative vote of a majority of all members of the Commission. Subpoenas shall be issued under the signature of the Chairman or any member of the Commission designated by the Chairman and shall be served by any person designated by the Chairman or any such member. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2)(A) Each department, agency, and instrumentality of the executive branch of the Government is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under this section. Whenever the head of any such department, agency, or instrumentality submits a report pursuant to section 552a(o) of title 5, United States Code, a copy of such report shall be transmitted to the Commission.

(B) In carrying out its functions and exercising its powers under this section, the Commission may accept from any such department, agency, independent instrumentality, or other person any individually identifiable data if such data is necessary to carry out such powers and functions. In any case in which the Commission accepts any such information, it shall assure that the information is used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned to such department, agency, independent instrumentality, or person from which it is obtained, as appropriate.

(3) The Commission shall have the power to—

(A) appoint and fix the compensation of an executive director, and such additional staff personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and (5 U.S.C. 5101, 5331; 5 U.S.C. 5332(note))

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code. The Commission may delegate any of its functions to such personnel of the Commission as the Commission may designate and may authorize such successive redelegations of such functions as it may deem desirable.

(4) The Commission is authorized—

(A) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel;

(B) to enter into contracts or other arrangements or modifications thereof, with any government, any department, agency, or independent instrumentality of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5);

(C) to make advance, progress, and other payments which the Commission deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(D) to take such other action as may be necessary to carry out its functions under this section.

(f)(1) Each [the] member of the Commission who is an officer or employee of the United States shall serve without additional compensation, but shall continue to receive the salary of his regular position when engaged in the performance of the duties vested in the Commission.

(2) A member of the Commission other than one to whom paragraph (1) applies shall receive per diem at the maximum daily rate for GS-18 of the General Schedule when engaged in the actual performance of the duties vested in the Commission. (5 U.S.C. 5332(note))

(3) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(g) The Commission shall, from time to time, and in an annual report, report to the President and the Congress on its activities in carrying out the provisions of this section. The Commission shall make a final report to the President and to the Congress on its findings pursuant to the study required to be made under subsection (b)(1) of this section not later than two years from the date on which all of the members of the Commission are appointed. The Commission shall cease to exist thirty days after the date on which its final report is submitted to the President and the Congress.

(h)(1) Any member, officer, or employee of the Commission, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Commission under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

Sec. 6. The Office of Management and Budget shall—

(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act; and

(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies. (5 U.S.C. 552a(note))

Sec. 7. (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number. (5 U.S.C. 552a(note))

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

Sec. 8. The provisions of this Act shall be effective on and after the date of enactment, except that the amendments made by sections 3 and 4 shall become effective 270 days following the day on which

this Act is enacted. (5 U.S.C. 552a(note))

Sec. 9. There is authorized to be appropriated to carry out the provisions of section 5 of this Act for fiscal years 1975, 1976, and 1977 the sum of $1,500,000, except that not more than $750,000 may be expended during any such fiscal year. (5 U.S.C. 552a(note))

Eastern Wilderness Act

- **Act of January 3, 1975 (P.L. 93-622, 88 Stat. 2096; 16 U.S.C. 1132(note))**

Findings and Declaration of Policy

Sec. 2. (a) The Congress finds that—

(1) in the more populous eastern half of the United States there is an urgent need to identify, study, designate, and preserve areas for addition to the National Wilderness Preservation System;

(2) in recognition of this urgent need, certain areas in the National Forest System in the eastern half of the United States were designated by the Congress as wilderness in the Wilderness Act (78 Stat. 890); certain areas in the National Wildlife Refuge system in the eastern half of the United States have been designated by the Congress as wilderness or recommended by the President for such designation, and certain areas in the National Park System in the eastern half of the United States have been recommended by the President for designation as wilderness; and

(3) additional areas of wilderness in the more populous eastern half of the United States are increasingly threatened by the pressures of a growing and more mobile population, large-scale industrial and economic growth, and development and uses inconsistent with the protection, maintenance, and enhancement of the areas' wilderness character.

(b) Therefore, the Congress finds and declares that it is in the national interest that these and similar areas in the eastern half of the United States be promptly designated as wilderness with the National Wilderness Preservation System, in order to preserve such areas as an enduring resource of wilderness which shall be managed to promote and perpetuate the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation for the benefit of all of the American people of present and future generations. (16 U.S.C. 1132(note))

Designation of Wilderness Areas

Sec. 3. (a) In furtherance of the purposes of the Wilderness Act, the following lands (hereinafter in this Act referred to as "wilderness areas"), as generally depicted on maps appropriately referenced, dated April 1974, are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System—

(1) certain lands in the Bankhead National Forest, Alabama, which comprise about twelve thousand acres, are generally depicted on a map entitled "Sipsey Wilderness Area—Proposed", and shall be known as the Sipsey Wilderness;

(2) certain lands in the Ouachita National Forest, Arkansas, which comprise about fourteen thousand four hundred and thirty-three acres, are generally depicted on a map entitled "Caney Creek Wilderness Area—Proposed", and shall be known as the Caney Creek Wilderness;

(3) certain lands in the Ozark National Forest, Arkansas, which comprise about ten thousand five hundred and ninety acres, are

generally depicted on a map entitled "Upper Buffalo Wilderness Area—Proposed", and shall be known as the Upper Buffalo Wilderness;

(4) certain lands in the Appalachicola National Forest, Florida, which comprise about twenty-two thousand acres, are generally depicted on a map entitled "Bradwell Bay Wilderness Area—Proposed", and shall be known as the Bradwell Bay Wilderness;

(5) certain lands in the Daniel Boone National Forest, Kentucky, which comprise about five thousand five hundred acres, are generally depicted on a map entitled "Beaver Creek Wilderness Area—Proposed", and shall be known as the Beaver Creek Wilderness;

(6) certain lands in the White Mountain National Forest, New Hampshire, which comprise about twenty thousand three hundred and eighty acres, are generally depicted on a map entitled "Presidential Range-Dry River Wilderness area—proposed", and shall be known as the Presidential Range-Dry River Wilderness;

(7) certain lands in the Nantahala and Cherokee National Forest, North Carolina and Tennessee, which comprise about fifteen thousand acres, are generally depicted on a map entitled "Joyce Kilmer-Slickrock Wilderness Area—Proposed," and shall be known as the Joyce Kilmer-Slickrock Wilderness;

(8) certain lands in the Sumter, Nantahaha, and Chattahoochee National Forests in South Carolina, North Carolina, and Georgia, which comprise about three thousand six hundred acres, are generally depicted on a map entitled "Ellicott Rock Wilderness Area—Proposed," and shall be known as Ellicott Rock Wilderness;

(9) certain lands in the Cherokee National Forest, Tennessee, which comprise about two thousand five hundred and seventy acres, are generally depicted on a map entitled "Gee Creek Wilderness Area—Proposed", and shall be known as the Gee Creek Wilderness;

(10) certain lands in the Green Mountain National Forest, Vermont, which comprise about six thousand five hundred acres, are generally depicted on a map entitled "Bristol Cliffs Wilderness Area—Proposed", and shall be known as the Bristol Cliffs Wilderness;

(11) certain lands in the Green Mountain National Forest, Vermont, which comprise about fourteen thousand three hundred acres, are generally depicted on a map entitled "Lye Brook Wilderness Area—Proposed", and shall be known as the Lye Brook Wilderness;

(12) certain lands in the Jefferson National Forest, Virginia, which comprise about eight thousand eight hundred acres, are generally depicted on a map entitled "James River Face Wilderness Area—Proposed", and shall be known as the James River Face Wilderness;

(13) certain lands in the Monongahela National Forest, West Virginia, which comprise about ten thousand two hundred and fifteen acres, are generally depicted on a map entitled "Dolly Sods Wilderness Area—Proposed," and shall be known as the Dolly Sods Wilderness;

(14) certain lands in the Monongahela National Forest, West Virginia, which comprise about twenty thousand acres, are generally depicted on a map entitled "Otter Creek Wilderness Study Area," and shall be known as the Otter Creek Wilderness; and

(15) certain lands in the Chequamegon National Forest, Wisconsin, which comprise about six thousand six hundred acres, are

generally depicted on a map entitled "Rainbow Lake Wilderness Area—Proposed", and shall be known as the Rainbow Lake Wilderness.

(b) In furtherance of the purposes of the Wilderness Act, the following lands (hereinafter referred to as "wilderness areas"), as generally depicted on maps appropriately referenced, dated April 1973, are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System: certain lands in the Chattahoochee and Cherokee National Forests, Georgia and Tennessee, which comprise about thirty-four thousand five hundred acres, are generally depicted on a map dated April 1973, entitled "Cohutta Wilderness Area—Proposed," and shall be known as the Cohutta Wilderness. (16 U.S.C. 1132(note))

Designation of Wilderness Study Areas

Sec. 4. (a) In furtherance of the purposes of the Wilderness Act and in accordance with the provisions of subsection 3(d) of that Act, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall review, as to its suitability or nonsuitability for preservation as wilderness, each area designated by or pursuant to subsection (b) of this section and report his findings to the President. The President shall advise the United States Senate and House of Representatives of his recommendations with respect to the designation as wilderness of each such area on which the review has been completed.

(b) Areas to be reviewed pursuant to this section (hereinafter referred to as "wilderness study areas"), as generally depicted on maps appropriately referenced, dated April 1974, include—

(1) certain lands in the Quachita National Forest, Arkansas, which comprise approximately five thousand seven hundred acres and are generally depicted on a map entitled "Belle Starr Cave Wilderness Study Area";

(2) certain lands in the Quachita National Forest, Arkansas, which comprise approximately five thousand five hundred acres and are generally depicted on a map entitled "Dry Creek Wilderness Study Area";

(3) certain lands in the Ozark National Forest, Arkansas, which comprise approximately two thousand one hundred acres and are generally depicted on a map entitled "Richland Creek Wilderness Study Area";

(4) certain lands in the Appalachicola National Forest, Florida, which comprise approximately one thousand one hundred acres and are generally depicted as the "Sopchoppy River Wilderness Study Area" on a map entitled "Bradwell Bay Wilderness Area—Proposed";

(5) certain lands in the Hiawatha National Forest, Michigan, which comprise approximately five thousand four hundred acres and are generally depicted on a map entitled "Rock River Canyon Wilderness Study Area";

(6) certain lands in the Ottawa National Forest, Michigan, which comprise approximately thirteen thousand two hundred acres and are generally depicted on a map entitled "Sturgeon River Wilderness Study Area";

(7) certain lands in the Pisgah National Forest, North Carolina, which comprise approximately one thousand one hundred acres and are generally depicted on a map entitled "Craggy Mountain Wilderness Study Area";

(8) certain lands in the Francis Marion National Forest, South Carolina, which comprise approximately one thousand five hundred acres and are generally depicted on a map entitled "Wambaw Swamp Wilderness Study Area";

(9) certain lands in the Jefferson National Forest, Virginia, which comprise approximately four thousand acres and are generally depicted on a map entitled "Mill Creek Wilderness Study Area";

(10) certain lands in the Jefferson National Forest, Virginia, which comprise approximately eight thousand four hundred acres and are generally depicted on a map entitled "Mountain Lake Wilderness Study Area";

(11) certain lands in the Jefferson National Forest, Virginia, which comprise approximately five thousand acres and are generally depicted on a map entitled "Peters Mountain Wilderness Study Area";

(12) certain lands in the George Washington National Forest, Virginia, which comprise approximately six thousand seven hundred acres and are generally depicted on a map entitled "Ramsey's Draft Wilderness Study Area";

(13) certain lands in the Chequamegon National Forest, Wisconsin, which comprise approximately six thousand three hundred acres and are generally depicted on a map entitled "Flynn Lake Wilderness Study Area";

(14) certain lands in the Chequamegon National Forest, Wisconsin, which comprise approximately four thousand two hundred acres and are generally depicted on a map entitled "Round Lake Wilderness Study Area";

(15) certain lands in the Monogahela National Forest, West Virginia, which comprise approximately thirty-six thousand three hundred acres and are generally depicted on a map entitled "Cranberry Wilderness Study Area";

(16) certain lands in the Cherokee National Forest, Tennessee, which comprise approximately four thousand five hundred acres and are generally depicted on a map entitled "Big Frog Wilderness Study Area"; and

(17) certain lands in the Cherokee National Forest, Tennessee, which comprise approximately fourteen thousand acres and are generally depicted as the "Citico Creek Area" on a map entitled "Joyce Kilmer-Slickrock Wilderness Area—Proposed";

(c) Reviews shall be completed and the President shall make his recommendations to Congress with five years after enactment of this Act.

(d) Congress may, upon the recommendation of the Secretary of Agriculture or otherwise, designate as study areas, National Forest System lands east of the 100th meridian other than those areas specified in subsection (b) of this section, for review as to suitability or nonsuitability for preservation as wilderness. Any such area subsequently designated as a wilderness study area after the enactment of this Act shall have its suitability or nonsuitability for preservation as wilderness submitted to Congress within ten years from the date of designation as a wilderness study area. Nothing in this Act shall be construed as limiting the authority of the Secretary of Agriculture to carry out management programs, development, and activities in accordance with the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215, 16 U.S.C. 528-531) within areas not designated for review in accordance with the provisions of this Act.

(e) Nothing herein contained shall limit the President in proposing, as part of his recommendations to

Congress, the alteration of existing boundaries of any wilderness study area or recommending the addition to any such area of any contiguous area predominantly of wilderness value. Any recommendation of the President of the effect that such area or portion thereof should be designated as "wilderness" shall become effective only if so provided by an Act of Congress. (16 U.S.C. 1132; 1132(note))

Filing of Maps and Descriptions

Sec. 5. As soon as practicable after enactment of this Act, a map of each wilderness study area and a map and a legal description of each wilderness area shall be filed with the Committees on Interior and Insular Affairs and on Agriculture of the United States Senate and House of Representatives, and each such map and description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in each such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

Managing Study Areas to Preserve Wilderness Character

Sec. 6. (a) Except as otherwise provided by this Act, the wilderness areas designated by or pursuant to this Act shall be managed by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act. The wilderness study areas designated by or pursuant to this Act shall—be managed by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation system until Congress has determined otherwise, except that such management requirement shall in no case extend beyond the expiration of the third succeeding Congress from the date of submission to the Congress of the President's recommendations concerning the particular study area.

(b) Within the sixteen wilderness areas designated by section 3 of this Act:

(1) the Secretary of Agriculture may acquire by purchase with donated or appropriated funds, by gift, exchange, condemnation, or otherwise, such lands, waters, or interests therein as he determines necessary or desirable for the purposes of this Act. All lands acquired under the provisions of this subsection shall become National Forest lands and a part of the Wilderness System;

(2) in exercising the exchange authority granted by paragraph (1), the Secretary of Agriculture may accept title to non-Federal property for federally owned property of substantially equal value, or if not of substantially equal value, the value shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require;

(3) the authority of the Secretary of Agriculture to condemn any private land or interest therein within any wilderness area designated by or pursuant to this Act shall not be invoked so long as the owner or owners of such land or interest holds and uses it in the same manner and for those purposes for which such land or interest was held on the date of the designation of the wilderness area: *Provided, however,* That the Secretary of Agriculture may acquire such land or interest without consent of the owner or

owners whenever he finds such use to be incompatible with the management of such area as wilderness and the owner or owners manifest unwillingness, and subsequently fail, to promptly discontinue such incompatible use;

(4) at least sixty days prior to any transfer by exchange, sale, or otherwise (except by bequest) of such lands or interests therein described in paragraph (3) of this subsection, the owner or owners of such lands or interests therein shall provide notice of such transfer to the supervisor of the National Forest concerned, in accordance with such rules and regulations as the Secretary of Agriculture may promulgate;

(5) at least sixty days prior to any change in the use of such lands or interests therein described in paragraph (3) of this subsection which will result in any significant new construction or disturbance of land surface or flora or will require the use of motor vehicles and other forms of mechanized transport or motorized equipment (except as otherwise authorized by law for ingress or egress or for existing agricultural activities begun before the date of the designation other than timber cutting), the owner or owners of such lands or interests therein shall provide notice of such change in use to the supervisor of the National Forest within which such lands are located, in accordance with such rules and regulations as the Secretary of Agriculture may promulgate;

(6) for the purposes of paragraph (7) and (8) of this subsection, the term "property" shall mean a detached noncommercial residential dwelling, the construction of which was begun before the date of the designation of the wilderness area (hereinafter referred to as "dwelling"), or an existing agricultural activity begun before the date of the designation of the wilderness area, other than timber cutting (hereinafter referred to as "agricultural activity"), together with so much of the land on which the dwelling or agricultural activity is situated, such land being in the same ownership as the dwelling or agricultural activity, as the Secretary of Agriculture shall determine to be necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use or for the agricultural activity, together with any structures accessory to the dwelling or agricultural activity which are situated on the land so designated;

(7) any owner or owners of property on the date of its acquisition by the Secretary of Agriculture may, as a condition of such acquisition, retain for themselves and their successors or assigns a right of use and occupancy of the property for such noncommercial residential purpose or agricultural activity for twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or his spouse, whichever is later. The owner shall elect the term to be reserved. The Secretary of Agriculture shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner: *Provided,* That whenever an owner of property elects to retain a right of use and occupancy as provided for in this section, such owner shall be deemed to have waived any benefits or rights accruing under sections 203, 204, 205, and 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), and for the purpose of those sections such owner shall not be considered a displaced person as defined in section 101(6) of that Act; and

(8) a right of use and occupancy retained or enjoyed pursuant to paragraph (7) of this subsection may be terminated with respect to the entire property by the Secretary of Agriculture upon his determination that the property or any portion thereof has ceased to be used for such noncommercial residential purpose or agricultural activity and upon tender to the holder of a right an amount equal to the fair market value as of the date of tender of the portion of the right which remains unexpired on the date of termination. (16 U.S.C. 1131(note))

Transfer of Jurisdiction

Sec. 7. The head of any federal department or agency having jurisdiction over any lands or interests in lands within the boundaries of wilderness areas and wilderness study areas designated by or pursuant to this Act is authorized to transfer to the Secretary jurisdiction over such lands for administration in accordance with the provisions of this Act.

Limitation of the 100th Meridian

Sec. 8. Unless otherwise provided by any other Act the provisions of this Act shall only apply to National Forest areas east of the 100th meridian.

Authorization of Appropriations

Sec. 9. There are hereby authorized to be appropriated an amount not to exceed $5,000,000 for the acquisition by purchase, condemnation, or otherwise of lands, waters, or interests therein located in areas designated as wilderness pursuant to section 3 of this Act and an amount not to exceed $1,700,000 for the purpose of conducting a review of wilderness study areas designated by section 4 of this Act.

Federal Noxious Weed Act of 1974

- **Act of January 3, 1975, (P.L. 93-629, as amended, 81 Stat. 2148; 7 U.S.C. 2801(note), 2801-2814)**

Short Title

Sec. 1. That this Act may be cited as the "Federal Noxious Weed Act of 1974". (7 U.S.C. 2801(note))

Findings

Sec. 2. The importation or distribution in interstate commerce of noxious weeds, except under controlled conditions, allows the growth and spread of such weeds which interfere with the growth of useful plants, clog waterways and interfere with navigation, cause disease, or have other adverse effects upon man or his environment and therefore is detrimental to the agriculture and commerce of the United States and to the public health. The uncontrolled distribution within the United States of noxious weeds after their importation or interstate distribution has like detrimental effects and allowing such distribution encourages and facilitates the burdening and obstructing of interstate and foreign commerce, and is inimical to the public interest. Accordingly, the Congress hereby determines that the regulation of transactions in, and movement of, noxious weeds as provided in this Act is necessary to prevent and eliminate burdens upon and obstructions to interstate and foreign commerce and to protect the public welfare. (7 U.S.C. 2801)

Definitions

Sec. 3. As used in this Act, except where the context otherwise requires:

(a) "Secretary" means the Secretary of Agriculture of the United States or any other person to whom authority may be delegated to act in his stead.

(b) "Authorized inspector" means any employee of the Department of Agriculture, or any employee of any other agency of the Federal Government or of any State or other governmental agency which is cooperating with the Department in administration of any provisions of this Act, who is authorized by the Secretary to perform assigned duties under this Act.

(c) "Noxious weed" means any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health.

(d) "United States" means any of the States, territories, or districts of the United States.

(e) "Interstate" means from any State, territory, or district of the United States into or through any other State, territory, or district.

(f) "District" means the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States.

(g) "Move" means deposit for transmission in the mails, ship, offer for shipment, offer for entry, import,

receive for transportation, carry, or otherwise transport or move, or allow to be moved, by mail or otherwise. (7 U.S.C. 2802)

Movement of Noxious Weeds

Sec. 4. (a) No person shall knowingly move any noxious weed, identified in a regulation promulgated by the Secretary, into or through the United States or interstate, unless such movement is—

(1) from Canada, or authorized under general or specific permit from the Secretary; and

(2) made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as the Secretary may prescribe under this Act to prevent the dissemination into the United States, or interstate, of such noxious weeds.

(b) The Secretary may refuse to issue a permit for the movement of any such noxious weed when, in his opinion, such movement would involve a danger of dissemination of such noxious weeds into the United States or interstate.

(c) No person shall knowingly sell, purchase, barter, exchange, give, or receive any such noxious weed which has been moved in violation of subsection (a), or knowingly deliver or receive for transportation or transport, in interstate or foreign commerce, any advertisement to sell, purchase, barter, exchange, give, or receive any such noxious weed which is prohibited from movement in such commerce under this Act. (7 U.S.C. 2803)

Quarantine

Sec. 5. (a) The Secretary may promulgate such quarantines and other regulations requiring inspection of products and articles of any character whatsoever and means of conveyance, specified in the regulations, as a condition of their movement into or through the United States and otherwise restricting or prohibiting such movement, as he deems necessary to prevent the dissemination into the United States of any noxious weeds, and it shall be unlawful for any person to move any products, articles, or means of conveyance into or through the United States contrary to any such regulation.

(b) Whenever the Secretary has reason to believe that an infestation of noxious weeds exists in any State, territory, or district, he may by regulation temporarily quarantine such jurisdiction, or a portion thereof, and by regulation may restrict or prohibit the interstate movement from the quarantined area of any products and articles of any character whatsoever and means of conveyance, capable of carrying such noxious weeds, and after promulgation of such quarantine and other regulations, it shall be unlawful for any person to move interstate from a quarantined area any such products, articles, or means of conveyance, specified in the regulations, except in accordance with such regulations: *Provided, however,* That such quarantine and regulations shall expire at the close of the ninetieth day after their promulgation.

(c) However, if, after public hearing, the Secretary determines, on the basis of the information received at the hearing and other information available to him, that such a quarantine and regulations are necessary in order to prevent the interstate spread of noxious weeds from any State, territory, or district in which he determines an infestation of noxious weeds exists, and to protect the agriculture, commerce, fish, or wildlife resources of the United States or the public health, he shall promulgate such quarantine

and other regulations as he determines are appropriate for such purposes, and thereafter it shall be unlawful for any person to move interstate from any quarantined area any regulated products, articles, or means of conveyance except in accordance with such regulations. (7 U.S.C. 2804)

Prevent Dissemination

Sec. 6. (a) Except as provided in paragraph (c) of this section, the Secretary may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any noxious weed, seize, quarantine, treat, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, in bond or otherwise, and which he has reason to believe is infested by any noxious weed or contains any such weed, or which has moved into the United States, or interstate, and which he has reason to believe was infested by or contained any noxious weed at the time of such movement; and any noxious weed, product, article, or means of conveyance which is moving into or through the United States, or interstate, or has moved into the United States, or interstate, in violation of this Act or any regulation hereunder.

(b) Except as provided in subsection (c) of this section, the Secretary may order the owner of any product, article, means of conveyance, or noxious weed subject to disposal under subsection (a) of this section, or his agent, to treat, destroy, or make other disposal of such product, article, means of conveyance, or noxious weed, without cost to the Federal Government and in such manner as the Secretary deems appropriate. The Secretary may apply to the United States District Court, or to the United States court of any territory or possession, for the judicial district in which such person resides or transacts business or in which the product, article, means of conveyance, or noxious weed is found, for enforcement of such order by injunction, mandatory or otherwise. Process in any such case may be served in any judicial district wherein the defendant resides or transacts business or may be found, and subpoenas for witnesses who are required to attend a court in any judicial district in such a case may run to any other judicial district.

(c) No product, article, means of conveyance, or noxious weed shall be destroyed, exported, or returned to shipping point of origin, or ordered to be destroyed, exported, or so returned under this section, unless in the opinion of the Secretary there is no less drastic action which would be adequate to prevent the dissemination of noxious weeds into the United States or interstate.

(d) The owner of any product, article, means of conveyance, or noxious weed destroyed, or otherwise disposed of, by the Secretary under this section, may bring an action against the United States in the United States District Court for the District of Columbia, within one year after such destruction or disposal, and recover just compensation for such destruction or disposal of such product, article, means of conveyance, or noxious weed (not including compensation for loss due to delays incident to determining its eligibility for movement under this Act) if the owner establishes that such destruction or disposal was not authorized under this Act. Any judgment rendered in favor of such owner shall be paid out of the money in the Treasury appropriated

for administration of this Act. (7 U.S.C. 2805)

Searches

Sec. 7. Any authorized inspector, when properly identified, shall have authority (a) without a warrant, to stop any person or means of conveyance moving into the United States, and inspect any noxious weeds and any products and articles of any character whatsoever, carried thereby, and inspect such means of conveyance, to determine whether such person or means of conveyance is moving any noxious weed, product, article, or means of conveyance contrary to this Act or any regulation under this Act; (b) without a warrant, to stop any person or means of conveyance moving through the United States or interstate, and inspect any noxious weeds and any products and articles of any character whatsoever carried thereby, and inspect such means of conveyance, to determine whether such person or means of conveyance is moving any noxious weed, product, article, or means of conveyance contrary to this Act or any regulation thereunder, if such inspector has probable cause to believe that such person or means of conveyance is moving any noxious weed regulated under this Act; and (c) to enter, with a warrant, any premises in the United States, for purposes of any inspections or other actions necessary under this Act. Any judge of the United States or of a court of record of any State, territory, or district, or a United States commissioner, may, within his respective jurisdiction, upon proper oath or affirmation showing probably cause to believe that there are on certain premises any products, articles, means of conveyance, or noxious weeds subject to this Act, issue warrants for the entry of such premises for purposes of any inspection or other action necessary under this Act, except as otherwise provided in section 9 of this Act. Such warrants may be executed by any authorized inspector or any United States marshal. (7 U.S.C. 2806)

Penalties

Sec. 8. Any person who knowingly violates section 4 or 5 of this Act, or any regulation promulgated under this Act, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or both. (7 U.S.C. 2807)

Cooperation with other Agencies

Sec. 9. (a) The Secretary is authorized to cooperate with other Federal agencies, agencies of States, territories, or districts, or political subdivisions thereof, farmers' associations, and similar organizations, and individuals in carrying out operations or measures in the United States to eradicate, suppress, control, or prevent or retard the spread of any noxious weed. The Secretary is authorized to appoint employees of other agencies of the Federal Government or any agencies of any State, territory, or district, or political subdivisions thereof, as collaborators to assist in administration of the provisions of this Act, pursuant to cooperative agreements with such agencies, whenever he determines that such appointments would facilitate administration of this Act.

(b) In performing the operations or measures authorized by subsection (a) of this section, the cooperating State or other governmental agency shall be responsible for the authority necessary to carry out the operations or measures on all lands and properties within the State or other jurisdiction involved, other

than those owned or controlled by the United States Government, and for such other facilities and means as in the discretion of the Secretary are necessary. (7 U.S.C. 2808)

Regulations

Sec. 10. The Secretary is authorized to promulgate regulations necessary to effectuate the provisions of this Act. However, any regulation identifying a noxious weed under section 4 of this Act shall be promulgated only after publication of a notice of the proposed regulation and, when requested by any interested person, a public hearing on the proposal. Any such regulation shall be based upon the information received at any such hearing and other information available to the Secretary and a determination by the Secretary that the plant is within the definition of a noxious weed in section 3(c) of this Act and that its dissemination in the United States may reasonably be expected to have, to a serious degree, any effect specified in section 3(c). (7 U.S.C. 2809)

Appropriations

Sec. 11. There are hereby authorized to be appropriated such sums as Congress may from time to time determine to be necessary for the administration of this Act. Any sums so appropriated shall be available for expenditures for the purchase, hire, maintenance, operation, and exchange of aircraft and other means of conveyance, and for such other expenses as may be necessary to carry out the purposes of this Act. However, unless specifically authorized in other legislation or provided for in appropriations, no part of such sums shall be used to pay the cost or value of property injured or destroyed under section 9 of this Act. (7 U.S.C. 2810)

Shipments of Seeds

Sec. 12. The provisions of this Act shall not apply to shipments of seed subject to the Federal Seed Act (53 Stat. 1275, as amended; 7 U.S.C. 1551 et seq.) and this Act shall not amend or repeal any of the provisions of said Act or of the Plant Quarantine Act of August 20, 1912 (37 Stat. 315, as amended; 7 U.S.C. 151-154, 156-164a, 167), the Federal Plant Pest Act (71 Stat. 31; 7 U.S.C. 150aa-150jj), or any other Federal laws. (7 U.S.C. 2811)

State and Local Laws

Sec. 13. The provisions of this Act shall not invalidate the provisions of the laws of any State or political subdivision thereof, or of any territory or district of the United States relating to noxious weeds, except that no such jurisdiction may permit any action that is prohibited under this Act. (7 U.S.C. 2812)

Separability of Provisions

Sec. 14. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby. (7 U.S.C. 2813)

Management of Undesirable Plants on Federal Lands

Sec. 15. (a) Duties of Agencies. Each Federal agency shall—

(1) designate an office or person adequately trained in the management of undesirable plant

species to develop and coordinate an undesirable plants management program for control of undesirable plants on Federal lands under the agency's jurisdiction;

(2) establish and adequately fund an undesirable plants management program through the agency's budgetary process;

(3) complete and implement cooperative agreements with State agencies regarding the management of undesirable plant species on Federal lands under the agency's jurisdiction; and

(4) establish integrated management systems to control or contain undesirable plant species targeted under cooperative agreements.

(b) Environmental Impact Statements.—In the event an environmental assessment or environmental impact statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to implement plant control agreements, Federal agencies shall complete such assessments or statements within 1 year after the requirement for such assessment or statement is ascertained.

(c) Cooperative agreements with state agencies.—

(1) In general.—Federal agencies, as appropriate, shall enter into cooperative agreements with State agencies to coordinate the management of undesirable plant species on Federal lands.

(2) Contents of plan.—A cooperative agreement entered into pursuant to paragraph (1) shall—

(A) prioritize and target undesirable plant species or group of species to be controlled or contained within a specific geographic area;

(B) describe the integrated management system to be used to control or contain the targeted undesirable plant species or group of species; and

(C) detail the means of implementing the integrated management system, define the duties of the Federal agency and the State agency in prosecuting that method, and establish a timeframe for the initiation and completion of the tasks specified in the integrated management system.

(d) Exception. A Federal agency is not required under this section to carry out programs on Federal lands unless similar programs are being implemented generally on State or private lands in the same area.

(e) Definitions. As used in this section—

(1) Cooperative agreement.—The term "cooperative agreement" means a written agreement between a Federal agency and a State agency entered into pursuant to this section.

(2) Federal agency.—The term "Federal agency" means a department, agency, or bureau of the Federal Government responsible for administering or managing Federal lands under its jurisdiction.

(3) Federal lands.—The term "Federal lands" means lands managed by or under the jurisdiction of the Federal Government.

(4) Integrated management system.—The term "integrated management systems" means a system for the planning and implementation of a program, using an interdisciplinary approach, to select a method for containing or controlling an undesirable plant species or group of species using all available methods, including—

(A) education;

(B) preventive measures;

(C) physical or mechanical methods;

(D) biological agents;

(E) herbicide methods;

(F) cultural methods; and

(G) general land management practices such as manipulation

of livestock or wildlife grazing strategies or improving wildlife or livestock habitat.

(5) Interdisciplinary approach.— The term "interdisciplinary approach" means an approach to making decisions regarding the containment or control of an undesirable plant species or group of species, which—

(A) includes participation by personnel of Federal or State agencies with experience in areas including weed science, range science, wildlife biology, land management, and forestry; and

(B) includes consideration of—

(i) the most efficient and effective method of containing or controlling the undesirable plant species;

(ii) scientific evidence and current technology;

(iii) the physiology and habitat of a plant species; and

(iv) the economic, social, and ecological consequences of implementing the program.

(6) State agencies.—The term "State agency" means a State department of agriculture, or other State agency or political subdivision thereof, responsible for the administration or implementation of undesirable plants laws of a State.

(7) Undesirable plant species.—The term "undesirable plants" means plant species that are classified as undesirable, noxious, harmful, exotic, injurious, or poisonous, pursuant to State or Federal law. Species listed as endangered by the Endangered Species Act of 1973 shall not be designated as undesirable plants under this section and shall not include plants indigenous to an area where control measures are to be taken under this section.

(f) Coordination.—

(1) In general.—The Secretary of Agriculture and the Secretary of the Interior shall take such actions as may be necessary to coordinate Federal agency programs for control, research, and educational efforts associated with Federal, State, and locally designated noxious weeds.

(2) Duties.—The Secretary, in consultation with the Secretary of the Interior, shall—

(A) identify regional priorities for noxious weed control;

(B) incorporate into existing technical guides regionally appropriate technical information; and

(C) disseminate such technical information to interested State, local, and private entities.

(3) Cost share assistance.—The Secretary may provide cost share assistance to State and local agencies to manage noxious weeds in an area if a majority of landowners in that area agree to participate in a noxious weed management program.

(g) Authorization of appropriations.—There is authorized to be appropriated such sums as may be necessary in each of fiscal years 1991 through 1995 to carry out this section. (7 U.S.C. 2814)

Cooperative Funds and Deposits

- **Act of December 12, 1975 (P.L. 94-148, 89 Stat. 804; 16 U.S.C. 565a-1 thru 565a-3)**

Agreements

Sec. 1. To facilitate the administration of the programs and activities of the Forest Service, the Secretary is authorized to negotiate and enter into cooperative agreements with public or private agencies, organizations, institutions, or persons to construct, operate, and maintain cooperative pollution abatement equipment and facilities, including sanitary landfills, water systems, and sewer systems; to engage in cooperative manpower and job training and development programs; to develop and publish cooperative environmental education and forest history materials; and to perform forestry protection, including fire protection, timber stand improvement, debris removal, and thinning of trees. The Secretary may enter into aforesaid agreements when he determines that the public interest will be benefitted and that there exists a mutual interest other than monetary considerations. In such cooperative arrangements, the Secretary is authorized to advance or reimburse funds to cooperators from any Forest Service appropriation available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of the Act of January 31, 1823 (Rev. Stat. 3648, as amended; 31 U.S.C. 529), relating to the advance of public moneys. (16 U.S.C. 565a-1)

Status of Cooperators

Sec. 2. In any agreement authorized by Section 1, cooperators and their employees may perform cooperative work under supervision of the Forest Service in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for the purposes of chapter 171 of title 28, United States Code, and chapter 81 of title 5, United States Code, (16 U.S.C. 565a-2)

Other Agreements

Sec. 3. Nothing in this Act shall be construed as limiting or modifying the authority of the Secretary to enter into cooperative agreements otherwise authorized by law. (16 U.S.C. 565a-3)

Energy Policy and Conservation Act

• **Act of December 22, 1975 (P.L. 94-163, 89 Stat. 871; 42 U.S.C. 6213)**

* * * *

TITLE I — MATTERS RELATED TO DOMESTIC SUPPLY AVAILABILITY

* * * *

Certain Lease Bidding Arrangements Prohibited

Sec. 105. (a) The Secretary of the Interior shall, not later than 30 days after December 22, 1975, prescribe and make effective a rule which prohibits the bidding for any right to develop crude oil, natural gas, and natural gas liquids on any lands located on the Outer Continental Shelf by any person if more than one major oil company, more than one affiliate of a major oil company, or a major oil company and any affiliate of a major oil company, has or have a significant ownership interest in such person. Such rule shall define affiliate relationships and significant ownership interests.

(b) Definitions.—As used in this section—

(1) The term "major oil company" means any person who, individually or together with any other person with respect to which such person has an affiliate relationship or significant ownership interest, produced during a prior 6-month period specified by the Secretary, an average daily volume of 1,600,000 barrels of crude oil, natural gas liquid equivalents, and natural gas equivalents.

(2). . . .

(3). . . .

(c) Exemptions.—The Secretary may, in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section. In considering any such request, the Secretary may exempt bidding for leases for lands in any area only if the Secretary finds, on the record after opportunity for an agency hearing, that—

(1) such lands have extremely high cost exploration or development problems; and

(2) exploration and development will not occur on such lands unless such exemption is granted.

Findings of the Secretary under this subsection shall be final, and shall not be invalidated unless found to be arbitrary or capricious.

(d). . . .

(e) The Secretary shall study and report to Congress, not later than 6 months after December 22, 1975, with respect to the feasibility and desirability of extending the prohibition on joint bidding to—

(1) bidding for any right to develop crude oil, natural gas, and natural gas liquids on Federal lands other than those located on the Outer Continental Shelf; and

(2) bidding for any right to develop coal and oil shale on such lands. (42 U.S.C. 6213)

Government in the Sunshine Act

- **Act of September 13, 1976 (P.L. 94-409; 90 Stat. 1241, as amended; 5 U.S.C. 552b(note))**

Short Title

Sec. 1. That this Act may be cited as the "Government in the Sunshine Act". (5 U.S.C. 552b (note))

Declaration of Policy

Sec. 2. It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. (5 U.S.C. 552b(note))

Sec. 3. (a) Title 5, United States Code, is amended by adding after section 552a the following new section:

Note—Section 552b below has been updated to show changes to U.S. Code through 1991.

Open Meetings

Sec. 552b. (a) For purposes of this section—

(1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsection (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and

(B) in fact properly classified pursuant to such Executive order;

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

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

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

(9) disclose information the premature disclosure of which would—

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court of international tribunal or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to

each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The Provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided,* That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place,and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the

determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant, exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal

Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory

purposes. In the cases of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcriptions, recordings, and minutes described in subsection (f) of this section.

(*l*) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, records, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

Toxic Substances Control Act

- **Act of October 11, 1976 (P.L. 94-469, 90 Stat. 2003 as amended; 15 U.S.C. 2602, 2608, 2609)**

* * * *

Definitions

Sec. 3. As used in this Act—

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2)(A) Except as provided in subparagraph (B), the term "chemical substance" means any organic or inorganic substance of a particular molecular identity, including—

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as pesticide.

(iii). . . .

(15 U.S.C. 2602)

* * * *

Relationship to Other Federal Laws

Sec. 9. (a) Laws Not Administered By the Administrator.

(1) If the Administrator has reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment and determines, in the Administrator's discretion, that such risk may be prevented or reduced to a sufficient extent by action taken under a federal law not administered by the Administrator, the Administrator shall submit to the agency which administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

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

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

(B) to respond to the Administrator with respect to the matters described in subparagraph (A). Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register. The agency receiving a request under such a report shall make the requested determination, issue the requested order, and make the requested response within such time as the Administrator specifies in the request, but such time specified may not be less than 90

days from the date the request was made. The response of an agency shall be accompanied by a detailed statement of the findings and conclusions of the agency and shall be published in the Federal Register.

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

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

(B) initiates, within 90 days of the publication in the Federal Register of the response of the agency under paragraph (1), action under the law (or laws) administered by such agency to protect against such risk associated with such activity or combination of activities, the Administrator may not take any action under section 6 or 7 with respect to such risk.

(3) If the Administrator has initiated action under section 6 or 7 with respect to a risk associated with a chemical substance or mixture which was the subject of a report made to an agency under paragraph (1), such agency shall before taking action under the law (or laws) administered by it to protect against such risk consult with the Administrator for the purpose of avoiding duplication of Federal action against such risk.

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

(c) Occupational Safety and Health.—In exercising any authority under this Act, the Administrator shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(d) Coordination.—In administering this Act, the Administrator shall consult and coordinate with the Secretary of Health, Education, and Welfare and the heads of any other appropriate federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the federal government for the purpose of achieving the maximum enforcement of this Act while imposing the least burdens of duplicative requirements on those subject to the Act and for other purposes. The Administrator shall, in the report required by section 30, report annually to the Congress on actions taken to coordinate with such other federal departments, agencies, or instrumentalities, and on actions taken to coordinate the authority under this Act with the authority granted under other Acts referred to in subsection (b). (15 U.S.C. 2608)

Research, Development, Collection, Dissemination, and Utilization of Data

Sec. 10. (a) Authority.—The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this Act. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529, 14 U.S.C. 5).

(b) Data Systems.—

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

(2)(A) The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare and other heads of appropriate departments and agencies design, establish, and coordinate an efficient and effective system for the retrieval of toxicological and other scientific data which could be useful to the Administrator in carrying out the purpose of this Act. Systematized retrieval shall be developed for use by all federal and other departments and agencies with responsibilities in the area of regulation or study of chemical substances and mixtures and their effect on health or the environment.

(B) The Administrator, in consultation and cooperation with the Secretary of Health, Education, and Welfare, may make grants and enter into contracts for the development of a data retrieval system described in subparagraph (A). Contracts may be entered into under this subparagraph without regard to section 3648 and 4709 of the Revised Statutes (31 U.S.C. 529, 41 U.S.C. 5)

(c) Screening Techniques.—The Administrator shall coordinate, with the Assistant Secretary for Health of the Department of Health, Education, and Welfare, research undertaken by the Administrator and directed toward the development of rapid, reliable, and economical screening techniques for carcinogenic, mutagenic, teratogenic, and ecological effects of chemical substances and mixtures.

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

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

(f) Training.—The Administrator shall establish and promote

programs and workshops to train or facilitate the training of federal laboratory and technical personnel in existing or newly developed screening and monitoring techniques.

(g) Exchange of Research and Development Results.—The Administrator shall, in consultation with the Secretary of Health, Education, and Welfare and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. (15 U.S.C. 2609)

Payments In Lieu of Taxes Act

- **Act of October 20, 1976 (P.L. 94-565, 90 Stat. 2662; 31 U.S.C. 1601-1607)**

  Note—This law was substituted by P.L. 97-258 (see Chapter 69 of this Act).

Federal Land Policy and Management Act of 1976

- **Act of October 21, 1976 (P.L. 94-579, 90 Stat. 2743, as amended; 43 U.S.C. 1701(note), 1701-1702, 1711-1723, 1732-1737, 1740-1742, 1744, 1746-1748, 1751-1753, 1761-1771, 1781-1782)**

Note—Implementing regulations are found at 36 CFR 251 Subpart A, 43 CFR All Parts.

TITLE I — SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

Short Title

Sec. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976". (43 U.S.C. 1701(note))

Declaration of Policy

Sec. 102. (a) The Congress declares that it is the policy of the United States that—

(1) the public lands be retained in federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that

will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the federal government should, on a basis equitable to both the federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law. (43 U.S.C. 1701)

Definitions

Sec. 103. Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act—

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title V of this Act.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long–term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific

and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in title V of this Act.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136).

(j) The term "withdrawal" means withholding of an area of federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public land or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(*l*) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and

wildlife development and utilization, mineral exploration and production, rights-or-way, outdoor recreation, and timber production.

(m) The term "department" means a unit of the executive branch of the federal government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the federal government which is not under the jurisdiction of a head of a department.

(n) The term "Bureau" means the Bureau of Land Management.

(o) The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock. (43 U.S.C. 1702)

TITLE II — LAND USE PLANNING: LAND ACQUISITION AND DISPOSITION

Inventory and Identification

Sec. 201. (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands. (43 U.S.C. 1711)

Land Use Planning

Sec. 202. (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

(b) In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs. (43 U.S.C. 1712)

(c) In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended (16 U.S.C. 460*l*-4, et seq.), and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act. (16 U.S.C. 460l-4(note))

(d) Any classification of public lands or any land use plan in effect on the date of enactment of this Act is subject to review in the land use planning-process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) The Secretary may issue management decisions to implement land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his

delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which are resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even through a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions, but public lands shall be removed from or restored to the operations of the Mining Law of 1872, as amended (R.S. 2318-2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 204 or other action pursuant to applicable law: *Provided,* That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment upon and participate in the formulation of plans and programs relating to the management of the public lands. (43 U.S.C. 1712)

Sales of Public Land Tracts

Sec. 203. (a) Tract of the public lands (except land in units of the National Wilderness Preservation

System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 1712 of this title of this title, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or the characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and that tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

(b) Where the Secretary determines that land to be conveyed under clause 3) of subsection (a) of this section is of agricultural value and in desert in character, such land shall be conveyed either under the sale authority of this section or in accordance with other existing law.

(c) Where each tract of the public lands in excess of two thousand five hundred acres has been designated for sale, such sale may be made only after the end of the ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the day the Secretary has submitted notice of such designation to the Senate and the House of Representatives, and then only if the Congress has not adopted a concurrent resolution stating that such House does not approve of such designation. If the committee to which a resolution has been referred during the said ninety day period, has not reported at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the designation. A motion to discharge may be made by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same designation. When the committee has reprinted, or has been discharged from further consideration for a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(d) Sales of public lands shall be made at a price not less than their

fair market value as determined by the Secretary.

(e) The Secretary shall determine and establish the size of tracts of public lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract which is judged by the Secretary to be chiefly valuable for agriculture is sold, its size shall be no larger than necessary to support a family-sized farm.

(f) Sales of public lands under this section shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or public policies, including but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers

(1) the State in which the land is located;

(2) the local government entities in such State which are in the vicinity of the land;

(3) adjoining landowners;

(4) individuals; and

(5) any other person.

(g) The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bidding at his invitation no later than thirty days after the receipt of such offer or, in the case of a tract in excess of two thousand five hundred acres, and the end of thirty days after the end of the ninety-day period provided in subsection (c) of this section, whichever is later, unless the offeror waives his right to a decision within such thirty-day period. Prior to the expiration of such periods the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines the consummation of the sale would not be consistent with the Act or other applicable law. (43 U.S.C. 1713)

Withdrawals

Sec. 204. (a) On and after the effective date of this Act, the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate.

(b)(1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawals of lands by the Secretary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c)(1) On and after the dates of approval of this Act, a withdrawal aggregating five thousand acres or

more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(2) With the notices required by subsection (c)(1) of this subsection and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees—

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(d) A withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion or upon request by a department or any agency head—

(1) for such period of time as he deems desirable for a resource use; or

(2) for a period of not more than twenty years for any other use, including but not limited to use for administrative sites, location of facilities, and other proprietary purposes; or

(3) for a period of not more than five years to preserve such tract for a specific use then under consideration by the Congress.

(e) When the Secretary determines, or when the Committee on Interior and Insular Affairs of either the House of Representatives or the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provision of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with the Committees on Interior and Insular Affairs of the Senate and the House of Representatives. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable, and (b)(1) of this section. The information required in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) All withdrawals and extension thereof, whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d), whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the original withdrawal period. The Secretary shall report on such review and extensions

to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate.

(g) All applications for withdrawal pending on the date of approval of this Act shall be processed and adjudicated to conclusion within fifteen years of the date of approval of this Act, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date.

(h) All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under subsection (e) of this section) shall be promulgated after an opportunity for a public hearing.

(i) In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify , and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) apply.

(j) The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431-433); or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to the date of approval of this Act or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd(a)).

(k) There is hereby authorized to be appropriated the sum of $10,000,000 for the purpose of processing withdrawal applications pending on the effective date of this Act, to be available until expended.

(*l*)(1) The Secretary shall, within fifteen years of the date of enactment of this Act, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objective of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads

of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) There are hereby authorized to be appropriated not more than $10,000,000 for the purpose of paragraph (1) of this subsection to be available until expended to the Secretary and to the heads of other departments and agencies which will be involved. (43 U.S.C. 1714)

Acquisitions

Sec. 205. (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands, and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interest therein: *Provided,* that with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

(b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) Except as provided in subsection (e), lands and interests in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to the first section of the Act of June 23, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315) (commonly known as the "Taylor Grazing Act"), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules and regulations applicable thereto.

(e) Land acquired by the Secretary pursuant to this section or section 206 of this Act in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (P.L. 64-86, 39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (P.L. 40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to the revested or reconveyed lands exchanged for the lands acquired by the Secretary. (14 U.S.C 1715)

Exchanges

Sec. 206. (a) A tract of public land or interest therein may be disposed of by exchange by the Secretary under this Act and tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided,* That when considering public interest the Secretary concerned shall give full consideration to better federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation area, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which federal lands or interests to be conveyed may serve if retained in federal ownership are not more than the values of the non-federal lands or interests and the public objectives they could serve if acquired.

(b) In exercising the exchange authority granted by subsection (a) of this section or by section 205(a) of this Act, the Secretary concerned may accept title to any non-federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as

"non-federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total values of the lands or interests transferred out of Federal ownership. The Secretary concerned and the other party or parties involved in the exchange may mutually agree to waive the requirement for the payment of money to equalize values where the Secretary concerned determines that the exchange will be expedited thereby and that the public interest will be better served by such a waiver of cash equalization payments and where the amount to be waived is no more than 3 per centum of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less, except that the Secretary of Agriculture shall not agree to waive any such requirement for payment of money to the United States. The Secretary concerned shall try to reduce the amount of payment of money to as small an amount as possible.

(c) Lands acquired by the Secretary by exchange under this section which are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress, or the boundaries of the California Desert Conservation Area, or the boundaries of any national conservation area or national recreation area established by Act of Congress, upon acceptance of title by the United States shall immediately be reserved for and become a part of the unit or area within which they are located, without further action by the Secretary, and shall thereafter be managed in accordance with all laws, rules, and regulations applicable to such unit or area.

(d)(1) No later than ninety days after entering into an agreement to initiate an exchange of land or interests therein pursuant to this Act or other applicable law, the Secretary concerned and other party or parties involved in the exchange shall arrange for appraisal (to be completed within a time frame and under such terms as are negotiated by the parties) of the lands or interests therein involved in the exchange in accordance with subsection (f) of this section.

(2) If within one hundred and eighty days after the submission of an appraisal or appraisals for review and approval by the Secretary concerned, the Secretary concerned and the other party or parties involved cannot agree to accept the findings of an appraisal or appraisals, the appraisal or appraisals shall be submitted to an arbitrator appointed by the Secretary from a list of arbitrators submitted to him by the American Arbitration Association for arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Such arbitration shall be binding for a period of not to exceed two years on the Secretary concerned and the other party or parties involved in the exchange insofar as concerns the value of the lands which were the subject of the appraisal or appraisals.

(3) Within thirty days after the completion of the arbitration, the Secretary concerned and the other

party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or to withdraw from the exchange. A decision to withdraw from the exchange may be made by either the Secretary concerned or the other party or parties involved.

(4) Instead of submitting the appraisal to an arbitrator, as provided in paragraph (2) of this section, the Secretary concerned and the other party or parties involved in an exchange may mutually agree to employ a process of bargaining or some other process to determine the values of the properties involved in the exchange.

(5) The Secretary concerned and the other party or parties involved in an exchange may mutually agree to suspend or modify any of the deadlines contained in this subsection.

(e) Unless mutually agreed otherwise by the Secretary concerned and the other party or parties involved in an exchange pursuant to this Act or other applicable law, all patents or titles to be issued for land or interests therein to be acquired by the Federal Government and lands or interest therein to be transferred out of Federal ownership shall be issued simultaneously after the Secretary concerned has taken any necessary steps to assure that the United States will receive acceptable title.

(f)(1) Within one year after the enactment of subsections (d) through (i) of this section, the Secretaries of the Interior and Agriculture shall promulgate new and comprehensive rules and regulations governing exchanges of land and interests therein pursuant to this Act and other applicable law. Such rules and regulations shall fully reflect the changes in law made by subsections (d) through (i) of this section and shall include provisions pertaining to appraisals of lands and interests therein involved in such exchanges.

(2) The provisions of the rules and regulations issued pursuant to paragraph (1) of this subsection governing appraisals shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisitions: *Provided, however,* That the provisions of such rules and regulations shall—

(A) ensure that the same nationally approved appraisal standards are used in appraising lands or interest therein being acquired by the Federal Government and appraising lands or interests therein being transferred out of Federal ownership; and

(B) with respect to costs or other responsibilities or requirements associated with land exchanges—

(i) recognize that the parties involved in an exchange may mutually agree that one party (or parties) will assume, without compensation, all or part of certain costs or other responsibilities or requirements ordinarily borne by the other party or parties; and

(ii) also permit the Secretary concerned, where such Secretary determines it is in the public interest and it is in the best interest of consummating an exchange pursuant to this Act or other applicable law, and upon mutual agreement of the parties, to make adjustments to the relative values involved in an exchange transaction in order to compensate a party or parties to the exchange for assuming costs or other responsibilities or requirements which would ordinarily be borne by the other party or parties.

As used in this subparagraph, the term "costs or other responsibilities

or requirements" shall include, but not be limited to, costs or other requirements associated with land surveys and appraisals, mineral examinations, title searches, archeological surveys and salvage, removal of encumbrances, arbitration pursuant to subsection (d) of this section, curing deficiencies preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions, or which are necessary to bring the Federal or non-Federal lands or interests involved in the exchange to their highest and best use for the appraisal and exchange purposes. Prior to making any adjustments pursuant to this subparagraph, the Secretary concerned shall be satisfied that the amount of such adjustment is reasonable and accurately reflects the approximate value of any costs or services provided or any responsibilities or requirements assumed.

(g) Until such time as new and comprehensive rules and regulations governing exchange of land and interests therein are promulgated pursuant to subsection (f) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in the Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending the promulgation of such new and comprehensive rules and regulations. Where the Secretary concerned and the party or parties involved in an exchange have agreed to initiate an exchange of land or interests therein prior to the day of enactment of such subsections, subsections (d) through (i) of this section shall not apply to such exchanges unless the Secretary concerned and the party or parties involved in the exchange mutually agree otherwise.

(h)(1) Notwithstanding the provisions of this Act and other applicable laws which require that exchanges of land or interests therein be for equal value, where the Secretary concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Secretary concerned may exchange lands or interests therein which are of approximately equal value in cases where—

(A) the combined value of the lands or interests therein to be transferred from Federal ownership by the Secretary concerned in such exchange is not more than $150,000; and

(B) the Secretary concerned finds in accordance with the regulations to be promulgated pursuant to subsection (f) of this section that a determination of approximately equal value can be made without formal appraisals, as based on a statement of value made by a qualified appraiser and approved by an authorized officer; and

(C) the definition of and procedure for determining "approximately equal value" has been set forth in regulations by the Secretary concerned and the Secretary concerned documents how such determination was made in the case of the particular exchange involved.

(2) As used in this subsection, the term "approximately equal value" shall have the same meaning with respect to lands managed by the Secretary of Agriculture as it does in the Act of January 22, 1983 (commonly known as the 'Small Tracts Act').

(i)(1) Upon receipt of an offer to exchange lands or interests in land pursuant to this Act or other applicable laws, at the request of the head of the department or agency having jurisdiction over the lands

involved, the Secretary of the Interior may temporarily segregate the Federal lands under consideration for exchange from appropriation under the mining laws. Such temporary segregation may only be made for a period of not to exceed five years. Upon a decision not to proceed with the exchange or upon deletion of any particular parcel from the exchange offer, the Federal lands involved or deleted shall be promptly restored to their former status under the mining laws. Any segregation pursuant to this paragraph shall be subject to valid existing rights as of the date of such segregation.

(2) All non-Federal lands which are acquired by the United States through exchange pursuant to this Act or pursuant to other law applicable to lands managed by the Secretary of Agriculture shall be automatically segregated from appropriation under the public land law, including the mining laws, for ninety days after acceptance of title by the United States. Such segregation shall be subject to valid existing rights as of the date of such acceptance of title. At the end of such ninety day period, such segregation shall end and such lands shallbe open to operation of the public land laws and to entry, location, and patent under the mining laws except to the extent otherwise provided by this Act or other applicable law, or appropriate actions pursuant thereto. (43 U.S.C. 1716)

Qualified Conveyees

Sec. 207. No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States. (43 U.S.C 1717)

Conveyances

Sec. 208. The Secretary shall issue all patents or other documents of conveyance after any disposal authorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 206(b) of this Act shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided,* That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable federal or State law or State land use plans: *Provided further,* That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs. (43 U.S.C. 1718)

Reservation and Conveyance of Minerals

Sec. 209. (a) All conveyances of title issued by the Secretary, except those involving land exchanges provided for in section 206, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface

to the prospective surface owner as provided in subsection (b).

(b)(1) The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-federal ownership, regardless of which federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section—

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided,* That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(ii) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(4) Moneys paid to the Secretary for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current. (43 U.S.C. 1719)

Coordination with State and Local Governments

Sec. 210. At least sixty days prior to offering for sale or otherwise conveying public lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance. The Secretary shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands. (43 U.S.C. 1720)

Convey Lands to States, Etc.

Sec. 211. (a) The Secretary is hereby authorized to convey to States or their political subdivisions under the Recreation and Public Purposes Act (44 Stat. 741 as amended; 43 U.S.C. 869 et seq.), as amended, but without regard to the acreage limitations contained

therein, unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey: *Provided, however,* That such island may be surveyed at the request of the applicant State or its political subdivision if such State or subdivision donates money or services to the Secretary for such survey, the Secretary accepts such money or services, and such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management. Any such island so surveyed shall not be conveyed without approval of such survey by the Secretary prior to the conveyance.

(b)(1) The Secretary is authorized to convey to States and their political subdivisions under the Recreation and Public Purposes Act (43 U.S.C. 869 to 869-4), but without regard to the acreage limitations contained therein, lands other than islands determined by him after survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys (hereinafter referred to as "omitted lands"). Any such conveyance shall not be made without a survey: *Provided,* That the prospective recipient may donate money or services to the Secretary for the surveying necessary prior to conveyance if the Secretary accepts such money or services, such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management, and such survey is approved by the Secretary prior to the conveyance.

(2) The Secretary is authorized to convey to the occupant of any omitted lands which, after survey, are found to have been occupied and developed for a five-year period prior to January 1, 1975, if the Secretary determines that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyance under this subparagraph shall be made at not less than the fair market value of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

(c)(1) No conveyance shall be made pursuant to this section until the relevant State government, local government, and area-wide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262) (42 U.S.C. 3334) and/or title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103-4), and/or section 6506 of title 3, have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(2) The provisions of section 210 of this Act shall be applicable to all conveyances under this section.

(d) The final sentence of section 1(c) of the Recreation and Public Purpose Act (42 U.S.C. 869) shall not be applicable to conveyances under this section.

(e) No conveyance pursuant to this section shall be used as the basis for determining the baseline between Federal and State ownership, the boundary of any State for purposes of determining the extent of a State's submerged lands or the line of demarcation of Federal jurisdiction, or any similar or related purpose.

(f) The provisions of this section shall not apply to any lands within

the National Forest System, defined in the Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

(g) Nothing in this section shall supersede the provisions of the Act of December 22,, 1928 (45 Sat. 1069; 43 U.S.C. 1068), as amended, and the Act of May 31, 1962 (76 Stat. 89), or any other Act authorizing the sale of specific omitted lands. (43 U.S.C. 1721)

Recreation and Public Purposes Act

Sec. 212. The Recreation and Public Purposes Act of 1926 (44 Stat. 741, as amended; 43 U.S.C. 869-4), as amended, is further amended as follows:

(a) The second sentence of subsection (a) of the first section of that Act (43 U.S.C. 869(a)) is amended to read as follows: "Before the land may be disposed of under this Act it must be shown to the satisfaction of the Secretary that the land is to be used for an established or definitely proposed project, that the land involved is not of national significance nor more than is reasonably necessary for the proposed use, and that for proposals of over 640 acres comprehensive land use plans and zoning regulations applicable to the area in which the public lands to be disposed of are located have been adopted by the appropriate State or local authority. The Secretary shall provide an opportunity for participation by affected citizens in disposals under this Act, including public hearings or meetings where he deems it appropriate to provide public comments, and shall hold at least one public meeting on any proposed disposal of more than six hundred forty acres under this Act."

(b) Subsection (b)(i) of the first section of that Act (43 U.S.C. 869(b)) is amended to read as follows—

"(b) Conveyances made in any one calendar year shall be limited as follows—

"(i) For recreational purposes—

"(A) To any State or the State park agency or any other agency having jurisdiction over the State park system of such State designated by the Governor of that State as its sole representative for acceptance of lands under this provision, hereinafter referred to as the State, or to any political subdivision of such State, six thousand four hundred acres, and such additional acreage as may be needed for small roadside parks and rest sites of not more than ten acres each.

"(B) To any nonprofit corporation or nonprofit association, six hundred and forty acres.

"(C) No more than twenty-five thousand six hundred acres may be conveyed for recreational purposes under this Act in any one State per calendar year. Should any State or political subdivision, however, fail to secure, in any one year, six thousand four hundred acres, not counting lands for small roadside parks and rest sites, conveyances may be made thereafter if pursuant to an application on file with the Secretary of the Interior on or before the last day of said year and to the extent that the conveyance would not have exceeded the limitations of said year."

(c) Section 2(a) of that Act (43 U.S.C. 869-1) is amended by inserting "or recreational purposes" immediately after "historic-monument purposes".

(d) Section 2(b) of that Act (43 U.S.C. 869-1) is amended by adding ", except that leases of such lands for recreational purposes shall be

made without monetary consideration" after the phase "reasonable annual rental".

National Forest Townsites

Sec. 213. The Act of July 31, 1958 (72 Stat. 438, 7 U.S.C. 1012a, 16 U.S.C. 478a), is amended to read as follows: "When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest system land for any one application. After public notice, and satisfactory showing of need therefore by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: *Provided, however,* That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands." (7 U.S.C. 1012a; 16 U.S.C. 478a)

Note—Amends Townsite Act of 1958.

Unintentional Trespass Act

Sec. 214. (a) Notwithstanding the provisions of the Act of September 26, 1968 (82 Stat. 870; 43 U.S.C. 1431-1435), hereinafter called the "1968 Act", with respect to applications under the 1968 Act which were pending before the Secretary as of the effective date of this subsection and which he approves for sale under the criteria prescribed by the 1968 Act, he shall give the right of first refusal to those having a preference right under section 2 of the 1968 Act. The Secretary shall offer such lands to such preference right holders at their fair market value (exclusive of any values added to the land by such holders and their predecessors in interest) as determined by the Secretary as of September 26, 1973.

(b) Within three years after the date of approval of this Act, the Secretary shall notify the filers of applications subject to paragraph (a) of this section whether he will offer them the lands applied for and at what price; that is, their fair market value as of September 26, 1973, excluding any value added to the lands by the applicants or their predecessors in interest. He will also notify the President of the Senate and the Speaker of the House of Representatives of the lands which he has determined not to sell pursuant to paragraph (a) of this section and the reasons therefor. With respect to such lands which the Secretary determined not to sell, he shall take no other action to convey those lands or interests in them before the end of ninety-days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the date

the Secretary has submitted such notice to the Senate and House of Representatives. If, during that ninety-day period, the Congress adopts a concurrent resolution stating the length of time such suspension of action should continue, he shall continue such suspension for the specified time period. If the committee to which a resolution has been referred during the said ninety-day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the suspension of action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same suspension of action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(c) Within five years after the date of approval of this Act, the Secretary shall complete the processing of all applications filed under the 1968 Act and hold sales covering all lands which he has determined to sell thereunder. (43 U.S.C. 1722)

Sec. 215. (a) When the sole impediment to consummation of an exchange of lands or interests therein (hereinafter referred to as an exchange) determined to be in the public interest, is the inability of the Secretary of the Interior to revoke, modify, or terminate part or all of a withdrawal or classification because of the order (or subsequent modification or continuance thereof) of the United States District Court for the District of Columbia dated February 10, 1986, in Civil Action No. 85-2238 (National Wildlife Federation v. Robert E. Burford, et al.), the Secretary of the Interior is hereby authorized, notwithstanding such order (or subsequent modification or continuance thereof), to use the authority contained herein, in lieu of other authority provided in this Act including section 204, to revoke, modify, or terminate in whole or in part, withdrawals or classifications to the extent deemed necessary by the Secretary to enable the United States to transfer land or interests therein out of Federal ownership pursuant to an exchange.

(b) The authority specified in subsection (a) of this section may be exercised only in cases where—

(1) a particular exchange is proposed to be carried out pursuant to this Act, as amended, or other applicable law authorizing such an exchange;

(2) the proposed exchange has been prepared in compliance with

all laws applicable to such exchange;

(3) the head of each Federal agency managing the lands proposed for such transfer has submitted to the Secretary of the Interior a statement of concurrence with the proposed revocation, modification, or termination;

(4) at least sixty days have elapsed since the Secretary of the Interior has published in the Federal Register a notice of the proposed revocation, modification, or termination; and

(5) at least sixty days have elapsed since the Secretary of the Interior has transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report which includes—

(A) a justification for the necessity of exercising such authority in order to complete an exchange;

(B) an explanation of the reasons why the continuation of the withdrawal or a classification or portion thereof proposed for revocation, modification, or termination is no longer necessary for the purposes of the statutory or other program or programs for which the withdrawal or classification was made or other relevant programs;

(C) assurances that all relevant documents concerning the proposed exchange or purchase for which such authority is proposed to be exercised (including documents related to compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and all other applicable provisions of law) are available for public inspection in the office of the Secretary concerned located nearest to the lands proposed for transfer out of Federal ownership in furtherance of such exchange and that the relevant portions of such documents are also available in the offices of the Secretary concerned in Washington, District of Columbia; and

(D) an explanation of the effect of the revocation, modification, or termination of a withdrawal or classification or portion thereof and the transfer of lands out of Federal ownership pursuant to the particular proposed exchange, on the objectives of the land management plan which is applicable at the time of such transfer to the land to be transferred out of Federal ownership.

(c)(1) Nothing in this section shall be construed as affirming or denying any of the allegations made by any party in the civil action specified in subsection (a), or as constituting an expression of congressional opinion with respect to the merits of any allegation, contention, or argument made or issue raised by any party in such action, or as expanding or diminishing the jurisdiction of the United States District Court for the District of Columbia.

(2) Except as specifically provided in this section, nothing in this section shall be construed as modifying, terminating, revoking, or otherwise affecting any provision of law applicable to land exchanges, withdrawals, or classifications.

(3) The availability or exercise of the authority granted in subsection (a) may not be considered by the Secretary of the Interior in making a determination pursuant to this Act or other applicable law as to whether or not any proposed exchange is in the public interest.

(d) The authority specified in subsection (a) shall expire either (1) on December 31, 1990, or (2) when the Court order (or subsequent modification or continuation thereof) specified in subsection (a) is no

longer in effect, whichever occurs first. (43 U.S.C. 1723)

TITLE III — ADMINISTRATION

Management of Use, Occupancy, and Development

Sec. 302. (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided,* That unless otherwise provided for by law, the Secretary may permit federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further,* That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

(c) The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument,

including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implementation plan: *Provided,* That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further,* That the Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further,* That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further,* That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

(d)(1) The Secretary of the Interior, after consultation with the Governor of Alaska, may issue to the Secretary of Defense or to the Secretary of a military department within the Department of Defense or the Commandant of the Coast Guard a nonrenewable general authorization to utilize public lands in Alaska (other than within a conservation system unit or the Steese National Conservation Area or the White Mountains National Recreation Area) for purposes of military maneuvering, military training, or equipment testing not involving artillery firing, aerial or other gunnery, or other use of live ammunition or ordnance.

(2) Use of public lands pursuant to a general authorization under this subsection shall be limited to areas where such use would not be inconsistent with the plans prepared pursuant to section 1712 of this title. Each such use shall be subject to a requirement that the using department shall be responsible for any necessary cleanup and decontamination of the lands used, and to such other terms and conditions (including but not limited to restrictions on off-road or all-terrain vehicles) as the Secretary of the Interior may require to—

(A) minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish an wildlife habitat) of the public lands involved; and

(B) minimize the period and methods of such use and the interference with or restriction on other uses of the public lands involved.

(3)(A) A general authorization issued pursuant to this subsection shall not be for a term of more than three years and shall be revoked in whole or in part, as the Secretary of the Interior finds necessary, prior to the end of such term upon a determination by the Secretary of the Interior that there has been a failure to comply with its terms and conditions or that activities pursuant to such an authorization have had or might have a significant adverse impact on the resources or values of the affected lands.

(B) Each specific use of a particular area of public lands pursuant to a general authorization under this subsection shall be subject to specific authorization by the Secretary and to appropriate terms and conditions, including such as are described in paragraph (2) of this subsection.

(4) Issuance of a general authorization pursuant to this subsection shall be subject to the provisions of section 1712(f) of this title, section

3120 of title 16, and all other applicable provisions of law. The Secretary of a military department (or the commandant of the Coast Guard) requesting such authorization shall reimburse the Secretary of the Interior for the costs of implementing this paragraph. An authorization pursuant to this subsection shall not authorize the construction of permanent structures or facilities on the public lands.

(5) To the extent that public safety may require closure to public use of any portion of the public lands covered by an authorization issued pursuant to this subsection, the Secretary of the military department concerned or the Commandant of the Coast Guard shall take appropriate steps to notify the public concerning such closure and to provide appropriate warnings of risks to public safety.

(6) For purposes of this subsection, the term "conservation system unit" has the same meaning as specified in section 3102 of title 16. (43 U.S.C. 1732)

Enforcement Authority

Sec. 303. (a) The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.

(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities.

While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.

(2) The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.

(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 601 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.

(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.

(g) The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited. (43 U.S.C. 1733)

Service Charges, Reimbursement Payments, and Excess Payments

Sec. 304. (a) Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. As used in this section "reasonable costs" include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general

public interest rather than for the exclusive benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs.

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds. (43 U.S.C. 1734)

Deposits and Forfeitures

Sec. 305. (a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary; or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to the public lands shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on those public lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.

(b) Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), shall be expended for the benefit of such land only.

(c) If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the Secretary, upon application or otherwise, may cause a refund of the amount in excess to be made from applicable funds. (43 U.S.C. 1735)

Working Capital Fund

Sec. 306. (a) There is hereby established a working capital fund for the management of the public lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, as amended), and regulations promulgated thereunder, supplies and equipment services in support of Bureau programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Secretary for the Bureau.

(b) The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) The fund shall be credited with payments from appropriations, and funds of the Bureau, other agencies of the Department of the Interior, other Federal agencies, and other

sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

(d) There is hereby authorized to be appropriated a sum not to exceed $3,000,000 as initial capital of the working capital fund. (Establishment. 43 U.S.C. 1736 and 40 U.S.C. 471(et seq.))

Studies, Cooperative Agreements, and Contributions

Sec. 307. (a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the public lands.

(b) Subject to the provisions of applicable law, the Secretary may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the public lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost. . . . (43 U.S.C. 1737)

Rules and Regulations

Sec. 310. The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of title 5 of the United States Code, without regard to section 553(a)(2). Prior to promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical. (43 U.S.C. 1740)

Public Lands Program Report

Sec. 311. (a) For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House and Senate and shall be provided to the committees

prior to the end of the second quarter of each fiscal year.

(c) The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years. (43 U.S.C. 1741)

Search and Rescue

Sec. 312. Where in his judgment sufficient search, rescue, and protection forces are not otherwise available, the Secretary is authorized in cases of emergency to incur such expenses as may be necessary—

(a) in searching for and rescuing, or in cooperating in the search for and rescue of, persons lost on the public lands,

(b) in protecting or rescuing, or in cooperating in the protection and rescue of, persons or animals endangered by an act of God, and

(c) in transporting deceased persons or persons seriously ill or injured to the nearest place where interested parties or local authorities are located. (43 U.S.C. 1742)

* * * *

Recordation of Mining Claims and Abandonment

Sec. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, [or] a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall, within a three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after the date of approval of this Act shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of law. (43 U.S.C. 1744)

Correction of Conveyance Documents

Sec. 316. The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands. (43 U.S.C. 1746)

Mineral Revenues

Sec. 317. (a) Section 35 of the Act of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. 181, 191), as amended, is further amended to read as follows: "All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts', as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.". (30 U.S.C. 191; 30 U.S.C. 1001(note); 43 U.S.C. 391 note; 30 U.S.C. 1001(note))

(b) Funds now held pursuant to said section 35 by the States of

Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services. (30 U.S.C. 191(note))

(c)(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.). Such loans shall be confined to the uses specified for the 50 per centum of mineral revenues to be received by such States and subdivisions pursuant to section 35 of such Act. (30 U.S.C. 191)

* * * *

(3) The Secretary, after consultation with Governors of the affected States, shall allocate such loans among the States and their subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(4) Loans under this subsection shall be subject to such terms and conditions as the Secretary determines necessary to assure that the purpose of this subsection will be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section.

(5) Loans made pursuant to this section shall bear interest equivalent to the lowest interest rate paid on an issue of at least $1,000,000 of tax exempt bonds of such State or any agency thereof within the preceding calendar year.

(6) Any loan made pursuant to this section shall be secured only by a pledge of the revenues received by the State or the political subdivision thereof pursuant to section 35 of the Act of February 25, 1920, as amended (30 U.S.C. 191), and shall not constitute an obligation upon the general property or taxing authority of such unit of government.

(7) Notwithstanding any other provision of law, loans made pursuant to this section may be used for the non-Federal share for the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under this section.

(8) Nothing in this section shall be construed to preclude any forbearance for the benefit of the borrower including a restructuring, which may be determined by the Secretary as justified by the failure of anticipated mineral development or related revenues to materialize as expected when the loan was made pursuant to this section.

(9) Recipients of loans made pursuant to this section shall keep such records as the Secretary shall prescribe by regulation, including records which fully disclose the disposition of the proceeds of such assistance and such other records as the Secretary may require to facilitate an effective audit. The secretary and the Comptroller General of the United States or their duly authorized representatives shall have access, for the purpose of audit, to such records.

(10) No person in the United States shall, on the grounds of race, color, religion, national origin, or

sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or part with funds made available under this section.

(11) All amounts collected in connection with loans made pursuant to this section, including interest payments or repayment of principal on loans, fees, and other moneys, derived in connection with the section, shall be deposited in the Treasury as miscellaneous receipts. (43 U.S.C. 1747)

Appropriation Authorization

Sec. 318. (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act, but no amounts shall be appropriated to carry out after October 1,1978, any program, function, or activity of the Bureau under this or any other Act unless such sums are specifically authorized to be appropriated as of the date of approval of this Act or are authorized to be appropriated in accordance with the provisions of subsection (b) of this section. (43 U.S.C. 1748)

(b) Consistent with section 607 of the Congressional Budget Act of 1974, beginning May 15, 1977, and not later than May 15 of each second even numbered year thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a request for the authorization of appropriations for all programs, functions, and activities of the Bureau to be carried out during the four-fiscal-year period beginning on October 1 of the calendar year following the calendar year in which such request is submitted. The Secretary shall include in his request, in addition to the information contained in his budget request and justification statement to the Office of Management and Budget, the funding levels which he determines can be efficiently and effectively utilized in the execution of his responsibilities for each such program, function, or activity, notwithstanding any budget guidelines or limitations imposed by any official or agency of the executive branch.

(c) Nothing in this section shall apply to the distribution of receipts of the Bureau from the disposal of lands, natural resources, and interests in lands in accordance with applicable law, nor to the use of contributed funds, private deposits for public survey work, and townsite trusteeships, nor to fund allocations from other Federal agencies, reimbursements from both Federal and non-Federal sources, and funds expended for emergency firefighting and rehabilitation.

(d) In exercising the authority to acquire by purchase granted by subsection (a) of section 205 of this Act, the Secretary may use the Land and Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes. (43 U.S.C. 1748)

TITLE IV — RANGE MANAGEMENT GRAZING FEES

Sec. 401. (a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such land which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the

costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after the date of approval of this Act, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after the date of approval of this Act, the grazing fee charge then in effect shall not be altered and shall remain the same until such report has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

(b)(1) Congress finds that a substantial amount of the federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum or $10,000,000 per annum, whichever is greater, of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on land in National Forests in the sixteen contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with use representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major federal action requiring a detailed statement pursuant to section 4332(c) of title 42 of the United States Code. (43 U.S.C. 1751)

(2) The first clause of section 10(b) of the Taylor Grazing Act (48 Stat. 1269), as amended by the Act of August 6, 1947 (43 U.S.C. 315i), is hereby repealed. All distributions of moneys made under section 401(b)(1) of this Act shall be in addition to distributions made under section 10 of the Taylor Grazing Act and shall not apply to distribution of moneys made under section 11 of that Act. The remaining moneys received by the United States as fees for grazing domestic livestock on the public lands shall be deposited in the Treasury as miscellaneous receipts. (43 U.S.C. 1751; 43 U.S.C. 315j)

(3) Section 3 of the Taylor Grazing Act, as amended (43 U.S.C. 315), is further amended by—

(i) deleting the last clause of the first sentence thereof, which begins with "and in fixing," deleting the comma after "time", and adding to that first sentence the words "in accordance with governing law"

(ii) deleting the second sentence thereof. (43 U.S.C. 315b)

Grazing Leases and Permits

Sec. 402. (a) Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a-1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided,* That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: *Provided further,* That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

(c) So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 202 of this Act or section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477; 16 U.S.C. 1601), (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

Note—Section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 was redesignated as section 6 by the National Forest Management Act of 1976.

(d) All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 403 of the Federal Land Policy and Management Act (43 U.S.C. 1753), and any State or States having lands within the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation, and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public Rangelands Improvement Act of 1978."

(e) In all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plans shall not refer to livestock operations or range improvement on non-federal lands except where the non-federal lands are intermingled with, or with the consent of the permittee or lessee involved, associated with, the federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value,

to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases. (43 U.S.C. 1752)

Grazing Advisory Boards

Sec. 403. (a) For each Bureau district office and National Forest headquarters office in the sixteen contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers.

(b) The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) The number of advisers on each board and the number of years an advisor may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Each grazing advisory board shall meet at least once annually.

(e) Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1) shall apply to grazing advisory boards.

(f) The provisions of this section shall expire December 31, 1985. (43 U.S.C. 1753)

Management of Certain Horses and Burros

Sec. 404. Sections 9 and 10 of the Act of December 15, 1971 (85 Stat. 649, 651; 16 U.S.C. 1339–1340) are renumbered as sections 10 and 11, respectively, and the following new section is inserted after section 8:

"**Sec. 9.** In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(1)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary." (16 U.S.C. 1338a)

TITLE V — RIGHTS-OF-WAY

Sec. 501. (a) The Secretary, with respect to the public lands (including public lands, as defined in section 102 of this Act, which are reserved from entry pursuant to section 24 of the Federal Power Act (16 U.S.C. 818) and, the Secretary, with respect to the public lands, and the Secretary of Agriculture, with respect to lands designated the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791a-825r), including part 1 thereof (16 U.S.C. 792-823b, 41 Stat. 1063, 16 U.S.C. 791a-825r).

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon,, under, or through such lands.

(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-of-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and

address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and percentage of any class of voting stock of that affiliate owned, directly or indirectly by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agriculture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.

(c)(1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ("National Forest Lands"), constructed and in operation or placed into operation prior to October 21, 1976, if—

(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;

(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;

(C) the use served by the water system is not located solely on Federal lands;

(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;

(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;

(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and

(G) the applicant submits such application on or before December 31, 1996.

(2)(A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such provisions grant shall be deemed to have been relinquished and shall terminate.

(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the

holder or change in ownership of the facilities.

(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.

(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.

(3)(A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 506 of this Act. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.

(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power or authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.

(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.

(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section.

(d) With respect to any project thereof that was licensed pursuant to, or granted an exemption from, part I of the Federal Power Act (16 U.S.C. 792-823b) which is located on lands subject to a reservation under section 24 of the Federal Power Act (16 U.S.C. 818) and which did not receive a permit, right-of-way, or other approval under this section prior to October 24, 1992, no such permit, right-of-way, or other approval shall be required for continued operation, including continued operation pursuant to section 15 of the Federal Power Act (16 U.S.C. 808), of such project unless the Commission determines that such project involves the use of any additional public lands or National Forest land not subject to such reservation. (43 U.S.C. 1761)

Cost-Share Road Authorization

Note—Sec. 502 provides authority for Cost Share Roads and is applicable only to the Secretary of the Interior. Similar authority is granted to the Secretary of Agriculture in section 4 of the National Forest Roads and Trails Act.

Sec. 502. (a) The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided,* That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further,* That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

(b) Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

(c) The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided,* That deposits received for work on adjacent and overlapping area may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further,* That unexpended balances upon accomplishment of the purpose for which

deposited shall be transferred to miscellaneous receipts or refunded.

(d) Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor. (43 U.S.C. 1762)

Rights-of-Way Corridors

Sec. 503. In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to right-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review. (43 U.S.C. 1763)

General Provisions

Sec. 504. (a) The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project of which the right-of-way is granted, issued, or renewed (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) Rights-of-way shall be granted, issued, or renewed pursuant to this title under such regulations or stipulations, consistent with the provisions of this title or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) The Secretary concerned prior to granting or issuing a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation, for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 505 of this Act.

(e) The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 505 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this title.

(f) Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws or for emergency repair work necessary for those rights-of-way authorized under section 501(c) of this Act.

(g) The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder. The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however,* That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profit making corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury

in a special account and are hereby authorized to be appropriated and made available until expended. Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.) or any extensions from such facilities: *Provided,* That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of–way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection.

(h)(1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this title shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) The Secretary concerned shall grant, issue, or renew a right-of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title. (43 U.S.C. 1764)

Terms and Conditions

Sec. 505. Each right-of-way shall contain (a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable air and water quality standards; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable federal standards; and (b) such terms and conditions as the Secretary concerned deems necessary to (i) protect federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public

interest in the lands traversed by the right-of-way or adjacent thereto. (43 U.S.C. 1765)

Suspension or Termination of Rights-of-Way

Sec. 506. Abandonment of a right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and, with respect to easements, an appropriate administrative proceeding pursuant to section 554 of title 5 of the United States Code, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way. (43 U.S.C. 1766)

Rights-of-Way for Federal Agencies

Sec. 507. (a) The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency. (43 U.S.C. 1767)

Conveyance of Lands

Sec. 508. If under applicable law the Secretary concerned decides to transfer out of federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall—

(a) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or

(b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents. (43 U.S.C. 1768)

Existing Rights-of-Way

Sec. 509. (a) Nothing in this title shall have the effect of terminating any right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title.

(b) When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realignment of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this title, provide in the new right-of-way the same terms and conditions as applied to the portion of the existing right-of-way relinquished to the United States with respect to the payment of annual rental, duration of the right-of-way, and the nature of the interest in lands granted. The Secretary concerned or his delegate shall take final action upon all applications for the grant, issue, or renewal of rights-of-way under subsection (b) of this section no later than six months after receipt from the applicant of all information required from the applicant by this title. (43 U.S.C. 1769)

Effect on Other Laws

Sec. 510. (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title: *Provided,* That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 [National Forest Roads and Trails Act] (78 Stat. 1089; 16 U.S.C. 532-538) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further,* That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501(b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c)(1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued

under this title from any provision of the antitrust laws of the United States.

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1980 (26 Stat. 15 U.S.C. 1 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894. (43 U.S.C. 1770)

Coordination of Applications

Sec. 511. Applicants before federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-of-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other federal department or agency. (43 U.S.C. 1771)

TITLE VI — DESIGNATED MANAGEMENT AREAS CALIFORNIA DESERT CONSERVATION AREA

Sec. 601. (a) The Congress finds that—

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plan to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of offroad recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

(b) It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

(c)(1) For the purpose of this section, the term "California desert" means the area generally depicted on a map entitled "California Desert

Conservation Area-Proposed" dated April 1974, and described as provided in subsection (c)(2).

(2) As soon as practicable after the date of approval of this Act, the Secretary shall file a revised map and a legal description of the California Desert Conservation Area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and a map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

(d) The Secretary, in accordance with Section 202 of this Act, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

(e) During the period beginning on the date of approval of this Act and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and protect the public lands, and their resources now in danger of destruction, in the California Desert Conservation Area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed desert ranger force.

(f) Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area.

(g)(1) The Secretary, within sixty days after the date of approval of this Act, shall establish a California Desert Conservation Area Advisory Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 309 of this Act.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

(h) The Secretary of Agriculture and the Secretary of Defense shall manage lands within their respective jurisdictions located in or adjacent to the California Desert Conservation Area, in accordance with the laws relating to such lands and wherever practicable, in a manner consonant with the purpose of this

section. The Secretary, the Secretary of Agriculture, and the Secretary of Defense are authorized and directed to consult among themselves and take cooperative actions to carry out the provisions of this subsection, including a program of law enforcement in accordance with applicable authorities to protect the archeological and other values of the California Desert Conservation Area and adjacent lands. (43 U.S.C. 1781)

(i) The Secretary shall report to the Congress no later than two years after the date of approval of this Act, and annually thereafter, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary, to remedy such problems.

(j) There are authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 for the purpose of this section, such amount to remain available until expended. (43 U.S.C. 1781)

* * * *

TITLE VII — EFFECT ON EXISTING RIGHTS: REPEAL OF EXISTING LAWS; SEVERABILITY

Effect on Existing Rights

(a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of

two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands;

or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

(i) The adequacy of reports required by this Act to be submitted to the Congress or its committees shall not be subject to judicial review.

(j) Nothing in this Act shall be construed as affecting the distribution of livestock grazing revenues to local governments under the Granger-Thye Act (64 Stat. 85, 16 U.S.C. 580h), under the Act of May 23, 1908 (35 Stat. 260 as amended; 16 U.S.C. 500), under the Act of March 4, 1913 (37 Stat. 843, as amended; 16 U.S.C. 501), and under the Act of June 20, 1910 (36 Stat. 557). (43 U.S.C. 1701(note))

Act of	Chapter	Section	Statute at Large	43 U.S. Code

Repeal of Laws Relating to Homesteading and Small Tracts

Sec. 702. Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed except the effective date shall on and after the tenth anniversary of the date of approval of this Act insofar as the listed homestead laws apply to public lands in Alaska:

1. Homesteads:

Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26: 1097	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 123	164, 169, 281.
May 14, 1880	89		21: 141	166, 185, 202, 223.
June 6, 1900	821		31: 683	166, 223.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1193	
Oct. 17, 1914	325		38: 740	168.
Revised Statute 2297				169.
Mar. 31, 1881	153		21: 511	
Oct. 22, 1914	335		38: 766	170.
Revised Statute 2292				171.
June 8, 1880	136		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 3, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 3, 1891	561	3	26: 1097	
Mar. 3, 1905	1424		36: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
May 17, 1900	479	1	31: 179	179.
Jan. 26, 1901	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 31, 1918	166	8	40: 957	
Sept. 13, 1918	173		40: 960	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	76		41: 434	186.
Jan. 21, 1922	32		42: 358	
Dec. 28, 1922	19		42: 1067	
June 12, 1930	471		46: 580	
Feb. 25, 1925	326		43: 081	187.
June 12, 1934	690		48: 1185	187a.
May 22, 1902	821	2	32: 203	187b.
June 5, 1900	716		31: 270	188, 217.
Mar. 3, 1875	131	15	18: 420	189.
July 4, 1884	180	Only last paragraph of sec. 1		23: 96190.
Mar. 1, 1933	160	1	47: 1418	190a.

The following words only: "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 48, sec. 190)."

Revised Statute 2310, 2310				191.
June 13, 1902	1080		32: 384	203.
Mar. 3, 1879	191		20: 472	204.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		24: 22	206.
Aug. 21, 1916	361		39: 518	207.
June 3, 1924	240		43: 357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26: 391	212.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act."				
Mar. 3, 1891	561	17	26: 1101	
The following words only: "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: 'No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."				
Apr. 28, 1904	1776		33: 527	213.
Aug. 3, 1950	521		64: 398	
Mar. 2, 1889	381	6	28: 854	214.
Feb. 20, 1917	98		39: 925	215.
Mar. 4, 1921	162	1	41: 1433	216.
Feb. 19, 1909	160		35: 639	218.
June 13, 1912	166		37: 132	
Mar. 3, 1915	84		38: 953	
Mar. 3, 1915	91		38: 957	
Mar. 4, 1915	150	2	38: 1163	
July 3, 1916	220		39: 344	
Feb. 11, 1913	39		37: 666	218, 219.
June 17, 1910	298		36: 531	219.
Mar. 3, 1915	91		38: 957	
Sept. 5, 1916	440		39: 724	
Aug. 10, 1917	52	10	40: 275	
Mar. 4, 1915	150	1	38: 1162	220.
Mar. 4, 1923	245	1	42: 1445	222.
Apr. 28, 1904	1801		33: 547	224.
Mar. 2, 1907	2527		34: 1224	
May 29, 1908	220	7	35: 466	
Aug. 24, 1912	371		37: 499	
Aug. 22, 1914	270		38: 704	231.
Feb. 25, 1919	21		40: 1153	
July 3, 1916	214		39: 341	232.
Sept. 29, 1919	64		41: 288	233.
Apr. 6, 1922	122		42: 491	233, 272, 273.
Mar. 2, 1889	381	3	25: 854	234.
Dec. 29, 1894	14		28: 599	
July 1, 1879	63	1	21: 48	235.
Dec. 20, 1917	6		40: 430	236.
July 24, 1919	126	Next to last paragraph only.	41: 271	237.
Mar. 2, 1932	69		47: 59	237a.
May 21, 1934	320		48: 787	237b.
May 22, 1935	135		49: 286	237c.
Aug. 19, 1935	560		49: 659	237d.
Mar. 31, 1938	57		52: 149	
Apr. 20, 1936	239		49: 1235	237e.
July 30, 1956	778	1, 2, 4	70: 715	237f, g, h.
Mar. 1, 1921	102		41: 1202	238.
Apr. 7, 1922	125		42: 492	
Revised Statute 2308				239.
June 16, 1898	458		30: 473	240.
Aug. 29, 1916	420		39: 671	
Apr. 7, 1930	108		46: 144	243.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 3, 1933	198		47: 1424	243a.
Mar. 3, 1879	192		20: 472	251.
Mar. 2, 1889	381	7	25: 855	252.
June 3, 1878	152		20: 91	253.
Revised Statute 2294				254.
May 26, 1890	355		26: 121	
Mar. 11, 1902	182		32: 63	
Mar. 4, 1904	394		33: 59	
Feb. 23, 1923	105		42: 1281	
Revised Statute 2293				255.
Oct. 6, 1917	86		40: 391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service."	37: 925	256.
May 13, 1932	178		47: 153	256a.
June 16, 1933	99		48: 274	
June 26, 1935	419		49: 504	
June 16, 1937	361		50: 303	
Aug. 27, 1935	770		49: 909	256b.
Sept. 30, 1890	J. Res. 59		26: 684	261.
June 16, 1880	244		21: 287	263.
Apr. 18, 1904	25		33: 589	
Revised Statute 2304				271.
Mar. 1, 1901	674		31: 847	271, 272.
Revised Statute 2305				272.
Feb. 25, 1919	37		40: 1161	272a.
Dec. 28, 1922	19		42: 1067	
Revised Statute 2306				274.
Mar. 3, 1893	208		27: 593	275.

The following words only: "And provided further: That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land: but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."

Aug. 18, 1894	301	Only last paragraph headed "Surveying the Public Lands."	28: 397	276.
Revised Statute 2309				277.
Revised Statute 2307				278.
Sept. 21, 1922	357		42: 990	
Sept. 27, 1944	421		58: 747	279-283.
June 25, 1946	474		60: 308	279.
May 31, 1947	88		61: 123	279, 280, 282.
June 18, 1954	306		68: 253	279, 282.
June 3, 1948	399		62: 305	283, 284.
Dec. 29, 1916	9	1-8	39: 862	291-298.
Feb. 28, 1931	328		46: 1454	291.
June 9, 1933	53		48: 119	291.
June 6, 1924	274		46: 469	292.
Oct. 25, 1918	195		40: 1016	293.
Sept. 29, 1919	63		41: 287	294, 295.
Mar. 4, 1923	245	2	42: 1445	302.
Aug. 21, 1916	361		39: 518	1075.
Aug. 28, 1937	876	3	50: 875	1181c.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
2. Small tracts:				
June 1, 1938	317		52: 609	682a-e.
June 8, 1954	270		68: 239	
July 14, 1945	298		59: 467	

Repeal of Laws Related to Disposal

Sec. 703. (a) Effective on and after the tenth anniversary of the date of approval of this Act, the statutes and parts of statutes listed below as "Alaska Settlement Laws", and effective on and after the date of approval of this Act, the remainder of the following statutes and parts of statutes are hereby repealed:

1. Sale and Disposal Laws:				
Mar. 3, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1898	344	2	30: 418	675.
Revised Statute 2365				676.
Revised Statute 2357				678.
June 15, 1880	227	3, 4	21: 238	679-680.
Mar. 2, 1889	381	4	25: 854	681.
Mar. 1, 1907	2286		34: 1052	682.
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2368				691.
Revised Statute 2366				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35: 645	
May 21, 1926	353	The 2 provisos only.	44: 591	
Revised Statute 2375				698.
Revised Statute 2376				699.
Mar. 2, 1889	381	1	25: 854	700.
2. Townsite Reservation and Sale:				
Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68: 792	
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2386				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19: 392	725-727.
Mar. 3, 1891	561	16	26: 1101	728.
July 9, 1914	138		38: 454	730.
Feb. 9, 1903	531		32: 820	731.
3. Drainage Under State Laws:				
May 20, 1908	181	1-7	35: 171	1021-1027.
Mar. 3, 1919	113		40: 1321	1028.
May 1, 1958	P.L. 85-387		72: 99	1029-1034.
Jan. 17, 1920	47		41: 392	1041-1048.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
4. Abandoned Military Reservation:				
July 5, 1884	214	5	23: 104	1074.
Aug. 21, 1916	361		39: 518	1075.
Mar. 3, 1893	208		27: 593	1076.
The following words only: "Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one place."				
Aug. 23, 1894	314		23: 491	1077, 1078.
Feb. 11, 1903	543		32: 822	1079.
Feb. 15, 1895	92		28: 664	1080, 1077.
Apr. 23, 1904	1496		33: 306	1081.
5. Public Lands; Oklahoma:				
May 2, 1890	182	Last paragraph of sec. 18, and secs. 20, 21, 22, 24, 27.	26: 90	1091-1094, 1096.
Mar. 3, 1891	543	16	26: 1026	1098.
Aug. 7, 1946	772	1, 2	60: 872	1100-1101.
Aug. 3, 1955	498	1-8	69: 445	1102-1102g.
May 4, 1890	207		26: 109	1111-1117.
Sept. 1, 1893	J. Res. 4		28: 11	1118.
May 11, 1896	168	1, 2	29: 116	1119.
Jan. 18, 1897	62	1-3, 5, 7	29: 490	1131-1134.
June 3, 1897	8		30: 105	
Mar. 1, 1899	328		30: 966	
6. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 26, 1895	133		28: 687	
June 27, 1906	3554		34: 517	
Mar. 28, 1912	67		37: 77	
Mar. 9, 1928	164		45: 253	
June 28, 1934	865	14	48: 1274	
July 30, 1947	383		61: 630	
Apr. 24, 1928	428		45: 457	1171a.
May 23, 1930	313		46: 377	1171b.
Feb. 4, 1919	13		40: 1055	1172.
May 10, 1920	178		41: 595	1173.
Aug. 11, 1921	62		42: 159	1175.
May 19, 1926	337		44: 566	1176.
Feb. 14, 1931	170		46: 1105	1177.
7. Alaska Special Laws:				
Mar. 3, 1891	561	11	26: 1099	732.
May 25, 1926	379		44: 629	733-736.
May 29, 1963	P.L. 88-34		77: 52	
July 24, 1947	305		61: 414	738.
Aug. 17, 1961	P.L. 87-147		75: 384	270-13.
Oct. 3, 1962	P.L. 87-742		76: 740	
July 19, 1963	P.L. 86-66		77: 80	687b-5.
May 14, 1898	299	1	30: 409	270.
Mar. 3, 1903	1002		32: 1028	
Apr. 29, 1950	137	1	64: 94	
Aug. 3, 1955	496		69: 444	270, 687a-2.
Apr. 29, 1950	137	2-5	64: 95	270-5, 260-6, 270-7, 687a-1.
July 11, 1956	571	2	70: 529	270-7.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
July 8, 1916	228		39: 352	270-8, 270-9.
June 28, 1918	110		40: 632	270-10, 270-14.
July 11, 1956	571	1	70: 528	
8. Alaska Settlement Laws:				
Mar. 8, 1922	96	1	42: 415	270-11.
Aug. 23, 1958	P.L. 85-725	1, 4	72: 730	
Apr. 13, 1926	121		44: 243	270-15.
Apr. 29, 1950	134	3	64: 93	270-16, 270-17.
May 14, 1898	299	10	30: 413	270-4, 687a to 687a-5.
Mar. 3, 1927	323		44: 1364	
May 26, 1934	357		48: 809	
Aug. 23, 1958	P.L. 85-725	3	72: 730	
Mar. 3, 1891	561	13	26: 1100	687a-6.
Aug. 30, 1949	521		63: 679	687b to 687b-4.
9. Pittman Underground Water Act:				
Sept. 22, 1922	400		42: 1012	356.

(c) Effective on and after the tenth anniversary of the date of approval of this Act, section 2 of the Act of March 8, 1922 (42 Stat. 415, 416), as amended by section 2 of the Act of August 23, 1958 (72 Stat. 730), is further amended to read:

"The coal, oil, or gas deposits reserved to the United States in accordance with the Act of March 8, 1922 (42 Stat. 415; 43 U,.S.C. 270-11 et seq.), as added to by the Act of August 17, 1961 (75 Stat. 384; 43 U.S.C. 270-13), and amended by the Act of October 3, 1962 (76 Stat. 740; 43 U.S.C. 270-13), shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits or coal, oil, or gas lands in Alaska in force at the time of such disposal. Any person qualified to acquire coal, oil, or gas deposits, or the right to mine or remove the coal or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times to enter upon the lands patented under the Act of March 8, 1922, as amended, and in accordance with the provisions hereof, for the purpose of prospecting for coal, oil, or gas therein, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal, oil, or gas deposits in any such land, or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove oil and gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: Provided, That the owner under such limited patent shall have the right to mine the coal for use on the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: Provided further, That nothing in this Act shall be construed as authorizing the exploration upon or entry of any coal deposits withdrawn from such exploration and purchase.". (43 U.S.C. 270-12, 270-12 note)

(d) Section 3 of the Act of August 30, 1949 (63 Stat. 679; 43 U.S.C. 687b et seq.), is amended to read: "Notwithstanding the provisions of any Act of Congress to the contrary, any person who prospects for, mines, or removes any minerals from any land disposed of under the Act of August 30, 1949 (63 Stat. 679), shall be liable for any damage that may be caused to the value of the land and tangible improvements thereon by such prospecting for, mining, or removal of minerals. Nothing in this section shall be construed to impair any vested right in existence on August 30, 1949.". (43 U.S.C. 687b-2)

Repeal of Withdrawal Laws

Sec. 704. (a) Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (U.S. v. Midwest Oil Co., 236 U.S. 459) and the following statues and parts of statues are repealed:

Oct. 2, 1888	1069	25: 527	662.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Only the following portion under the section headed U.S. Geological Survey: The last sentence of the paragraph relating to investigation of irrigable lands in the arid region, including the proviso at the end thereof.				
Mar. 3, 1891	561	24	26: 1103	16 U.S.C. 471.
Mar. 1, 1893	183	21	27: 510	33 U.S.C. 681.
Aug. 18, 1894	301	4	28: 422	641.
Only that portion of the first sentence of the second paragraph with "and the Secretary of the Interior" and ending with "shall not be approved."				
May 14, 1898	299	10	30: 413	687a-4.
Only the fifth proviso of the first paragraph.				
June 17, 1902	1093	3	32: 388	416.
Only that portion of section three preceding the first proviso.				
Apr. 16, 1906	1631	1	34: 116	561.
Only the words "withdraw from public entry any lands needed for townsite purposes", and also after the word "case", the word "and".				
June 27, 1906	3559	4	34: 520	561.
Only the words "withdraw and".				
Mar. 15, 1910	96		36: 237	643.
June 25, 1910	421	1, 2	36: 847	141, 142, 16 U.S.C. 471(a).
All except the second and third provisos.				
June 25, 1910	431	13	36: 858	148.
Mar. 12, 1914	37	1	38: 305	975b.
Only that portion which authorizes the President to withdraw, locate, and dispose of lands for townsites.				
Oct. 5, 1914	316	1	38: 727	569(a).
June 9, 1916	137	2	39: 219	
Under "Class One," only the words "withdrawal and."				
Dec. 29, 1916	9	10	39: 865	300.
June 7, 1924	348	9	43: 655	16 U.S.C. 471.
Aug. 19, 1935	561	"Sec. 4"	49: 661	22 U.S.C. 277c.
In "Sec. 4", only paragraph "c" except the proviso thereof.				
Mar. 3, 1927	299	4	44: 1347	25 U.S.C. 398d.
Only the proviso thereof.				
May 24, 1928	729	4	45: 729	49 U.S.C. 214.
Dec. 21, 1928	42	9	45: 1063	617h.
Mar. 6, 1946	58		69: 36	617h.
First sentence only.				
June 16, 1934	557	"Sec. 40(a)"	48: 977	30 U.S.C. 229a.

	Act of	Chapter	Section	Statute at Large	43 U.S. Code
	The proviso only.				
	May 1, 1936	254	2	49: 1250	
	May 31, 1938	304		52: 593	25 U.S.C. 497.
	July 20, 1939	334		53: 1071	16 U.S.C. 471b.
	May 28, 1940	220	1	54: 224	16 U.S.C. 552a.
	All except the second proviso.				
	Apr. 11, 1956	203	8	70: 110	620g.
	Only the words "and to withdraw public lands from entry or other disposition under the public land laws."				
	Aug. 10, 1956	Chapter 9772 949		70A: 588	10 U.S.C. 4472, 9772.
	Aug. 16, 1952	P.L. 87-590	4	76: 389	616c.
	Only the words "and to withdraw public lands from entry or other disposition under the public land laws."				

(b) The second sentence of the Act of March 6, 1946 (60 Stat. 36; 43 U.S.C. 617(h)), is amended by deleting "Thereafter,, at the direction of the Secretary of the Interior, such lands" and by substituting therefore the following: "Lands found to be practicable of irrigation and reclamation by irrigation works and withdrawn under the Act of March 6, 1946 (43 U.S.C. 617(h))".

Repeal of Law Relating to Administration of Public Lands

Sec. 705. (a) Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed:

1.	Mar. 2, 1895	174		28: 744	176.
2.	June 28, 1934	865	8	48: 1272	315g.
	June 26, 1936	842	3	49: 1976, title I.	
	June 19, 1948	548	1	62: 533	
	July 9, 1962		P.L. 87-524	76: 140	315g-1.
3.	Aug. 24, 1937	744		50: 748	315p.
4.	Mar. 3, 1909	271	2d proviso only.	35: 845	772.
	June 25, 1910	J. Res.		36: 884	40
5.	June 21, 1934	689		48: 1185	871a.
6.	Revised Statute 2447				1151.
	Revised Statute 2448				1152.
7.	June 6, 1874	223		18: 62	1153; 1154.
8.	Jan. 28, 1879	30		20: 274	1155.
9.	May 30, 1894	87		28: 84	1156.
10.	Revised Statute 2471				1191.
	Revised Statute 2472				1192.
	Revised Statute 2473				1193.
11.	July 14, 1960	P.L. 86-649	101-202(a), 203-204(a), 301-303.	74: 506	1361, 1362, 1363-1383.
12.	Sept. 26, 1970	P.L. 91-429		84: 885	1362a.
13.	July 31, 1939	401	1, 2	53: 1144	

Act of	Chapter	Section	Statute at Large	43 U.S. Code

Repeal of Laws Relating to Rights-of-Way

Sec. 706. (a) Effective on and after the date of approval of this Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System:

Revised Statutes 2339 661.

The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed: but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damages shall be liable to the party injured for such injury or damage."

Revised Statutes 2340 661.

The following words only: ", or rights to ditches and reservoirs used in connection with such water rights,"

Feb. 26, 1897	335		29: 599	664.
Mar. 3, 1899	427	1	30: 1233	665, 958, (16 U.S.C. 525).

The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plots of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoirs site when in his judgment the public interests will not be injuriously affected thereby."

Mar. 3, 1875	152		18: 482	934-939.
May 14, 1898	299	2-9	30: 409	942-1 to 942-9.
Feb. 27, 1901	614		31: 815	943.
June 26, 1906	3548		34: 481	944.
Mar. 3, 1891	561	18-21	26: 1101	946-949.
Mar. 4, 1917	184	1	39: 1197	
May 28, 1926	409		44: 668	
Mar. 1, 1921		93	41: 1194	950.
Jan. 13, 1897	11		20: 484	952-955.
Mar. 3, 1923	219		42: 1437	
Jan. 21, 1895	37		28: 635	951, 956, 957.
May 14, 1896	179		29: 120	
May 11, 1898	292		30: 404	
Mar. 4, 1917	184	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	951 (16 U.S.C. 5, 420, 523).

Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."

May 27, 1952	338		66: 95	
May 21, 1896	212		29: 127	962-965.
Apr. 12, 1910	155		36: 296	966-970.
June 4, 1897	2	1	30: 35	16 U.S.C. 551.

Only the eleventh paragraph under Surveying the public lands.

July 22, 1937	517	31, 32	50: 525	7 U.S.C. 1010-1012.
Sept. 3, 1954	1255	1	68: 1146	931c.
July 7, 1960	Public Law 86-608.		74: 363	40 U.S.C. 345c.
Oct. 23, 1962	Public Law 87-852.	1-3	76: 1129	40: U.S.C. 319-319c.
Feb. 1, 1905	288	4	3: 628	16 U.S.C. 524.

Act of	Chapter	Section	Statute at Large	43 U.S. Code

(b) Nothing in section 706(a), except as it pertains to rights-of-way, may be construed as affecting the authority of the Secretary of Agriculture under the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551); the Act of July 22, 1937 (50 Stat. 525, as amended, 7 U.S.C. 1010-1212); or the Act of September 3, 1954 (68 Stat. 1146, 43 U.S.C. 913c) (43 U.S.C. 1701(note))

Severability

Sec. 707. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected there. (43 U.S.C. 1701(note))

National Forest Management Act of 1976

- **Act of October 22, 1976 (P.L. 94-588, 90 Stat. 2949, as amended; 16 U.S.C. 472a, 476, 476 (note), 500, 513-516, 518, 521b, 528(note), 576b, 594-2(note), 1600(note), 1601(note), 1600-1602, 1604, 1606, 1608-1614)**

Sec. 1. This Act may be cited as the "National Forest Management Act of 1976". (16 U.S.C. 1600(note))

Findings

Sec. 2. The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476; 16 U.S.C. 1601-1610) is amended by redesignating sections 2 through 11 as sections 3 through 12, respectively; and by adding a new section 2 as follows: (see P.L. 93-378)

Reports on Fiber Potential, Wood Utilization by Mills, Wood Wastes and Wood Product Recycling

Sec. 3. Section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesigned by section 2 of this Act, is amended by adding at the end thereof a new subsection (c) as follows: (see P.L. 93-378)

Reforestation

Sec. 4. Section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by adding at the end thereof new subsections (d) and (e) as follows: (see P.L. 93-378)

Renewable Resource Program

Sec. 5. Section 4 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by striking out the word "and" at the end of paragraph (3); striking out the word "satisfy" and inserting in lieu thereof "implement and monitor" in paragraph (4); striking out the period at the end of paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and by adding a new paragraph (5) as follows: (see P.L. 93-378)

National Forest System Resource Planning

Sec. 6. Section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by adding at the end thereof new subsections (c) through (m) as follows: (see P.L. 93-378)

National Participation

Sec. 7. Section 8 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended— (see P.L. 93-378)

Transportation System

Sec. 8. Section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by inserting "(a)" immediately before the words "The Congress" and inserting at the end

thereof new subsections (b) and (c) as follows: (see P.L. 93-378)

National Forest System

Sec. 9. Section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended by . . . (see P.L. 93-378)

Note—This amendment does not affect the President's authority (16 U.S.C. 473) to combine National Forests, separate a forest into two or more National Forests, or change the boundary lines of a Forest, providing such changes do not remove lands from National Forest Status. (Senate Report No. 94-898, May 14, 1976)

Renewable Resources

Sec. 10. Section 12 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as redesignated by section 2 of this Act, is amended . . . (see P.L. 93-378)

Limitations on Timber Removal; Public Participation and Advisory Boards; Regulations; Severability

Sec. 11. The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended by adding . . . (see P.L. 93-378)

Conforming Amendments to the Forest and Rangeland Renewable Resources Planning Act of 1974

Sec. 12. The Forest and Rangeland Renewable Resources Planning Act of 1974 is amended as follows—(see P.L. 93-378)

Amendment to the Organic Act

Sec. 13. The twelfth undesignated paragraph under the heading "SURVEYING THE PUBLIC LANDS" in the Act of June 4, 1897 (30 Stat. 35, as amended; 16 U.S.C. 476), is hereby repealed. (16 U.S.C. 476)

Timber Sales on National Forest System Lands

Sec. 14. (a) For the purpose of achieving the policies set forth in the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476; 16 U.S.C. 1600 et seq.), the Secretary of Agriculture, under such rules and regulations as he may prescribe, may sell, at not less than appraised value, trees, portions of trees, or forest products located on National Forest System lands.

(b) All advertised timber sales shall be designated on maps, and a prospectus shall be available to the public and interested potential bidders.

(c) The length and other terms of the contract shall be designed to promote orderly harvesting consistent with the principles set out in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1604). Unless there is a finding by the Secretary of Agriculture that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use, Sustained-Yield Act of 1960; 16 U.S.C. 528-531) will result, sales contracts shall be for a period not to exceed ten years: *Provided,* That such period may be adjusted at the discretion of the Secretary to

provide additional time due to time delays caused by an act of an agent of the United States or by other circumstances beyond the control of the purchaser. The Secretary shall require the purchaser to file as soon as practicable after execution of a contract for any advertised sale with a term of two years or more, a plan of operation, which shall be subject to concurrence by the Secretary. The Secretary shall not extend any contract period with an original term of two or more unless he finds—

(A) that the purchaser has diligently performed in accordance with an approved plan of operation or

(B) that the substantial overriding public interest justified the extension.

(d) The Secretary of Agriculture shall advertise all sales unless he determines that extraordinary conditions exist, as defined by regulation, or that the appraised value of the sale is less than $10,000. If, upon proper offering, no satisfactory bid is received for a sale, or the bidder fails to complete the purchase, the sale may be offered and sold without further advertisement.

(e)(1) In the sale of trees, portions of trees, or forest products from National Forest System lands (hereinafter referred to in this subsection as "National Forest materials"), the Secretary of Agriculture shall select the bidding method or methods which—

(A) insure open and fair competition;

(B) insure that the federal government receive not less than the appraised value as required by subsection (a) of this section;

(C) consider the economic stability of communities whose economies are dependent on such National Forest materials, or achieve such other objectives as the Secretary deems necessary; and

(D) are consistent with the objectives of this Act and other federal statutes. The Secretary shall select or alter the bidding method or methods as he determines necessary to achieve the objectives stated in clauses (A), (B), (C) and (D) of this paragraph.

(2) In those instances when the Secretary selects oral auction as the bidding method for the sale of any National Forest materials, he shall require that all prospective purchasers submit written sealed qualifying bids. Only prospective purchasers whose written sealed qualifying bids are equal to or in excess of the appraised value of such National Forest materials may participate in the oral bidding process.

(3) The Secretary shall monitor bidding patterns involved in the sale of National Forest materials. If the Secretary has a reasonable belief that collusive bidding practices may be occurring, then—

(A) he shall report any such instances of possible collusive bidding or suspected collusive bidding practices to the Attorney General of the United States with any and all supporting data;

(B) he may alter the bidding methods used within the affected area; and

(C) he shall take such other action as he deems necessary to eliminate such practices with the affected area.

(f) The Secretary of Agriculture, under such rules and regulations as he may prescribe, is authorized to dispose of, by sale or otherwise, trees, portions of trees, or other forest products related to research and demonstration projects.

(g) Designation, marking when necessary, and supervision of harvesting of trees, portions of trees, or forest products shall be conducted by persons employed by the Secretary of Agriculture. Such persons

shall have no personal interest in the purchase or harvest of such products and shall not be directly or indirectly in the employment of the purchaser thereof.

(h) The Secretary of Agriculture shall develop utilization standards, methods or measurement, and harvesting practices for the removal of trees, portions of trees, or forest products to provide for the optimum practical use of the wood material. Such standards, methods, and practices shall reflect consideration of opportunities to promote more effective wood utilization, regional conditions, and species characteristics and shall be compatible with multiple use resource management objectives in the affected area. To accomplish the purpose of this subsection in situations involving salvage of insect-infested, dead, damaged, or down timber, and to remove associated trees for stand improvement, the Secretary is authorized to require the purchaser of such timber to make monetary deposits, as a part of the payment for the timber, to be deposited in a designated fund from which sums are to be used, to cover the cost to the United States for design, engineering, and supervision of the construction of needed roads and the cost for Forest Service sale preparation and supervision of the harvesting of such timber. Deposits of money pursuant to this subsection are to be available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided,* That such deposits shall not be considered as moneys received from the National Forests within the meaning of sections 500 and 501 of title 16, United States Code: *And provided further,* That sums found to be in excess of the cost of accomplishing the purposes for which deposited on any National Forest shall be transferred to miscellaneous receipts in the Treasury of the United States.

(i)(1) For sales of timber which include a provision for purchaser credit for construction of permanent roads with an estimated cost in excess of $20,000, the Secretary of Agriculture shall promulgate regulations requiring that the notice of sale afford timber purchasers qualifying as "small business concerns" under the Small Business Act, as amended, (5 U.S.C. 631 et seq.) and the regulations issued thereunder, an estimate of the cost and the right, when submitting a bid, to elect that the Secretary build the proposed road.

(2) If the purchaser makes such an election, the price subsequently paid for the timber shall include all of the estimated cost of the road. In the notice of sale, the Secretary of Agriculture shall set a date when such road shall be completed which shall be applicable to either construction by the purchaser or the Secretary, depending on the election. To accomplish requested work, the Secretary is authorized to use from any receipts from the sale of timber a sum equal to the estimate for timber purchaser credits, and such additional sums as may be appropriated for the construction of roads, such funds to be available until expended, to construct a road that meets the standards specified in the notice of sale.

Note—P.L. 99-500, FY 1987 Appropriations bill, included the following provision relative to this subsection of NFMA: "Notwithstanding any other provision of law, the Secretary of Agriculture is hereafter authorized to use from any receipts from the sale of timber a sum equal to the cost of construction of

roads under the purchaser election program as described and authorized in section 14(i) of the National Forest Management Act of 1976.".

(3) The provisions of this subsection shall become effective on October 1, 1976. (16 U.S.C. 472a)

Validation of Timber Sales Contracts

Sec. 15. (a) Timber sales made pursuant to the Act of June 4, 1897 (30 Stat. 35, as amended; 16 U.S.C. 476), prior to the date of enactment of this section shall not be invalid if the timber was sold in accord with Forest Service silvicultural practices and sales procedures in effect at the time of the sale, subject to the provisions of subsection (b) of this section.

(b) The Secretary of Agriculture is directed, in developing five-year operating plans under the provisions of existing fifty-year timber sales contracts in Alaska, to revise such contracts to make them consistent with the guidelines and standards provided for in the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended, (16 U.S.C. 1600 et seq.), and to reflect such revisions in the contract price of timber. Any such action shall not be inconsistent with valid contract rights approved by the final judgement of a court of competent jurisdiction. (16 U.S.C. 476(note))

Payments to States for Schools and Roads

Sec. 16. The sixth paragraph under the heading "FOREST SERVICE" in the Act of May 23, 1908, as amended, and section 13 of the Act of March 1, 1911, as amended (35 Stat. 260; 36 Stat. 963, as amended ; 16 U.S.C. 500), are each amended by adding at the end thereof, respectively, the following new sentence: "Beginning October 1, 1976, the term 'moneys received' shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of National Forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such National Forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payment estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes." (16 U.S.C. 500)

Acquisition of National Forest System Lands

Sec. 17. (a) The Act of March 1, 1911 (36 Stat. 961), as amended (16 U.S.C. 480, 500, 513-517, 517a, 518, 519, 521, 552, 563), is amended as follows—

(1) Section 4, as amended, is repealed , and all functions of the National Forest Reservation Commission are transferred to the Secretary of Agriculture. (16 U.S.C. 513)

(2) Section 5 is repealed. (16 U.S.C. 513)

(3) Section 6 is amended to read as follows: (see P.L. 61-435)

(4) Section 7, as amended, is amended to read as follows: (see P.L. 61-435)

(5) Section 9, as amended, is amended by striking out the following language in the first sentence:

"the National Forest Reservation Commission and". (16 U.S.C. 518)

(6) Section 14, as amended, is repealed. (16 U.S.C. 514)

(b) For purposes of providing information that will aid the Congress in its oversight responsibilities and improve the accountability of expenditures for the acquisition of forest land, the Secretary of Agriculture may not hereafter enter into any land purchase or exchange relating to the National Forest System of $150,000 or more for the types of lands which have been heretofore approved by the National Forest Reservation Commission until after 30 days from the date upon which a detailed report of the facts concerning such proposed purchase or transfer is submitted to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture and Forestry of the Senate or such earlier time as may be approved by both such committees. Such report shall contain at least the following:

(1) guidelines utilized by the Secretary in determining that the land should be acquired;

(2) the location and size of the land;

(3) the purchase price of the land and the criteria used by the Secretary in determining such price;

(4) the person from whom the land is being acquired; and

(5) any adjustments made by the Secretary of relative value pursuant to section 206(f)(2)(B)(ii) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). (16 U.S.C. 521b)

Amendment to the Knutson-Vandenberg Act

Sec. 18. Section 3 of the Act of June 9, 1930 (46 Stat. 527; 16 U.S.C. 576b), is amended—(see P.L. 71-319)

Amendment to the Act of June 12, 1960

Sec. 19. The Act of June 12, 1960 (74 Stat. 215; 16 U.S.C. 528-531), is amended by adding at the end thereof the following new section: (see P.L. 86-517)

Severability

Sec. 21. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby. (16 U.S.C. 1600(note))

Surface Mining Control and Reclamation Act of 1977

- **Act of August 3, 1977 (P.L. 95-87, 91 Stat. 445; 30 U.S.C. 1201, 1201(note), 1236, 1272, 1305)**

Short Title

Sec. 1. That this Act may be cited as the "Surface Mining Control and Reclamation Act of 1977". (30 U.S.C. 1201(note))

* * * *

TITLE IV — ABANDONED MINE RECLAMATION

* * * *

Reclamation of Rural Lands

Sec. 406. (a) In order to provide for the control and prevention of erosion and sediment damages from unreclaimed mined lands, and to promote the conservation and development of soil and water resources of unreclaimed mined lands and lands affected by mining, the Secretary of Agriculture is authorized to enter into agreements of not more than ten years with landowners (including owners of water rights), residents, and tenants, and individually or collectively, determined by him to have control for the period of the agreement of lands in question therein, providing for land stabilization, erosion, and sediment control, and reclamation through conservation treatment, including measures for the conservation and development of soil, water (excluding stream channelization), woodland, wildlife, and recreation resources, and agricultural productivity of such lands. Such agreements shall be made by the Secretary with the owners, including owners of water rights, residents, or tenants (collectively or individually) of the lands in question.

(b) Conservation and development plans.—The landowner, including the owner of water rights, resident, or tenant shall furnish to the Secretary of agriculture a conservation and development plan setting forth the proposed land uses and conservation treatment which shall be mutually agreed by the Secretary of Agriculture and the landowner, including owner of water rights, resident, or tenant to be needed on the lands for which the plan was prepared. In those instances where it is determined that the water rights or water supply of a tenant, landowner, including owner of water rights, resident, or tenant have been adversely affected by a surface or underground coal mine operation which has removed or disturbed a stratum so as to significantly affect the hydrologic balance, such plan may include proposed measures to enhance water quality or quantity by means of joint action with other affected landowners, including owner of water rights, residents, or tenants in consultation with appropriate State and Federal agencies.

(c) Agreement to effect plan.—Such plan shall be incorporated in an agreement under which the landowner, including owner of water rights, resident, or tenant shall agree with the Secretary of Agriculture to effect the land uses and conservation treatment provided for in such

plan on the lands described in the agreement in accordance with the terms and conditions thereof.

(d) Financial and other assistance; determination by Secretary.—In return for such agreement by the landowner, including owner of water rights, resident, or tenant, the Secretary of Agriculture is authorized to furnish financial and other assistance to such landowner, including owner of water rights, resident, or tenant, in such amounts and subject to such conditions as the Secretary of Agriculture determines are appropriate in the public interest for carrying out the land use and conservation treatment set forth in the agreement. Grants made under this section, depending on the income-producing potential of the land after reclaiming, shall provide up to 80 per centum of the cost of carrying out such land uses and conservation treatment on not more than one hundred and twenty acres of land occupied by such owner, including water rights owners, resident, or tenant, under an agreement for the enhancement of water quality or quantity or on land which has been acquired by an appropriate State or local agency for the purpose of implementing such agreement; except the Secretary may reduce the matching cost share where he determines that (1) the main benefits to be derived from the project are related to improving offsite water quality, offsite esthetic values, or other offsite benefits, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program: *Provided, however,* That the Secretary of Agriculture may allow for land use and conservation treatment on such lands occupied by any such owner in excess of such one hundred and twenty acre limitation up to three hundred and twenty acres, but in such event the amount of the grant to such landowner to carry out such reclamation on such lands shall be reduced proportionately. Notwithstanding any other provision of this section with regard to acreage limitations, the Secretary of Agriculture may carry out reclamation treatment projects to control erosion and improve water quality on all lands within a hydrologic unit, consisting of not more than 25,000 acres, if the Secretary determines that treatment of such lands as a hydrologic unit will achieve greater reduction in the adverse effects of past surface mining practices than would be achieved if reclamation was done on individual parcels of land.

(e) Termination of agreements.—The Secretary of Agriculture may terminate any agreement with a landowner including water rights owners, operator, or occupier by mutual agreement if the Secretary of Agriculture determines that such termination would be in the public interest, and may agree to such modification of agreements previously entered into hereunder as he deems desirable to carry out the purposes of this section or to facilitate the practical administration of the program authorized herein.

(f) Preservation and surrender of history and allotments.—Notwithstanding any other provision of law, the Secretary of Agriculture, to the extent he deems it desirable to carry out the purposes of this section, may provide in any agreement hereinunder for (1) preservation for a period not to exceed the period covered by the agreement and an equal period thereafter of the cropland, crop acreage, and allotment history applicable to land covered by the agreement for the purpose of any Federal program under which such history is used as a basis for an allotment or other limitation on the production of such crop; or (2) surrender of any such history and allotments.

(g) Rules and regulations.—The Secretary of Agriculture shall be authorized to issue such rules and regulations as he determines are necessary to carry out the provisions of this section.

(h) Utilization of Soil Conservation Service.–In carrying out the provisions of this section, the Secretary of Agriculture shall utilize the services of the Soil Conservation Service. (30 U.S.C. 1236)

* * * *

TITLE V — CONTROL OF THE ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING

* * * *

Designating Areas Unsuitable for Surface Coal Mining

Sec. 522.

* * * *

(e) After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted—

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreational Areas designated by Act of Congress;

(2) on any federal lands within the boundaries of any National Forest; *Provided, however,* That surface coal mining operations may be permitted on such lands if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and—

(A) surface operations and impacts are incident to an underground coal mine; or

(B) where the Secretary of Agriculture determines, with respect to land which does not have significant forest cover within those National Forests west of the 100th meridian, that surface mining is in compliance with the Multiple-Use, Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1975, the National Forest Management Act of 1976, and the provisions of this Act: *And provided further,* That no surface coal mining operations may be permitted within the boundaries of the Custer National Forest.

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the federal, State, or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, or institutional building, public park, or within one hundred feet of a cemetery. (30 U.S.C. 1272)

* * * *

TITLE VII — ADMINISTRATION AND MISCELLANEOUS PROVISIONS

* * * *

Sec. 715. In those instances where the coal proposed to be mined by surface coal mining operations is owned by the federal government and the surface is subject to a lease or a permit issued by the federal government, the application for a permit shall include either:

(1) the written consent of the permittee or lessee of the surface lands involved to enter and commence surface coal mining operations on such land, or in lieu thereof;

(2) evidence of the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the permittee or lessee of the surface lands involved to secure payment of any damages to the surface estate which the operations will cause to the crops, or to the tangible improvements of the permittee or lessee of the surface lands as may be determined by the parties involved, or as determined and fixed in an action brought against the operator or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation under this Act. (30 U.S.C. 1305)

National Agricultural Research, Extension, and Teaching Policy Act of 1977

- **Act of September 29, 1977 (P.L. 95-113, Title XIV, 91 Stat. 981, as amended; 7 U.S.C. 450i, 3101-3103, 3121, 3122-3128, 3322, 3324, 3331-3333, 3336; 42 U.S.C. 6651)**

Note—This is actually just Title XIV of the Food and Agriculture Act of 1977, P.L. 95-113.

TITLE XIV — NATIONAL AGRICULTURAL RESEARCH, EXTENSION, AND TEACHING POLICY ACT OF 1977

SUBTITLE A — FINDINGS, PURPOSES, AND DEFINITIONS

Findings

Sec. 1402. Purposes of agricultural research and extension.—Subject to the varying conditions and needs of States, Federally funded agricultural research and extension programs shall be designed to, among other things, accomplish the following—

(1) continue to satisfy human food and fiber needs;

(2) enhance the long-term viability and competitiveness of the food production and agricultural system of the United States within the global economy;

(3) expand economic opportunities in rural America and enhance the quality of life for farmers, rural citizens, and society as a whole;

(4) improve the productivity of the American agricultural commodities;

(5) develop information and systems to enhance the environment and the natural resource base upon which a sustainable agricultural economy depends; or

(6) enhance human health—

(1) by fostering the availability and affordability of a safe, wholesome, and nutritious food supply that meets the needs and preferences of the consumer; and

(2) by assisting farmers and other rural residents in the detection and prevention of health and safety concerns.

Purposes

Sec. 1403. The purposes of this title are to—

(1) establish firmly the Department of Agriculture as the lead agency in the federal government for the food and agricultural sciences, and to emphasize that agricultural research, extension, and teaching are distinct missions of the Department of Agriculture;

(2) undertake the special measures set forth in this title to improve the coordination and planning of agricultural research, teaching and extension programs, identify needs and establish priorities for these programs, assure that national agricultural research, extension, and teaching objectives are fully achieved, and assure that the results of agricultural research are effectively communicated and demonstrated to farmers, processors, handlers, consumers, and all other users who can benefit therefrom;

(3) increase cooperation and coordination in the performance of agricultural research by federal departments and agencies, the

States, State agricultural experiment stations, colleges and universities, and user groups;

(4) enable the federal government, the States, colleges and universities, and others to implement needed agricultural research, extension, and teaching programs through the establishment of new programs and the improvement of existing programs, as provided for in this title;

(5) establish a new program of grants for high-priority agricultural research to be awarded on the basis of competition among research workers and all colleges and universities;

(6) establish a new program of grants for facilities and instrumentation used in agricultural research; and

(7) establish a new program of education grants and fellowships to strengthen research, extension and teaching programs in the food and agricultural sciences, to be awarded on the basis of competition. (7 U.S.C. 3102)

Definitions

Sec. 1404. When used in this title—

* * * *

(8) the term "food and agricultural sciences" means basic, applied, and developmental research, extension and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities relating to:

(A) agriculture, including soil and water conservation and use, the use of organic waste materials to improve soil tilth and fertility, plant and animal production and protection, and plant and animal health;

(B) the processing, distributing, marketing, and utilization of food and agricultural products;

(C) forestry, including range management, production of forest and range products, multiple use of forest and rangelands, and urban forestry;

(D) aquaculture;

(E) home economics, including consumer affairs, food and nutrition, clothing and textiles, housing, and family well-being and financial management;

(F) rural community welfare and development;

(G) youth development, including 4-H clubs;

(H) domestic and export market expansion for United States agricultural products; and

(I) production inputs, such as energy, to improve productivity. . . . (7 U.S.C. 3103)

* * * *

SUBTITLE B — COORDINATION AND PLANNING OF AGRICULTURAL RESEARCH, EXTENSION, AND TEACHING

Responsibilities of the Secretary and Department of Agriculture

Sec. 1405. The Department of Agriculture is designated as the lead agency of the Federal Government for agricultural research (except with respect to the biomedical aspects of human nutrition concerned with diagnosis or treatment of disease), extension, and teaching in the food and agricultural sciences, and the Secretary, in carrying out the Secretary's responsibilities, shall—

(1) establish jointly with the Secretary of Health and Human Services procedures for coordination with respect to nutrition research in

areas of mutual interest;

(2) keep informed of developments in, and the Nation's need for, research, extension, teaching, and manpower development in the food and agricultural sciences and represent such need in deliberations within the Department of Agriculture, elsewhere within the executive branch of the United States Government, and with the several States and their designated land-grant colleges and universities, other colleges and universities, agricultural and related industries, and other interested institutions and groups;

(3) coordinate all agricultural research, extension, and teaching activity conducted or financed by the Department of Agriculture and, to the maximum extent practicable, by other agencies of the executive branch of the United States Government;

(4) take the initiative in establishing coordination of State-federal cooperative agricultural research, extension, and teaching programs, funded in whole or in part by the Department of Agriculture in each State, through the administrative heads of land-grant colleges and universities and the State directors of agricultural experiment stations and cooperative extension services, and other appropriate program administrators;

(5) consult the Joint Council, Advisory Board, and appropriate advisory committees of the Department of Agriculture in the formulation of basic policies, goals, strategies, and priorities for programs of agricultural research, extension, and teaching;

(6) report (as a part of the Department of Agriculture's annual budget submissions) to the House Committee on Agriculture, the House Committee on Appropriations, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Senate Committee on Appropriations actions taken or proposed to support the recommendations of the Advisory Board;

(7) establish appropriate review procedures to assure that agricultural research projects are timely and properly reported and published and that there is no unnecessary duplication of effort or overlapping between agricultural research units;

(8) establish federal or cooperative multidisciplinary research teams on major agricultural research problems with clearly defined leadership, budget responsibility, and research programs;

(9) in order to promote the coordination of agricultural research of the Department of Agriculture, conduct a continuing inventory of ongoing and completed research projects being conducted within or funded by the Department;

(10) coordinate all agricultural research, extension, and teaching activities conducted or financed by the Department of Agriculture with the periodic renewable resource assessment and program provided for in sections 3 and 4 of the Forest and Rangeland Renewable Resources Planning Act of 1974 and the appraisal and program provided for in sections 5 and 6 of the Soil and Water Resources Conservation Act of 1977;

(11) take the initiative in overcoming barriers to long-range planning by developing, in conjunction with the States, State cooperative institutions, the Joint Council, the Advisory Board, and other appropriate institutions, a long-term needs assessment for food, fiber, and forest products, and by determining the research requirements necessary to meet the identified needs, and

(12) establish, after coordination with the Technology Board, appropriate controls with respect to the development and use of the application of biotechnology to agriculture. (7 U.S.C. 3121)

Subcommittee on Food, Agricultural, and Forestry Research

Sec. 1406. Section 401(h) of the National Science and Technology Policy, Organization, and Priorities Act of 1967 (90 Stat. 471; 42 U.S.C. 6651(h)) is amended by adding at the end thereof the following: "Among such standing subcommittees and panels of the Council shall be the Subcommittee on Food and Renewable Resources. This subcommittee shall review federal research and development programs relevant to domestic and world food and fiber production and distribution, promote planning and coordination of this research in the federal government, and recommend policies and other measures concerning the food and agricultural sciences for the consideration of the Council.

* * * *

Joint Council on Food and Agricultural Sciences

Sec. 1407. (a) The Secretary shall establish within the Department of Agriculture a committee to be known as the Joint Council on Food and Agricultural Sciences which shall have a term that expires September 30, 1995.

(b) The Joint Council shall be composed of not fewer than twenty-one representatives of organizations or agencies which conduct or assist in conducting programs of research, extension, or teaching in the food and agricultural sciences, including the following:

(1) Six representatives from State cooperative institutions, including at least one from institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.), including Tuskegee University.

(2) Four representatives from agencies within the Department of Agriculture which have significant research, extension, and teaching responsibilities.

(3) One representative from public colleges and universities having a demonstrable capacity to carry out food and agricultural research, extension, or teaching.

(4) One representative from colleges and universities conducting research related to the food and agricultural sciences.

(5) Three representatives from private organizations or corporations conducting research in the food and agricultural sciences, including one representative from the food processing industry involved in food technology research.

(6) One representative from among foundations funding research in the food and agricultural sciences.

(7) One representative from among farmers, ranchers, and other producers of domestic agricultural commodities.

(8) One representative from the Office of Science and Technology Policy.

(9) Two representatives from other Federal agencies determined by the Secretary to be appropriate.

(10) One representative from the National Academy of Sciences.

(11) To the extent the Joint Council is composed of more than 21 members, representatives of other public and private institutions, producers, and representatives of the public who are interested in and have the potential to contribute to (as determined by the Secretary) the formulation of national policy in the food and agricultural sciences.

(c) Administrative provisions.—

(1) Members of the Joint Council shall be appointed for a term of up to three years by the Secretary from nominations made by the organizations and agencies described in subsection (b) of this

section. The terms of the members shall be staggered.

(2) The Joint Council shall be jointly chaired by the Assistant Secretary of Agriculture for research, extension, and teaching, and a person to be elected from among the non-Federal membership of the Joint Council.

(3) The Joint Council shall meet at least once during each three-month period. At least one meeting each year shall be a combined meeting with the Advisory Board. The meetings of the Joint Council shall be publicly announced in advance and shall be open to the public. Appropriate records of the activities of the Joint Council shall be kept and made available to the public on request.

(d) The primary responsibility of the Joint Council is to bring about more effective research, extension, and teaching in the food and agricultural sciences in the United States by improving planning and coordination of publicly and privately supported food and agricultural science activities and by relating federal budget development and program management to these processes.

(e) The responsibilities of the Joint Council shall also include the following—

(1) Provide a forum for the interchange of information among the organizations represented by the members of the Joint Council that will assure improved awareness among these organizations concerning the agricultural research, extension, and teaching programs, results, and directions of each organization;

(2) Analyze and evaluate the economic, environmental, and social impacts of agricultural research, extension, and teaching programs conducted by the United States.

(3) Determine high priority issues and goals for agricultural research extension, and teaching programs, and submit annual reports identifying such high priority issues and goals to the Secretary of Agricultural and to Congress.

(4) Develop and review the effectiveness of a system, for use by the Secretary, of compiling, maintaining, and disseminating information about each federally supported agricultural research or extension project and, to the maximum extent possible, information about private agricultural research or extension projects conducted by colleges and universities, foundations, contract research groups, businesses, and others. Information about private agricultural research and extension projects should not be included in this system unless they are partially or entirely funded by the federal government or the organizations sponsoring the projects agree to the inclusion of information about such projects.

(5) Assist the parties in developing, reviewing, and evaluating memoranda of understanding or other documents that detail the terms and conditions between the Secretary and the participants in agricultural research, extension, and teaching programs under this Act and other Acts.

(6) Assist the Secretary in carrying out the responsibilities assigned to the Secretary under this title through planning and coordination efforts in the food and agricultural sciences, by using, wherever possible, the existing regional research, extension, and teaching organizations of State cooperative institutions to provide regional planning and coordination, and by the development of recommendations and reports describing current and long-range needs, priorities, and goals in the food and agricultural sciences and means to achieve these goals.

(7) Coordinate with the Secretary in assessing the current status

of, and developing a plan for, the effective transfer of new technologies to the farming community.

(8) In consultation with the Users Advisory Board—

(A) provide an annual review and prioritize requests for agricultural related special grants and construction grants;

(B) provide an annual review of the competitive grants made by the Secretary to determine priority research and grant categories and types that best advance the purposes expressed in section 3101 of this title; and

(C) review and make budget recommendations on the research, extension, and teaching budgets for the Agricultural Research Service, the Forest Service, the Economic Research Service, the Extension Service, the National Agricultural Library, the Cooperative State Research Service, and other department agencies.

(f) Reports—

(1) Not later than June 30 of each year, the Joint Council shall prepare a report specifying its conclusions on—

(A) priorities for food and agricultural research, extension, and teaching programs;

(B) suggested areas of responsibility among Federal, State, and private organizations in carrying out such programs;

(C) the levels of financial and other support needed to carry out such programs;

(D) the progress made toward accomplishing the priorities and associated levels of financial and other support recommended in the annual report issued in the prior year; and

(E) the activities of the Board in meeting its responsibilities under this section.

(2) Not later than November 30, 1990, the Joint Council shall prepare a report outlining a five-year plan for food and agricultural sciences that reflects the coordinated views of the research, extension, and teaching community. The Joint Council shall update this plan every two years thereafter in reports reflecting the progress being made toward implementing the plan.

(3) Each report prepared under this subsection shall be submitted to the Secretary. Minority views, if timely submitted, shall be included in each such report.

National Agricultural Research and Extension Users Advisory Board

Sec. 1408. (a) The Secretary shall establish within the Department of Agriculture a board to be known as the National Agricultural Research and Extension Users Advisory Board which shall remain in existence until September 30, 1995.

(b)(1) One member who is a producer representing farm cooperatives.

(2) Two members who are producers representing general farm organizations.

(3) Four members who are producers representing agricultural commodities, forest product, and aquacultural product groups from various geographic regions.

(4) One member representing agricultural farm suppliers.

(5) One member representing food and fiber processors.

(6) One member representing animal health interests.

(7) One member engaged in transportation of food and agricultural products to domestic or foreign markets.

(8) One member representing labor organizations primarily concerned with the production, processing, distribution, or transport of food and agricultural products.

(9) One member representing food marketing interests.

(10) One member representing private nonprofit organizations and foundations involved in agricultural research, sustainable agricultural research, education, and extension.

(11) One member representing private sector organizations involved in development programs and issues in developing countries.

(12) One member representing agencies of the Department of Agriculture that do not have research capabilities.

(13) One member engaged in rural development work.

(14) One member engaged in human nutrition work.

(15) Two members representing consumer interests, including one member who represents nonprofit consumer advocacy organizations.

(16) One member representing nonprofit environmental protection organizations.

* * * *

(f)(1) The Advisory Board shall have general responsibility for preparing independent advisory opinions on the food and agricultural sciences.

(2) The Advisory Board shall have the specific responsibilities to perform the following duties;

(A) Review the policies, plans, and goals of programs within the Department of Agriculture involving the food and agricultural sciences, and related programs in other federal and State departments and agencies and in the colleges and universities developed by the Secretary under this title;

(B) Review and assess the extent of agricultural research, teaching, and extension being conducted by the private sector and the relationships and coordination of such activities with Federally supported agricultural research, teaching, and extension programs.

(C) Review and provide consultation to the Secretary on national policies, priorities, and strategies for agricultural research and extension for both the short and long term;

(D) Assess the overall adequacy of the distribution of resources and the allocation of funds for the agricultural research, extension, and teaching activities of the Department of Agriculture and make recommendations with regard to such distribution and allocation to the Secretary, Federal agencies, and private organizations that are contributing to the funding of agricultural research, extension, and teaching.

(E) Identify emerging agricultural research, teaching, and extension issues and suggest programs and technology transfer solutions for use by the public and private agricultural science and education community.

(F) Evaluate the results and the effectiveness of research and extension programs with regard to their influence on long-term goals of agriculture expressed in sections 3101 and 3102 of this title and consumer needs.

(G) Omitted

(g) Reports by the Advisory Board.—

(1) Examination of federally supported agricultural research and extension programs.—Not later than July 1 of each year, the Advisory Board shall provide an oral briefing to the Secretary (by the chairperson of the Advisory Board) and a written report to Congress and the Secretary of recommendations concerning the allocation of responsibilities and levels of funding among Federally supported agricultural research and extension programs. The Advisory Board shall include in each oral briefing and written report prepared under this paragraph—

(A) a review and assessment of the allocation of funds for agricultural research and extension made for the preceding fiscal year by the Department of Agriculture;

(B) an evaluation of—

(i) the effectiveness of coordination of Federal and private research initiatives;

(ii) new research and extension programs that need to be conducted by the research system; and

(iii) the effectiveness of the private and public research and extension system; and

(C) minority views, if timely submitted.

(2) Review of budget and Secretary's report.—Not later than February 20 of each year, the Advisory Board shall submit to the President, the Committees on Agricultural and Appropriations of the House of Representatives, and the committees on Agriculture, Nutrition, and Forestry and Appropriations of the Senate a report containing—

(A) an appraisal by the Advisory Board of the proposed budget of the President for the food and agricultural sciences for the fiscal year beginning in the year that report is submitted;

(B) the recommendations of the Secretary contained in the annual report submitted by the Secretary pursuant to section 3125 of this title; and

(C) separate views of members of the Advisory Board, if timely submitted.

(3) Requirement of reports.—Each report prepared by the Advisory Board shall list the membership of the Advisory Board as of the time the report was prepared, including the organizational and employment affiliation of each member of the Advisory Board.

(h) Report by Secretary.—Not later than February 1 of each year, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the manner in which the recommendations of the Advisory Board have been incorporated into the budget and programs of the Department of Agriculture. (7 U.S.C. 3123)

* * * *

Secretary's Report

Sec. 1410. The Secretary shall submit to the President and Congress by January 1 of each year a report on the Nation's agricultural research, extension, and teaching activities, and such report shall include—

(1) a review covering the following three categories of activities of the Department of Agriculture with respect to agricultural research, extension, and teaching activities and the relationship of these activities to similar activities of other departments and agencies of the federal government, the States, colleges and universities, and the private sector—

(A) a current inventory of such activities organized by statutory authorization and budget outlay;

(B) a current inventory of such activities organized by field of basic and applied science; and

(C) a current inventory of such activities organized by commodity and product category;

(2) the recommendations of the Joint Council developed pursuant to the provisions of section 1407(d)(2)(G) of this title and the statement of recommendations of the Advisory Board developed pursuant to the provisions of section 1408(f)(2)(E) of this title; and

(3) in the second and succeeding years, a five-year projection of national priorities with respect to agricultural research, extension, and

teaching, taking into account both domestic and international needs.

SUBTITLE L — AQUACULTURE

Purpose

Sec. 1474. It is the purpose of this subtitle to promote research and extension activities of the institutions hereinafter referred to in section 1475(b), and to coordinate their efforts as an integral part in the implementation of the National Aquaculture Act of 1980 (16 U.S.C. 2801 et seq.) by encouraging landowners, individuals, and commercial institutions to develop aquaculture production and facilities and sound aquaculture practices that will, through research and technology transfer programs, provide for the increased production and marketing of aquacultural food products.
(7 U.S.C. 3321)

Aquacultural Assistance Programs

Sec. 1475. (a) The secretary may develop and implement a cooperative research and extension program to encourage the development, management, and production of important aquatic food species within the several States and territories of the United States in accordance with the national aquaculture development plan, and revisions thereto, developed under the National Aquaculture Act of 1980.

(b) The Secretary may make grants to—

(1) land-grant colleges and universities;

(2) State agricultural experiment stations; and

(3) colleges, universities, and federal laboratories having a demonstrable capacity to conduct aquacultural research, as determined by the Secretary; for research and extension to facilitate or expand promising advances in the production and marketing of aquacultural food species and products. Except in the case of federal laboratories, no grant may be made under the subsection unless the State in which the grant recipient is located makes a matching grant to such recipient equal to the amount of the grant to be made under this subsection, and unless the grant is in implementation of the national aquacultural development plan, and revisions thereto, developed under the National Aquaculture Act of 1980. (7 U.S.C. 3322)

* * * *

(d) To provide for aquacultural research, development, and demonstration projects having national or regional application, the Secretary may establish in existing federal facilities or in cooperation with State agencies (including State departments of agriculture) and land-grant colleges and universities, up to four aquacultural research, development, and demonstration centers in the United States for the performance of aquacultural research, extension work, and demonstration projects. Funds made available for the operation of such regional centers may be used for the rehabilitation of existing buildings or facilities to house such centers, but may not be used for the construction or acquisition of new buildings or facilities.

(e) Not later than one year after the effective date of this subtitle and not later than March 1 of each subsequent year, the Secretary shall submit a report to the President, the House Committee on Agriculture, the House Committee on Appropriations, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Senate Committee on Appropriations, containing a summary outlining the progress of the Department of Agriculture in meeting the purposes of the programs establish-

ed under this subtitle. (16 U.S.C. 2801(note))

* * * *

Authorization of Appropriations

Sec. 1477. (a) There is authorized to be appropriated $7,500,000 for each fiscal year beginning after the effective date of this subtitle, and ending with the fiscal year ending September 30, 1985, and not in excess of such sums as may after the date of enactment of this subtitle be authorized by law for any subsequent fiscal year.

(b) Funds appropriated under subsection (a) shall be allocated by the Secretary for work to be done as mutually agreed upon between the Secretary and the institutions described in section 1475(b). The Secretary shall, whenever possible, consult with the Board in developing plans for the use of these funds. (7 U.S.C. 3324)

SUBTITLE M — RANGELAND RESEARCH

Purpose

Sec. 1478. It is the purpose of this subtitle to promote the general welfare through improved productivity of the Nation's rangelands, which comprise 60 percentum of the land area of the United States. Most of these rangelands are unsuited for cultivation, but produce a great volume of forage that is inedible by humans but readily converted, through an energy efficient process, to high quality food protein by grazing animals. These native grazing lands are located throughout the United States and are important resources for major segments of the Nation's livestock industry. In addition to the many livestock producers directly dependent on rangelands, other segments of agriculture are indirectly dependent on range-fed livestock and on range-produced forage that can be substituted for grain in times of grain scarcity. Recent resource assessments indicate that forage production of rangeland can be increased at least 100 per centum through development and application of improved range management practices while simultaneously enhancing wildlife, watershed, recreational, and aesthetic values and reducing hazards of erosion and flooding. (7 U.S.C. 3331)

Rangeland Research Program

Sec. 1479. The Secretary may develop and implement a cooperative rangeland research program in coordination with the program carried out under the Renewable Resources Extension Act of 1978 to improve the production and quality of desirable native forages or introduced forages which are managed in a similar manner to native forages for livestock and wildlife. The program shall include studies of: (1) management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and to improve water yield, water quality, and water conservation, to protect against onsite and offsite damage of rangeland resources from floods, erosion, and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants; and (4) such other matters as the Secretary considers appropriate. (7 U.S.C. 3332)

Rangeland Research Grants

Sec. 1480. The Secretary may make grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary, to carry out rangeland research. Except in the case of federal laboratories, this grant program shall be based on a matching formula of 50 percentum federal and 50 per centum non-federal funding. (7 U.S.C. 3333)

* * * *

Appropriations

Sec. 1483. (a) There are authorized to be appropriated, to implement the provisions of this subtitle, such sums not to exceed $10,000,000 annually for the period beginning October 1, 1981, and ending September 30, 1985, and thereafter such sums as may after the date of enactment of this subtitle be authorized by law for any subsequent fiscal year.

(b) Funds appropriated under this section shall be allocated by the Secretary to eligible institutions for work to be done as mutually agreed upon between the Secretary and the eligible institution or institutions. The Secretary shall, whenever possible, consult with the Board in developing plans for the use of these funds. (7 U.S.C. 3336)

Department of Agriculture Advisory Committees

- **Act of September 29, 1977 (P.L. 95-113, Title XVIII, 91 Stat. 1041, as amended; 7 U.S.C. 2281-2286)**

Note—This is Title XVII of the Food and Agriculture Act of 1977.

TITLE XVIII — DEPARTMENT OF AGRICULTURE ADVISORY COMMITTEES

Purposes

Sec. 1801. The purposes of this title are to—

(1) require strict financial and program accounting by advisory committees of the Department of Agriculture;

(2) assure balance and objectivity in the membership of such advisory committees; and

(3) prevent the formation or continuation of unnecessary advisory committees by the Department of Agriculture. (7 U.S.C. 2281)

Definitions

Sec. 1802. When used in this title—

(1) the term "Secretary" means the Secretary of Agriculture of the United States;

(2) the term "Department of Agriculture" means the United States Department of Agriculture; and

(3) the term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof that is established or used by the Department of Agriculture in the interest of obtaining advice ore recommendations for the President or the Department of Agriculture, except that such term excludes any committee which (A) is composed wholly of full-time officers or employees of the Federal Government, (B) is established by statute or reorganization plan, or (C) is established by the President. (7 U.S.C. 2282)

Membership on Advisory Committees

Sec. 1803. (a) No person other than officer or employee of the Department of Agriculture may serve simultaneously on more than one advisory committee, unless authorized by the Secretary.

(b) Not more than one officer or employee of any corporation or other non-Federal entity, including all subsidiaries and affiliates thereof, may serve on the same advisory committee at any one time, unless authorized by the Secretary.

(c) No person other than an officer or employee of the Department of Agriculture may serve for more than six consecutive years on an advisory committee, unless authorized by the Secretary. (7 U.S.C. 2283)

Annual Reports

Sec. 1804. The Secretary shall annually transmit to the appropriate committees of Congress having legislative jurisdiction or oversight with respect to the agency within the Department of Agriculture that provides support services to an advisory committee, and to the Library of Congress—

(1) a copy of the report concerning that advisory committee prepared in compliance with section

6(c) of the Federal Advisory Committee Act (5 U.S.C. App.);

(2) a list of the members of that advisory committee which shall specify the principal place of residence, persons or companies by whom they are employed, and other major sources of income, as defined by the Secretary, of each member; and

(3) a statement of the amount of expenses incurred in connection with advisory committee meetings by any member of an advisory committee for which reimbursement was received from any source other than the United States or the members's employer. (7 U.S.C. 2284)

Budget Prohibitions

Sec. 1805. No advisory committee may expend funds in excess of its estimated annual operating costs by more than 10 per centum or $500, whichever is greater, until it provides the Secretary with an explanation of the need for the additional expenditure and the Secretary approves such additional expenditure. (7 U.S.C. 2285)

Termination of Committees

Sec. 1806. The Secretary shall terminate any advisory committee upon a finding that any such advisory committee—

(1) has expended funds in excess of its estimated annual operating costs by more than 10 per centum or $500, whichever is greater, without the prior approval of the Secretary pursuant to the provisions of section 1805.

(2) has failed to file all reports required under the provisions of the Federal Advisory Committee Act or this Act;

(3) has failed to meet for two consecutive years;

(4) is responsible for functions that otherwise would be or should be performed by Federal employees; or

(5) does not serve or has ceased to serve an essential public function. (7 U.S.C. 2286)

Safe Drinking Water Amendments of 1977

- **Act of November 16, 1977 (P.L. 95-190, 91 Stat. 1393; 42 U.S.C. 300f, 300j-6, 300j-8, et seq.)**

* * * *

Sec. 8. (a) Section 1447(a) of the Public Health Service Act is amended to read as follows:

"Federal Agencies

"Sec. 1447. (a) Each Federal agency—

(1) having jurisdiction over any federally owned or maintained public water system or

(2) engaged in any activities resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 1421(d)(2)) shall be subject to, and comply with, all authorities, and process and sanctions respecting the provision of safe drinking water and respecting any underground injection program in the same manner, and to the same extent, as any nongovernmental entity. The preceding sentence shall apply—

(A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirements, any requirement respecting permits, and any other requirement whatsoever),

(B) to the exercise of any federal, State, or local administrative authority, and

(C) to any process or sanction, whether enforced in federal, State, or local courts or in any other manner. This subsection shall apply, notwithstanding any immunity of such agencies, under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty under this title with respect to any act or omission within the scope of his official duties." (42 U.S.C. 300j-6)

(b) Section 1401(12) of such Act is amended to read as follows:

"(12) The term 'person' means an individual, corporation, company, association, partnership, State, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or federal agency)." (42 U.S.C. 300f)

(c) Section 1449(e) of such Act is amended by adding the following at the end thereof: "Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

"(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

"(2) bringing any administrative action or obtaining any administrative remedy or sanction, against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this title, except as provided in section 1448. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 1447." (42 U.S.C. 300j-8)

(d) Section 1447 of such Act is further amended by inserting at the end thereof a new subsection (c):

"(c)(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute."

(2) for the purposes of this Act, the term "Federal agency" shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands." (42 U.S.C. 300j-6)

Soil and Water Resources Conservation Act of 1977

- **Act of November 18, 1977 (P.L. 95-192, 91 Stat. 1407; 16 U.S.C. 2001(note), 2001-2009)**

Short Title

Sec. 1. That this Act may be cited as the "Soil and Water Resources Conservation Act of 1977." (16 U.S.C. 2001 (note))

Findings

Sec. 2. The Congress finds that:

(1) There is a growing demand on the soil, water, and related resources of the Nation to meet present and future needs.

(2) The Congress, in its concern for sustained use of the resource base, created the Soil Conservation Service of the United States Department of Agriculture which possesses information, technical expertise, and a delivery system for providing assistance to land users with respect to conservation and use of soils; plants; woodlands; watershed protection and flood prevention; the conservation, development, utilization, and disposal of water; animal husbandry; fish and wildlife management; recreation; community development; and related resource uses.

(3) Resource appraisal is basic to effective soil and water conservation. Since individual and governmental decisions concerning soil and water resources often transcend administrative boundaries and affect other programs and decisions, a coordinated appraisal and program framework are essential. (16 U.S.C. 2001)

Definitions

Sec. 3. As used in this Act:

(1) The term "Secretary" means the Secretary of Agriculture.

(2) The term "soil, water, and related resources" means those resources which come within the scope of the programs administered and participated in by the Secretary of Agriculture through the Soil Conservation Service.

(3) The term "soil and water conservation program" means a set of guidelines for attaining the purposes of this Act. (16 U.S.C. 2002)

Declarations of Policy and Purposes: Promotion Thereof

Sec. 4. (a) In order to further the conservation of soil, water, and related resources, it is declared to be the policy of the United States and purpose of this Act that the conduct of programs administered by the Secretary of Agriculture for the conservation of such resources shall be responsive to the long-term needs of the Nation, as determined under the provisions of this Act.

(b) Recognizing that the arrangements under which the federal government cooperates with State soil and water conservation agencies and other appropriate State natural resource agencies such as those concerned with forestry and fish and wildlife and, through conservation districts, with other local units of government and land users, have effectively aided in the protection and improvement of the Nation's basic resources, including the restoration and maintenance of resources damaged by improper use, it is declared to be the policy of the United States that these

arrangements and similar cooperative arrangements should be utilized to the fullest extent practicable to achieve the purpose of this Act consistent with the roles and responsibilities of the non-federal agencies, landowners, and land users.

(c) The Secretary shall promote the attainment of the policies and purposes expressed in this Act by—

(1) appraising on a continuing basis the soil, water, and related resources of the Nation;

(2) developing and updating periodically a program for furthering the conservation, protection, and enhancement of the soil, water, and related resources of the Nation consistent with the roles and program responsibilities of other federal agencies and State and local governments; and

(3) providing to congress and the public, through reports, the information developed pursuant to paragraphs (1) and (2) of this subsection, and by providing Congress with an annual evaluation report as provided in section 7. (16 U.S.C. 2003)

Appraisal

Sec. 5. (a) In recognition of the importance of and need for obtaining and maintaining information on the current status of soil, water, and related resources, the Secretary is authorized and directed to carry out a continuing appraisal of the soil, water, and related resources of the Nation. The appraisal shall include, but not be limited to—

(1) data on the quality and quantity of soil, water, and related resources, including fish and wildlife habitats;

(2) data on the capability and limitations of those resources for meeting current and projected demands on the resource base;

(3) data on the changes that have occurred in the status and condition of those resources resulting from various past uses, including the impact of farming technologies, techniques, and practices;

(4) data on current Federal and State laws, policies, programs, rights, regulations, ownerships, and their trends and other considerations relating to the use, development, and conservation of soil, water, and related resources;

(5) data on the costs and benefits of alternative soil and water conservation practices; and

(6) data on alternative irrigation techniques regarding their costs, benefits, and impact on soil and water conservation, crop production, and environmental factors.

(b) The appraisal shall utilize data collected under this Act and pertinent data and information collected by the Department of Agriculture and other federal, State, and local agencies and organizations. The Secretary shall establish an integrated system capable of using combinations of resource data to determine the quality and capabilities for alternative uses of the resource base and to identify areas of local, State, and national concerns and related roles pertaining to soil and water conservation, resource use and development, and environmental improvement.

(c) The appraisal shall be made in cooperation with conservation districts, State soil and water conservation agencies, and other appropriate citizen groups, and local and State agencies under such procedures as the Secretary may prescribe to insure public participation.

(d) The Secretary shall conduct four comprehensive appraisals under this section to be completed by December 31, 1979, December 31, 1986, December 31, 1995, and

December 31, 2005, respectively. The Secretary may make such additional interim appraisals as the Secretary considers appropriate. (16 U.S.C. 2004)

Soil and Water Conservation Program

Sec. 6. (a) The Secretary is hereby authorized and directed to develop in cooperation with and participation by the public through conservation districts, State and national organizations and agencies, and other appropriate means, a national soil and water conservation program (hereinafter called the "program" to be used as a guide in carrying out the activities of the Soil Conservation Service which assist landowners and land users, at their request, in furthering soil and water conservation on the private and non-federal lands of the Nation. The program shall set forth direction for future soil and water conservation efforts of the United States Department of Agriculture based on the current soil, water, and related resource appraisal developed in accordance with section 5 of this Act, taking into consideration both the long- and short-term needs of the Nation, the landowners, and the land users, and the roles and responsibilities of federal, State, and local governments in such conservation efforts. The program shall also include but not be limited to—

(1) analysis of the Nation's soil, water, and related resource problems;

(2) analysis of existing federal, State, and local government authorities and adjustments needed;

(3) an evaluation of the effectiveness of the soil and water conservation ongoing programs and the overall progress being achieved by federal, State, and local programs and the landowners and land users in meeting the soil and water conservation objectives of this Act;

(4) identification and evaluation of alternative methods for the conservation, protection, environmental improvement, and enhancement of soil and water resources, in the context of alternative time frames, and a recommendation of the preferred alternatives and the extent to which they are being implemented;

(5) investigation and analysis of the practicability, desirability, and feasibility of collecting organic waste materials, including manure, crop and food waste, industrial organic waste, municipal sewage sludge, logging and wood-manufacturing residues, and any other organic refuse, composting, or similarly treating such materials, transporting and placing such materials onto the land to improve soil tilth and fertility. The analysis shall include the projected cost of such collection, transportation, and placement in accordance with sound locally approved soil and water conservation practices;

(6) analysis of the federal and non-federal inputs required to implement the program;

(7) analysis of costs and benefits of alternative soil and water conservation practices; and

(8) investigation and analysis of alternative irrigation techniques regarding their costs, benefits, and impact on soil and water conservation, crop production, and environmental factors.

(b) The program plan shall be completed not later than December 31, 1979, and program updates shall be completed by December 31, 1987, December 31, 1997, and December 31, 2007, respectively. (16 U.S.C. 2005)

Report to Congress

Sec. 7. (a)(1) At the time Congress convenes in 1980, 1987, 1996, and 2006, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate the appraisal developed under section 2004 of this title and completed prior to the end of the previous year.

(2) At the time Congress convenes in 1980, 1988, 1998, and 2008, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate the initial program or updated program developed under section 2205 of this title and completed prior to the end of the previous year, together with a detailed statement of policy regarding soil and water conservation activities of the United States Department of Agriculture.

(b) Annual report accompanying budget covering program effectiveness.—The Secretary, during budget preparation for fiscal year 1982 and annually thereafter, during the period this chapter is in effect, shall prepare and transmit to the Congress, through the President, a report to accompany the budget which evaluates the program's effectiveness in attaining the purposes of this chapter. The report, prepared in concise summary form with appropriate detailed appendices, shall contain pertinent data from the current resource appraisal required to be prepared by section 2004 of this title, shall set forth the progress in implementing the program required to be developed by section 2005 of this title, and shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. The report shall also indicate plans for implementing action and recommendations for new legislation where warranted.

(c) The Secretary, during budget preparation for fiscal year 1982 and annually thereafter during the period this Act is in effect, shall prepare and transmit to the Congress, through the President, a report to accompany the budget which evaluates the program's effectiveness in attaining the purposes of this Act. The report, prepared in concise summary form with appropriate detailed appendices, shall set forth the progress in implementing the program required to be developed by section 6 of this Act, and shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. The report shall also indicate plans for implementing action and recommendations for new legislation where warranted. (16 U.S.C. 2006)

Authorization for Appropriations

Sec. 8. There are authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act. (16 U.S.C. 2007)

Effective Date

Sec. 9. In the implementation of this Act, the Secretary shall utilize information and data available from other federal, State, and local governments, and private organizations and he shall coordinate his actions with the resource appraisal and planning efforts of other Federal agencies and avoid unnecessary duplication and overlap of planning and program efforts. (16 U.S.C. 2008)

Sec. 10. The provisions of this Act shall terminate on December 31, 2008. (16 U.S.C. 2009)

Renewable Resources Extension Act of 1978

- **Act of June 30, 1978 (P.L. 95-306, 92 Stat. 349; 16 U.S.C. 1600(note), 1671(note), 1671-1676)**

Short Title

Sec. 1. This Act may be cited as the "Renewable Resources Extension Act of 1978". (16 U.S.C. 1600(note))

Findings

Sec. 2. Congress finds that—

(1) the extension program of the Department of Agriculture and the extension activities of each State provide useful and productive educational programs for private forest and range landowners and processors and consumptive and nonconsumptive users of forest and rangeland renewable resources, and these educational programs complement research and assistance programs conducted by the Department of Agriculture;

(2) to meet national goals, it is essential that all forest and rangeland renewable resources (hereinafter in this Act referred to as "renewable resources"), including fish and wildlife, forage, outdoor recreational opportunities, timber, and water, be fully considered in designing educational programs for landowners, processors, and users;

(3) more efficient utilization and marketing of renewable resources extend available supplies of such resources, provide products to consumers at prices less than they would otherwise be, and promote reasonable returns on the investments of landowners, processors, and users;

(4) trees and forests in urban areas improve the aesthetic quality, reduce noise, filter impurities from the air and add oxygen to it, save energy by moderating temperature extremes, control wind and water erosion, and provide habitat for wildlife; and

(5) trees and shrubs used as shelterbelts protect farm lands from wind and water erosion, promote moisture accumulation in the soil, and provide habitat for wildlife. (16 U.S.C. 1671)

Types of Programs; Eligible Colleges and Universities

Sec. 3. (a) The Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary"), under conditions the Secretary may prescribe and in cooperation with the State directors of cooperative extension service programs and eligible colleges and universities, shall—

(1) provide educational programs that enable individuals to recognize, analyze, and resolve problems dealing with renewable resources, including forest- and range-based outdoor recreation opportunities, trees, and forests in urban areas, and trees and shrubs in shelterbelts;

(2) use educational programs to disseminate the results of research on renewable resources;

(3) conduct educational programs that transfer the best available technology to those involved in the management and protection of forests and rangelands and the processing and use of their associated renewable resources;

(4) develop and implement educational programs that give special attention to the educational needs of small, private non-industrial forest landowners;

(5) develop and implement educational programs in range and fish and wildlife management;

(6) assist in providing continuing education programs for professionally trained individuals in fish and wildlife, forest, range, and watershed management and related fields;

(7) help forest and range landowners in securing technical and financial assistance to bring appropriate expertise to bear on their problems;

(8) help identify areas of needed research regarding renewable resources;

(9) in cooperation with State foresters or equivalent State officials, promote public understanding of the energy conservation, economic, social, environmental, and psychological values of trees and open space in urban and community area environments and expand knowledge of the ecological relationships and benefits of trees and related resources in urban and community environments; and

(10) conduct a comprehensive natural resource and environmental education program for landowners and managers, public officials and the public, with particular emphasis on youth.

(b) As used in this Act, the term "eligible colleges and universities" means colleges and universities eligible to be supported and maintained, in whole or in part, with funds made available under the provisions of the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C 301-305, 307, 308), and the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326, 328), including Tuskegee Institute, and colleges and universities eligible for assistance under the Act of October 10, 1962 (76 Stat. 806-807, as amended; 16 U.S.C. 582a, 582a-1—582a-7).

(c) In implementing this section, all appropriate educational methods may be used, including, but not limited to, meetings, short courses, workshops, tours, demonstrations, publications, news releases, and radio and television programs. (16 U.S.C. 1672)

State Renewable Resources Extension Programs

Sec. 4. (a) The State director of cooperative extension programs (hereinafter in this Act referred to as the "State director") and the administrative heads of extension for eligible colleges and universities in each State shall jointly develop, by mutual agreement, a single comprehensive and coordinated renewable resources extension program in which the role of each eligible college and university is well-defined. In meeting this responsibility, the State director and the administrative heads of extension for eligible colleges and universities shall consult and seek agreement with the administrative technical representatives and the forestry representatives provided for by the Secretary in implementation of the Act of October 10, 1962 (76 Stat. 806-807, as amended; 16 U.S.C 582a, 582a-1-582a-7), in the State. Each State's renewable resources extension program shall be submitted to the Secretary annually. The National Agricultural Research and Extension Users Advisory Board established under section 1408 of the Food and Agriculture Act of 1977 shall review and make recommendations to the Secretary pertaining to programs conducted under this Act.

(b) The State director and the administrative heads of extension for eligible colleges and universities in each State shall encourage close cooperation between extension staffs at the county and State levels, and

State and federal research organizations dealing with renewable resources, State and federal agencies that manage forests and rangelands and their associated renewable resources, State and federal agencies that have responsibilities associated with the processing or use of renewable resources, and other agencies or organizations the State director and administrative heads of extension deem appropriate.

(c) Each State renewable resources extension program shall be administered and coordinated by the State director, except that, in States having colleges eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326, 328), including Tuskegee Institute, the State renewable resources extension program shall be administered by the State director and the administrative head or heads of extension for the college or colleges eligible to receive such funds.

(d) In meeting the provisions of this section, each State director and administrative heads of extension for eligible colleges and universities shall appoint and use one or more advisory committees comprised of forest and range landowners, professionally trained individuals in fish and wildlife, forest, range, and watershed management, and related fields, as appropriate, and other suitable persons.

(e) For the purposes of this Act, the term "State" means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, the District of Columbia, and the Virgin Islands of the United States. (16 U.S.C. 1673)

National Renewable Resources Extension Program

Sec. 5. (a) The Secretary shall prepare a five-year plan for implementing this Act, which is to be called the "Renewable Resources Extension Program" and shall submit such plan to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate no later than the last day of the first half of the fiscal year ending September 30, 1980, and the last day of the first half of each fifth fiscal year thereafter. The Renewable Resources Extension Program shall provide national emphasis and direction as well as guidance to State directors and administrative heads of extension for eligible colleges and universities in the development of their respective State renewable resources extension programs, which are to be appropriate in terms of the conditions, needs, and opportunities in each State. The Renewable Resources Extension Program shall contain, but not be limited to, brief outlines of general extension programs for fish and wildlife management (for both game and nongame species), range management, timber management (including brief outlines of general extension programs for timber utilization, timber harvesting, timber marketing, wood utilization, and wood products marketing), and watershed management (giving special attention to water quality protection), as well as brief outlines of general extension programs for recognition and enhancement of forest- and range-based outdoor recreation opportunities, for urban and community forestry activities, for planting and management of trees and shrubs in shelterbelts, and give special attention to water quality protection and natural resources and environmental education for landowners and managers, public officials, and the public.

(b) In preparing the Renewable Resources Extension Program, the Secretary shall take into account the respective capabilities of private

forests and rangelands for yielding renewable resources and the relative needs for such resources identified in the periodic Renewable Resource Assessment provided for in section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974 and the periodic appraisal of land and water resources provided for in section 5 of the Soil and Water Resources Conservation Act of 1977.

(c) To provide information that will aid Congress in its oversight responsibilities and to provide accountability in implementing this Act, the Secretary shall prepare an annual report, which shall be furnished to Congress at the time of submission of each annual fiscal budget, beginning with the annual fiscal budget for the fiscal year ending September 30, 1981. The annual report shall set forth accomplishments of the Renewable Resources Extension Program, its strengths and weaknesses, recommendations for improvement, and costs of program administration, each with respect to the preceding fiscal year.

(d) To assist Congress and the public in evaluating the Renewable Resources Extension Program, the program shall include a review of activities undertaken in response to the preceding five-year plan and an evaluation of the progress made toward accomplishing the goals and objectives set forth in such preceding plan. Such review and evaluation shall be displayed in the program, for the Nation as a whole, and for each State. (16 U.S.C. 1674)

Appropriations Authorization

Sec. 6. There are hereby authorized to be appropriated to implement this Act $15,000,000 for the fiscal year ending September 30, 1988, and $15,000,000 for each of the next twelve fiscal years. Generally, States shall be eligible for funds appropriated under this Act according to the respective capabilities of their private forests and rangelands for yielding renewable resources and relative needs for such resources identified in the periodic Renewable Resource Assessment provided for in section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974 and the periodic appraisal of land and water resources provided for in section 5 of the Soil and Water Resources Conservation Act of 1977. (16 U.S.C. 1675)

Regulations and Coordination

Sec. 7. The Secretary is authorized to issue such rules and regulations as the Secretary deems necessary to implement the provisions of this Act and to coordinate this Act with title XIV of the Food and Agriculture Act of 1977. (16 U.S.C. 1676)

Effective Dates

Sec. 8. The provisions of this Act shall be effective for the period beginning October 1, 1978, and ending September 30, 1988. (16 U.S.C. 1671(note))

Forest and Rangeland Renewable Resources Research Act of 1978

- **Act of June 30, 1978 (P.L. 95-307, 92 Stat. 353, as amended; 16 U.S.C. 1600(note), 1641(note), 1641-1648)**

Note—This Act was amended by P.L. 96-294, P.L. 101-513, Title VI, Sec. 607 to provide for international natural resource cooperation by the Secretary of Agriculture, and P.L. 101-624, Title XII, Subtitle B, Chapter 2 (1990 Farm bill).

Short Title

Sec. 1. This Act may be cited as the "Forest and Rangeland Renewable Resources Research Act of 1978." (16 U.S.C. 1600(note))

Purpose

Sec. 2. (a)(1) Congress finds that scientific discoveries and technological advances must be made and applied to support the protection, management, and utilization of the Nation's renewable resources. It is the purpose of this Act to authorize the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") to implement a comprehensive program of forest and rangeland renewable resources research and dissemination of the findings of such research.

(2) Congress further finds that the forest and rangeland renewable resources of the world are threatened by deforestation due to conversion to agriculture of lands better suited to other uses, overgrazing, over-harvesting, and other causes that pose a direct adverse threat to people, the global environment, and the world economy.

(b) This Act shall be deemed to complement the policies and direction set forth in the Forest and Rangeland Renewable Resources Planning Act of 1974.

(c) It is the purpose of this Act to authorize the Secretary to expand research activities to encompass international forestry and natural resource issues on a global scale. (16 U.S.C. 1641)

Research Authorization

Sec. 3. (a) The Secretary is authorized to conduct, support, and cooperate in investigations, experiments, tests, and other activities the Secretary deems necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas. The activities conducted, supported, or cooperated in by the Secretary under this Act shall include, but not be limited to, the five major areas of renewable resource research identified in paragraphs (1) through (5) of this subsection.

(1) Renewable resource management research shall include, as appropriate, research activities related to managing, reproducing, planting, and growing vegetation on forests and rangelands for timber, forage, water, fish and wildlife, esthetics, recreation, wilderness, energy production, activities related to energy conservation, and other purposes, including activities for encouraging improved reforestation

of forest lands from which timber has been harvested; determining the role of forest and rangeland management in the productive use of forests and rangelands, in diversified agriculture, and in mining, transportation, and other industries; and developing alternatives for the management of forests and rangelands that will make possible the most effective use of their multiple products and services.

(2) Renewable resource environmental research shall include, as appropriate, research activities related to understanding and managing surface and subsurface water flow, preventing and controlling erosion, and restoring damaged or disturbed soils on forest and rangeland watersheds; maintaining and improving wildlife and fish habitats; managing vegetation to reduce air and water pollution, provide amenities, and for other purposes; and understanding, predicting, and modifying weather, climatic, and other environmental conditions that affect the protection and management of forests and rangelands.

(3) Renewable resource protection research shall include, as appropriate, research activities related to protecting vegetation and other forest and rangeland resources, including threatened and endangered flora and fauna, as well as wood and wood products in storage or use, from fires, insects, diseases, noxious plants, animals, air pollutants and other agents through biological, chemical and mechanical control methods and systems; and protecting people, natural resources, and property from fires in rural areas.

(4) Renewable resource utilization research shall include, as appropriate, research activities related to harvesting, transporting, processing, marketing, distributing, and utilizing wood and other materials derived from forest and rangeland renewable resources; recycling and fully utilizing wood fiber; producing and conserving energy; and testing forest products, including necessary fieldwork associated therewith.

(5) Renewable resource assessment research shall include, as appropriate, research activities related to developing and applying scientific knowledge and technology in support of the survey and analysis of forest and rangeland renewable resources described in subsection (b) of this section.

(b)(1) To ensure the availability of adequate data and scientific information for development of the periodic Renewable Resource Assessment provided for in section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974, the Secretary of Agriculture shall make and keep current a comprehensive survey and analysis of the present and prospective conditions of and requirements for renewable resources of the forests and rangelands of the United States and of the supplies of such other renewable resources, including a determination of the present and potential productivity of the land, and of such other facts as may be necessary and useful in the determination of ways and means needed to balance the demand for and supply of these renewable resources, benefits, and uses in meeting the needs of the people of the United States. The Secretary shall conduct the survey and analysis under such plans as the Secretary may determine to be fair and equitable, and cooperate with appropriate officials of each State and, either through them or directly, with private or other entities.

(2) In implementing this subsection, the Secretary is authorized to develop and implement improved methods of survey and analysis of forest inventory information, for which purposes there are hereby

authorized to be appropriated annually $10,000,000.

(c)(1) The Secretary, acting through the United States Forest Service, shall establish not later than 180 days after the date of the enactment of this subsection a 10-year program (hereinafter in this subsection referred to as the "Program") to—

(A) increase the frequency of forest inventories in matters that relate to atmospheric pollution and conduct such surveys as are necessary to monitor long-term trends in the health and productivity of domestic forest ecosystems;

(B) determine the scope of the decline in the health and productivity of domestic forest ecosystems;

(C) accelerate and expand existing research efforts (including basic forest ecosystem research) to evaluate the effects of atmospheric pollutants on forest ecosystems and their role in the decline in domestic forest health and productivity;

(D) study the relationship between atmospheric pollution and other climatological, chemical, physical, and biological factors that may affect the health and productivity of domestic forest ecosystems;

(E) develop recommendation for solving or mitigating problems related to the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems;

(F) foster cooperation among Federal, State, and private researchers and encourage the exchange of scientific information on the effects of atmospheric pollutants on forest ecosystems among the United States, Canada, European nations, and other nations;

(G) support the long-term funding of research programs and related efforts to determine the causes of declines in the health and productivity of domestic forest ecosystems and the effects of atmospheric pollutants on the health and productivity of domestic forest ecosystems; and

(H) enlarge the Eastern Hardwood Cooperative by devoting additional resources to field analysis of the response of hardwood species to atmospheric pollution, and other factors that may affect the health and productivity of these ecosystems.

(2) The Secretary shall establish a committee to advise the Secretary in developing and carrying out the Program, which shall be composed of scientists with training and experience in various disciplines, including atmospheric, ecological, and biological sciences. Such scientists shall be selected from among individuals who are actively performing research for Federal or State agencies or for private industries, institutions, or organizations.

(3) The Secretary shall coordinate the Program with existing research efforts of Federal and State agencies and private industries, institutions, or organizations.

(4) The Secretary shall submit to the President and to Congress the following reports:

(A) Not less than 30 days before establishing the Program, the Secretary shall submit an initial program report—

(i) discussing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

(ii) outlining the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems;

(iii) describing the Program; and

(iv) estimating the cost of implementing the Program for each fiscal year of its duration.

(B) Not later than January 15, 1990, and January 15 of each year thereafter, during which the Program is in operation following the year in which the initial program report is submitted, the Secretary shall submit an annual report—

(i) updating information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

(ii) updating the findings and status of all current research and monitoring efforts in North America and Europe on the causes and effects of atmospheric pollution on the health and productivity of forest ecosystems, including efforts conducted under the Program;

(iii) recommending additional research and monitoring efforts to be undertaken under the Program to determine the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems; and

(iv) recommending methods for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.

(C) Not later than 10 years after the date on which the initial program report is submitted, the Secretary shall submit a final report—

(i) reviewing existing information about declining health and productivity of forest ecosystems on public and private lands in North America and Europe;

(ii) reviewing the nature and findings of all research and monitoring efforts conducted under the Program and any other relevant research and monitoring efforts related to the effects of atmospheric pollution on forest ecosystem; and

(iii) making final recommendations for solving or mitigating problems stemming from the effects of atmospheric pollution on the health and productivity of domestic forest ecosystems.

(d) The Secretary is authorized to conduct, support, and cooperate in studies and other activities the Secretary deems necessary to—

(1) evaluate renewable resource management problems associated with urban-forest interface;

(2) assess effects of changes in Federal revenue codes on private forest management and investment; and

(3) develop improved delivery systems for information and technical assistance provided to private landowners. (16 U.S.C. 1642)

Research Facilities and Cooperation

Sec. 4. (a) In implementing this Act, the Secretary is authorized to establish and maintain a system of experiment stations, research laboratories, experimental areas, and other forest and rangeland research facilities. The Secretary is authorized, with donated or appropriated funds, to acquire by lease, donation, purchase, exchange, or otherwise, land or interests in land within the United States needed to implement this Act, to make necessary expenditures to examine, appraise, and survey such property, and to do all things incident to perfecting title thereto in the United States.

(b) In implementing this Act, the Secretary is authorized to accept, hold, and administer gifts, donations, and bequests of money, real property, or personal property from any source not otherwise prohibited by law and to use such gifts, donations, and bequests to—

(1) establish or operate any forest and rangeland research facility within the United States, or

(2) perform any forest and rangeland renewable resource research activity authorized by this Act. Such gifts, donations, and bequests, or the proceeds thereof, and money appropriated for these purposes shall be deposited in the Treasury in a special fund. At the request of the Secretary, the Secretary of the Treasury may invest or reinvest any money in the fund that in the opinion of the Secretary is not needed for current operations. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and bearing interest at prevailing market rates. There are hereby authorized to be expended from such fund such amounts as may be specified in annual appropriation Acts, which shall remain available until expended.

(c) In implementing this Act, the Secretary may cooperate with international, Federal, State, and other governmental agencies, with public or private agencies, institutions, universities, and organizations, and with businesses and individuals in the United States and in other countries. The Secretary may receive money and other contributions from cooperators under such conditions as the Secretary may prescribe. Any money contributions received under this subsection shall be credited to the applicable appropriation or fund to be used for the same purposes and shall remain available until expended as the Secretary may direct for use in conducting research activities authorized by this Act and in making refunds to contributors. (16 U.S.C. 1643)

Competitive Research Grants

Sec. 5. In addition to any grants made under other laws, the Secretary is authorized to make competitive grants that will further research activities authorized by this Act of federal, State, and other governmental agencies, public or private agencies, institutions, universities, and organizations, and businesses and individuals in the United States. In making these grants, the Secretary shall emphasize basic and applied research activities that are important to achieving the purposes of this Act, and shall obtain, through review by qualified scientists and other methods, participation in research activities by scientists throughout the United States who have expertise in matters related to forest and rangeland renewable resources. Grants under this section shall be made at the discretion of the Secretary under whatever conditions the Secretary may prescribe, after publicly soliciting research proposals, allowing sufficient time for submission of the proposals, and considering qualitative, quantitative, financial, administrative, and other factors that the Secretary deems important in judging, comparing, and accepting the proposals. The Secretary may reject any or all proposals received under this section if the Secretary determines that it is in the public interest to do so. (16 U.S.C. 1644)

General Research Provisions

Sec. 6. (a) The Secretary may make funds available to cooperators and grantees under this Act without regard to the provisions of section 3648 of the Revised Statutes (31 U.S.C. 529), which prohibits advances of public money.

(b) To avoid duplication, the Secretary shall coordinate cooperative aid and grants under this Act with cooperative aid and grants the Secretary makes under any other authority.

(c) The Secretary shall use the authorities and means available to the Secretary to disseminate the knowledge and technology devel-

oped from research activities conducted under or supported by this Act. In meeting this responsibility, the Secretary shall cooperate, as the Secretary deems appropriate, with the entities identified in subsection (d)(3) of this section and with others.

(d) In implementing this Act, the Secretary, as the Secretary deems appropriate and practical, shall—

(1) use, and encourage cooperators and grantees to use, the best available scientific skills from a variety of disciplines within and outside the fields of agriculture and forestry;

(2) seek, and encourage cooperators and grantees to seek, a proper mixture of short-term and long-term research and a proper mixture of basic and applied research;

(3) avoid unnecessary duplication and coordinate activities under this section among agencies of the Department of Agriculture and with other affected federal departments and agencies, State agricultural experiment stations, State extension services, State foresters or equivalent State officials, forestry schools, and private research organizations; and

(4) encourage the development, employment, retention, and exchange of qualified scientists and other specialists through postgraduate, postdoctoral, and other training, national and international exchange of scientists, and other incentives and programs to improve the quality of forest and rangeland renewable resources research.

(e) This Act shall be construed as supplementing all other laws relating to the Department of Agriculture and shall not be construed as limiting or repealing any existing law or authority of the Secretary except as specifically cited in this Act.

(f) For the purpose of this Act, the terms "United States" and "State" shall include each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the territories and possessions of the United States. (16 U.S.C. 1645)

Research Appropriations Authorization

Sec. 7. There are hereby authorized to be appropriated annually such sums as may be needed to implement this Act. Funds appropriated under this Act shall remain available until expended. (16 U.S.C. 1646)

Repeal of McSweeney-McNary Act; Regulations and Coordination; Appropriations

Sec. 8. (a) The Act of May 22, 1928, known as the McSweeney-McNary Act (45 Stat. 699-702, as amended; 16 U.S.C. 581, 581a, 581b-581i), is hereby repealed.

(b) Contracts and cooperative and other agreements under the McSweeney-McNary Act shall remain in effect until revoked or amended by their own terms or under other provisions of law.

(c) The Secretary is authorized to issue such rules and regulations as the Secretary deems necessary to implement the provisions of this Act and to coordinate this Act with Title XIV of the Food and Agriculture Act of 1977.

(d) Funds appropriated under the authority of the McSweeney-McNary Act shall be available for expenditure for the programs authorized under this Act. (16 U.S.C. 1647)

Effective Date

Sec. 9. The provisions of this Act shall become effective October 1, 1978. (16 U.S.C. 1641(note))

Note — P.L. 101-624 directed that Sec. 9 be amended. It was interpreted to mean the addition of another section 9.

(a) Recycling research.—Congress finds that—

(1) the United States is amassing vast amounts of solid wastes, which is presenting an increasing problem for municipalities in locating suitable disposal sites;

(2) a large proportion of these wastes consists of paper and other wood wastes;

(3) less than one-third of these paper and wood wastes are recycled;

(4) additional recycling would result in reduced solid waste landfill disposal and would contribute to a reduced rate of removal of standing timber from forest lands; and

(5) additional research is needed to develop technological advances to address barriers to increased recycling of paper and wood wastes and utilization of products consisting of recycled materials.

(b) Recycling research program.—The Secretary is authorized to conduct, support, and cooperate in an expanded wood fiber recycling research program, including the acquisition of necessary equipment. The Secretary shall seek to ensure that the program goals include the application of such research to industry and consumer needs.

(c) Authorization of appropriations.—In addition to any other funds made available to implement section 1642 of this title, for the 5-year period beginning on October 1, 1990, there are authorized to be appropriated annually $10,000,000 to implement this section. (16 U.S.C. 1648)

Cooperative Forestry Assistance Act of 1978

- **Act of July 1, 1978 (P.L. 95-313, 92 Stat. 365 as amended; 16 U.S.C. 2101(note), 2101-2103, 2103a, 2103b, 2104-2105)**

Note—This Act was amended by P.L. 100-418 to add Section 15 (redesignated as Section 18 by P.L. 100-418); amended by P.L. 101-624, Title XII, to add new sections and change some existing sections, by P.L. 101-513 to conform with international provisions of the International Forestry Cooperation Act of 1990, and by P.L. 102-237 to make some technical amendments.

Short Title

Sec. 1. This Act may be cited as the "Cooperative Forestry Assistance Act of 1978." (16 U.S.C. 2101(note))

Findings, Purpose, and Policy

Sec. 2. (a) Findings.—Congress finds that—

(1) most of the productive forest land of the United States is in private, State, and local governmental ownership, and the capacity of the United States to produce renewable forest resources is significantly dependent on such non-Federal forest lands;

(2) adequate supplies of timber and other forest resources are essential to the United States, and adequate supplies are dependent on efficient methods for establishing, managing, and harvesting trees and processing, marketing, and using wood and wood products;

(3) nearly one-half of the wood supply of the United States comes from nonindustrial private timberlands and such percentage could rise with expanded assistance programs;

(4) managed forest lands provide habitats for fish and wildlife, as well as aesthetics, outdoor recreation opportunities, and other forest resources;

(5) the soil, water, and air quality of the United States can be maintained and improved through good stewardship of privately held forest resources;

(6) insects and diseases affecting trees occur and sometimes create emergency conditions on all land, whether Federal or non-Federal, and efforts to prevent and control such insects and diseases often require coordinated action by both Federal and non-Federal land managers;

(7) fires in rural areas threaten human lives, property, forests and other resources, and Federal-State cooperation in forest fire protection has proven effective and valuable;

(8) trees and forests are of great environmental and economic value to urban areas;

(9) managed forests contribute to improving the quality, quantity, and timing of water yields that are of broad benefit to society;

(10) over half the forest lands of the United States are in need of some type of conservation treatment;

(11) forest landowners are being faced with increased pressure to convert their forest land to development and other purposes;

(12) increased population pressures and user demands are being placed on private, as well as public, landholders to provide a

wide variety of products and services, including fish and wildlife habitat, aesthetic quality, and recreational opportunities;

(13) stewardship of privately held forest resources requires a long-term commitment that can be fostered through local, State, and Federal governmental actions;

(14) the Department of Agriculture, through the coordinated efforts of its agencies with forestry responsibilities, cooperating with other Federal agencies, State foresters, and State political subdivisions, has the expertise and experience to assist private landowners in achieving individual goals and public benefits regarding forestry;

(15) the products and services resulting from nonindustrial private forest land stewardship provide income and employment that contribute to the economic health and diversity of rural communities;

(16) sustainable agroforestry systems and tree planting in semiarid lands can improve environmental quality and maintain farm yields and income; and

(18) the same forest resource supply, protection, and management issues that exist in the United States are also present on an international scale, and the forest and rangeland renewable resources of the world are threatened by deforestation due to conversion to agriculture of lands better suited to other purposes, over-grazing, over-harvesting, and other causes which pose a direct adverse threat to people, the global environment, and the world economy.

Note—P.L. 101-513 incorrectly referred to section 2(a) paragraph (16), (17) and added new paragraph (18). It should have referred to (15), (16), and added new paragraph (17). The result is that there now is no paragraph (17).

(b) Purpose.—It is the purpose of this Act to authorize the Secretary of Agriculture (hereafter in this Act referred to as the "Secretary"), with respect to non-Federal forest lands in the United States, and forest lands in foreign countries, of the United States, to assist in—

(1) the establishment of a coordinated and cooperative Federal, State, and local forest stewardship program for management of the non-Federal forest lands;

(2) the encouragement of the production of timber;

(3) the prevention and control of insects and diseases affecting trees and forests;

(4) the prevention and control of rural fires;

(5) the efficient utilization of wood and wood residues, including the recycling of wood fiber;

(6) the improvement and maintenance of fish and wildlife habitat;

(7) the planning and conduct of urban forestry programs;

(8) broadening existing forest management, fire protection, and insect and disease protection programs on non-Federal forest lands to meet the multiple use objectives of landowners in an environmentally sensitive manner;

(9) providing opportunities to private landowners to protect ecologically valuable and threatened non-Federal forest lands; and

(10) strengthening educational, technical, and financial assistance programs that provide assistance to owners of non-Federal forest lands in the United States, and forest lands in foreign countries.

(c) Policy.—It is the policy of Congress that it is in the national interest for the Secretary to work through and in cooperation with State foresters, or equivalent State officials, nongovernmental organizations, and the private sector in implementing Federal programs affecting non-Federal forest lands.

(d) Construction.—This Act shall be construed to complement the policies and direction under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.). (16 U.S.C. 2101)

Rural Forestry Assistance

Sec. 3. (a) Assistance to Forest Landowners and Others.—The Secretary may provide financial, technical, educational, and related assistance to State foresters or equivalent State officials, and State extension directors, to enable such officials to provide technical information, advice, and related assistance to private forest land owners and managers, vendors, forest resource operators, forest resource professionals, public agencies, and individuals to enable such persons to carry out activities that are consistent with the purposes of this Act, including—

(1) protecting, maintaining, enhancing, restoring, and preserving forest lands and the multiple values and uses that depend on such lands;

(2) identifying, protecting, maintaining, enhancing, and preserving wildlife and fish species, including threatened and endangered species, and their habitats;

(3) implementing forest management technologies;

(4) selecting, producing, and marketing alternative forest crops, products and services from forest lands;

(5) protecting forest land from damage caused by fire, insects, disease, and damaging weather;

(6) managing the rural-land and urban-land interface to balance the use of forest resources in and adjacent to urban and community areas;

(7) identifying and managing recreational forest land resources;

(8) identifying and protecting the aesthetic character of forest lands;

(9) protecting forest land from conversion to alternative uses; and

(10) the management of resources of forest lands, including—

(A) the harvesting, processing, and marketing of timber and other forest resources and the marketing and utilization of wood and wood products;

(B) the conversion of wood to energy for domestic, industrial, municipal, and other uses;

(C) the planning, management, and treatment of forest land, including site preparation, reforestation, thinning, prescribed burning, and other silvicultural activities designed to increase the quantity and improve the quality of timber and other forest resources;

(D) ensuring that forest regeneration or reforestation occurs if needed to sustain long-term resource productivity;

(E) protecting and improving forest soil fertility and the quality, quantity, and timing of water yields; and

(F) encouraging the investment of a portion of the proceeds from the sale of timber or other forest resources in stewardship activities that preserve, protect, maintain, and enhance their forest land.

(b) State Forestry Assistance.—The Secretary is authorized to provide financial, technical, and related assistance to State foresters, or equivalent State officials, to—

(1) develop genetically improved tree seeds;

(2) develop and contract for the development of field arboretums, greenhouses, and tree nurseries, in cooperation with a State, to facilitate production and distribution of tree seeds and seedlings in States where

the Secretary determines that there is an inadequate capacity to carry out present and future reforestation needs;

(3) procure, produce, and distribute tree seeds and trees for the purpose of establishing forests, windbreaks, shelterbelts, woodlots, and other plantings;

(4) plant tree seeds and seedlings on non-Federal forest lands that are suitable for the production of timber, recreation, and for other benefits associated with the growing of trees;

(5) plan, organize, and implement measures on non-Federal forest lands, including thinning, prescribed burning, and other silvicultural activities designed to increase the quantity and improve the quality of trees and other vegetation, fish and wildlife habitat, and water yielded therefrom; and

(6) protect or improve soil fertility on non-Federal forest lands and the quality, quantity, and timing of water yields therefrom.

(c) Implementation.—In implementing this section, the Secretary shall cooperate with other Federal, State, and local natural resource management agencies, universities and the private sector.

(d) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section. (16 U.S.C. 2102)

Forestry Incentives

Sec. 4. (a) Development and implementation.—The Secretary is authorized to develop and implement a forestry incentives program to encourage the development, management, and protection of nonindustrial private forest lands. The purposes of such program shall be to encourage landowners to apply practices that will provide for afforestation of suitable open lands, reforestation of cutover or other nonstocked or understocked forest lands, timber stand improvement practices, including thinning, prescribed burning, and other silvicultural treatments, and forest resources management and protection, so as to provide for the production of timber and other forest resources associated therewith.

(b) Private forest lands.—For the purposes of this section, the term "private forest land" means land capable of producing crops of industrial wood and owned by any private individual, group, Indian tribe or other native group, association, corporation, or other legal entity.

(c) Cost sharing.—Landowners shall be eligible for cost sharing under this program if they own one thousand acres or less of private forest land, except that the Secretary may approve cost sharing with landowners owning more than one thousand acres of such land if significant public benefits will accrue. In no case, however, may the Secretary approve cost sharing with landowners owning more than five thousand acres of private forest land.

(d) Administration.—The Secretary shall administer this section in accordance with the regulations the Secretary shall develop in consultation with the committee described in section 13(c) of this Act. Regulations issued under Title X of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973, to the extent not inconsistent with the provisions of this section, shall remain in effect until revoked or amended by regulations issued under this subsection. The regulations issued under this subsection shall include guidelines for the administration of this section at the federal and State levels, and

shall identify the measures and activities eligible for cost sharing under this section.

(e) Management plans.—Individual forest management plans developed by the landowner in cooperation with and approved by the State forester or equivalent State official shall be the basis for agreements between the landowner and the Secretary under this section. The Secretary shall encourage participating States to use private agencies, consultants, organizations, and firms to the extent feasible for the preparation of individual forest management plans.

(f) Cost sharing.—In return for the agreement by the landowner, the Secretary shall agree to share the cost of implementing those forestry practices and measures set forth in the agreement for which the Secretary determines that cost sharing is appropriate. The portion of such cost (including labor) to be shared shall be that portion that the Secretary determines is necessary and appropriate to implement the forestry practices and measures under the agreement, but not more than 75 percent of the actual costs incurred by the landowner. The maximum amount any individual may receive annually under the program authorized by this section shall be determined by the Secretary in consultation with the committee described in section 13(c) of this Act.

(g) Funds distribution prerequisites.—The Secretary shall, for the purposes of this section, distribute funds available for cost sharing among the States only after assessing the public benefit incident thereto, and after giving appropriate consideration to—

(1) the acreage of private commercial forest land in each State,

(2) the potential productivity of such land,

(3) the number of ownerships eligible for cost sharing in each State,

(4) the need for reforestation, timber stand improvement, or other forestry investments on such ownerships, and

(5) the enhancement of other forest resources.

(h) Bid procedures.—The Secretary may, if the Secretary determines that doing so will contribute to the effective and equitable administration of the program authorized by this section, use an advertising and bid procedure in determining the lands in any area to be covered by agreements under this section.

(i) Implementation.—In implementing this section, the Secretary may use the authorities provided in sections 1001, 1002, 1004, and 1008 of the Agricultural Act of 1970, as added by the Agriculture and Consumer Protection Act of 1973.

(j) Authorization of appropriations.—There are hereby authorized to be appropriated annually such sums as may be needed to implement this section, including funds necessary for technical assistance and expenses associated therewith.

(k) Termination of program.—The program developed by the Secretary under this section shall terminate on December 31, 1995. (16 U.S.C. 2103)

Forest Stewardship Program

Sec. 5. (a) Establishment.—The Secretary, in consultation with State foresters or equivalent State officials, shall establish a Forest Stewardship Program (hereafter referred to in this section as the "Program") to encourage the long-term stewardship of nonindustrial private forest lands by assisting owners of such lands to more actively manage their forest and related resources by utilizing existing State, Federal, and

private sector resource management expertise and assistance programs.

(b) Goal.—The goal of the Program shall be to enter at least 25,000,000 acres of nonindustrial private forest lands in the Program by December 31, 1995.

(c) Definition.—For the purposes of this section, the term "nonindustrial private forest lands" means rural, as determined by the Secretary, lands with existing tree cover, or suitable for growing trees, and owned by any private individual, group, association, corporation, Indian tribe, or other private legal entity.

(d) Implementation.—In carrying out the Program the Secretary, in consultation with State foresters or equivalent State officials, shall provide financial, technical, educational, and related assistance to State foresters or equivalent State officials, including assistance to help such State foresters or equivalent officials to provide financial assistance to other State and local natural resource entities, both public and private, and land-grant universities for the delivery of information and professional assistance to owners of nonindustrial private forest lands. Such information and assistance shall be directed to help such owners understand and evaluate alternative actions they might take, including—

(1) managing and enhancing the productivity of timber, fish and wildlife habitat, water quality, wetlands, recreational resources, and the aesthetic value of forest lands;

(2) investing in practices to protect, maintain, and enhance the resources identified in paragraph (1);

(3) ensuring that afforestation, reforestation, improvement of poorly stocked stands, timber stand improvement, practices necessary to improve seedling growth and survival, and growth enhancement practices occur where needed to enhance and sustain the long-term productivity of timber and nontimber forest resources to help meet future public demand for all forest resources and provide the environmental benefits that result; and

(4) protecting their forests from damage caused by fire, insects, disease, and damaging weather.

(e) Eligibility.—All nonindustrial private forest lands that are not in management under Federal, State, or private sector financial and technical assistance programs existing on the date of enactment of this section are eligible for assistance under the Program. Nonindustrial private forest lands that are managed under such existing programs are eligible for assistance under the Program if forest management activities are expanded and enhanced and the landowner agrees to meet the requirements of this Act.

(f) Duties of Owners.—To enter forest land into the Program, landowners shall—

(1) prepare and submit to the State forester or equivalent State official a forest stewardship plan that meets the requirements of this section and that—

(A) is prepared by a professional resource manager;

(B) identifies and describes actions to be taken by the landowner to protect soil, water, range, aesthetic quality, recreation, timber, water, and fish and wildlife resources on such land in a manner that is compatible with the objectives of the landowner; and

(C) is approved by the State forester, or equivalent State official; and

(2) agree that all activities conducted on such land shall be consistent with the stewardship plan.

(g) Stewardship Recognition.—The Secretary, in consultation with State foresters or equivalent State officials, is encouraged to

develop an appropriate recognition program for landowners who practice stewardship management on their lands, with an appropriate, special recognition symbol and title.

(h) Authorization of Appropriations.—There are hereby authorized to be appropriated $25,000,000 for each of the fiscal years 1991 through 1995, and such sums as may be necessary thereafter, to carry out this section. (16 U.S.C. 2103a)

Stewardship Incentive Program

Sec. 6. (a) Establishment.—The Secretary, in consultation with State foresters or equivalent State officials, shall establish a program within the Forest Service, to be known as the "Stewardship Incentive Program" (hereafter referred to in this section as the "Program"), to meet the objectives and goals of section 5.

(b) Eligibility.—

(1) In general.—Owners of nonindustrial private forest lands shall be eligible for cost-sharing assistance under the Program if such owners—

(A) have developed an approved forest stewardship plan pursuant to section 5(f);

(B) agree to implement approved activities pursuant to paragraph (4) in accordance with the plan for a period of not less than 10 years unless the State forester or equivalent State official approves a modification to such plan; and

(C) own not more than 1,000 acres of nonindustrial private forest land, except that the Secretary may approve the provision of cost-sharing assistance to landowners that own more than 1,000 acres of such land if the Secretary determines that significant public benefits will accrue from such approval.

(2) Limitation.—

(A) Secretary.—The Secretary shall not approve of the provision of cost-sharing assistance to any landowner owning in excess of 5,000 acres of nonindustrial private forest land.

(B) Landowner.—A landowner shall not receive cost-share assistance for management on acreage under this section if such landowner receives cost-share assistance on the same acreage under section 4.

(3) State priorities.—The Secretary in consultation with the State forester, or equivalent State official, other State natural resource management agencies, and the State Coordinating Committee established pursuant to section 19(b), may develop State priorities for cost sharing under this section that will promote unique forest management objectives in that State.

(4) Approved activities.—

(A) Development.—The Secretary, in consultation with the State Coordinating Committees established pursuant to section 19(b), shall develop a list of approved forest activities and practices that will be eligible for cost-share assistance under the Program within each State.

(B) Type of activities.—The Secretary, in developing a list of approved activities and practices under subparagraph (A), shall attempt to achieve landowner and public purposes including—

(i) the establishment, management, maintenance, and restoration of forests for shelterbelts, windbreaks, aesthetic quality, and other conservation purposes;

(ii) the sustainable growth and management of forests for timber production;

(iii) the protection, restoration, and use of forest wetlands;

(iv) the enhanced management and maintenance of native vegetation on other lands vital to water quality;

(v) the growth and management of trees for energy conservation purposes;

(vi) the management and maintenance of fish and wildlife habitat;

(vii) the management of outdoor recreational opportunities; and

(viii) other activities approved by the Secretary.

(c) Reimbursement of Eligible Activities.—

(1) In general.—The Secretary shall share the cost of developing and carrying out the forest stewardship plan under section 5(f), and in implementing the approved activities that the Secretary determines are appropriate and in the public interest, with a landowner who has entered in an agreement to place the forest land of such owner into the Program.

(2) Rate.—The Secretary, in consultation with the State forester, or equivalent State official, shall determine the appropriate reimbursement rate for cost-share payments under paragraph (1) and the schedule for making such payments.

(3) Maximum.—The Secretary shall not make cost-share payments under this subsection to a landowner in an amount in excess of 75 percent of the total cost to such landowner of developing the forest stewardship plan and implementing eligible activities under the plan. The maximum payments to any one landowner shall be determined by the Secretary.

(d) Recapture.—

(1) In general.—The Secretary shall establish and implement a mechanism to recapture payments made to a landowner in the event that the landowner fails to implement any approved activity specified in the forest stewardship plan for which such owner received cost-share payments.

(2) Additional provision.—The provisions of paragraph (1) are in addition to any other provision available.

(e) Distribution.—The Secretary shall distribute funds available for cost sharing under this section among the States only after assessing the public benefit incident to such distribution and after giving appropriate consideration to—

(1) the total acreage of nonindustrial private forest land in each State;

(2) the potential productivity of such land;

(3) the number of owners eligible for cost sharing in each State;

(4) the need for reforestation in each State;

(5) the opportunities to enhance nontimber resources on such forest lands; and

(6) the anticipated demand for timber and nontimber resources in each State.

(f) Authorization of Appropriations.—There are authorized to be appropriated $100,000,000 for each of the fiscal years 1991 through 1995, and such sums as may be necessary thereafter, to carry out this section. (16 U.S.C. 2103b)

Forest Legacy Program

Sec. 7. (a) Establishment and Purpose.—The Secretary shall establish a program, to be known as the Forest Legacy Program, in cooperation with appropriate State, regional, and other units of government for the purposes of ascertaining and protecting environmentally important forest areas that are threatened by conversion to nonforest uses and, through the use of conservation

easements and other mechanisms, for promoting forest land protection and other conservation opportunities. Such purposes shall also include the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values.

(b) State and Regional Forest Legacy Programs.—The Secretary shall exercise the authority under subsection (a) in conjunction with State or regional programs that the Secretary deems consistent with this section.

(c) Interests in Land.—In addition to the authorities granted under section 6 of the Act of March 1, 1911 (16 U.S.C. 515), and section 11(a) of the Department of Agriculture Organic Act of 1956 (7 U.S.C. 428a(a)), the Secretary may acquire from willing landowners lands and interests therein, including conservation easements and rights of public access, for Forest Legacy Program purposes. The Secretary shall not acquire conservation easements with title held in common ownership with any other entity.

(d) Implementation.—

(1) In general.—Lands and interests therein acquired under subsection (c) may be held in perpetuity for program and easement administration purposes as the Secretary may provide. In administering lands and interests therein under the program, the Secretary shall identify the environmental values to be protected by entry of the lands into the program, management activities which are planned and the manner in which they may affect the values identified, and obtain from the landowner other information determined appropriate for administration and management purposes.

(2) Initial programs.—Not later than November 28, 1991, the Secretary shall establish a regional program in furtherance of the Northern Forest Lands Study in the States of New York, New Hampshire, Vermont, and Maine under Public Law 100-446. The Secretary shall establish additional programs in each of the Northeast, Midwest, South, and Western regions of the United States, and the Pacific Northwest (including the State of Washington), on the preparation of an assessment of the need for such programs.

(e) Eligibility.—Not later than November 28, 1991, and in consultation with State Forest Stewardship Coordinating Committees established under section 19(b) and similar regional organizations, the Secretary shall establish eligibility criteria for the designation of forest areas from which lands may be entered into the Forest Legacy Program and subsequently select such appropriate areas. To be eligible, such areas shall have significant environmental values or shall be threatened by present or future conversion to nonforest uses. Of land proposed to be included in the Forest Legacy Program, the Secretary shall give priority to lands which can be effectively protected and managed, and which have important scenic or recreational values; riparian areas; fish and wildlife values, including threatened and endangered species; or other ecological values.

(f) Application.—For areas included in the Forest Legacy Program, an owner of lands or interests in lands who wishes to participate may prepare and submit an application at such time in such form and containing such information as the Secretary may prescribe. The Secretary shall give reasonable advance notice for the submission of all applications to the State forester, equivalent State official, or other appropriate State or regional natural resource management agency. If applications exceed the ability of the Secretary to fund them, priority shall be given to those forest areas

having the greatest need for protection pursuant to the criteria described in subsection (e).

(g) State Consent.—Where a State has not approved the acquisition of land under section 6 of the Act of March 1, 1911 (16 U.S.C. 515), the Secretary shall not acquire lands or interests therein under authority granted by this section outside an area of that State designated as a part of a program established under subsection (b).

(h) Forest Management Activities.—

(1) In general.—Conservation easements or deed reservations acquired or reserved pursuant to this section may allow forest management activities, including timber management, on areas entered in the Forest Legacy Program insofar as the Secretary deems such activities consistent with the purposes of this section.

(2) Assignment of responsibilities.—For Forest Legacy Program areas, the Secretary may delegate or assign management and enforcement responsibilities over federally owned lands and interests in lands only to another governmental entity.

(i) Duties of Owners.—Under the terms of a conservation easement or other property interest acquired under subsection (b), the landowner shall be required to manage property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program and shall not convert such property to other uses. Hunting, fishing, hiking, and similar recreational uses shall not be considered inconsistent with the purposes of this program.

(j) Compensation and Cost Sharing.—

(1) Compensation.—The Secretary shall pay the fair market value of any property interest acquired under this section. Payments under this section shall be in accordance with Federal appraisal and acquisition standards and procedures.

(2) Cost sharing.—In accordance with terms and conditions that the Secretary shall prescribe, costs for the acquisition of lands or interests therein or project costs shall be shared among participating entities including regional organizations, State and other governmental units, landowners, corporations, or private organizations. Such costs may include, but are not limited to, those associated with planning, administration, property acquisition, and property management. To the extent practicable, the Federal share of total program costs shall not exceed 75 percent, including any in-kind contribution.

(k) Easements.—

(1) Reserved interest deeds.—As used in this section, the term "conservation easement" includes an easement utilizing a reserved interest deed where the grantee acquires all rights, title, and interests in a property, except those rights, title, and interests that may run with the land that are expressly reserved by a grantor.

(2) Prohibitions on limitations.—Notwithstanding any provision of State law, no conservation easement held by the United States or its successors or assigns under this section shall be limited in duration or scope or be defeasible by—

(A) the conservation easement being in gross or appurtenant;

(B) the management of the conservation easement having been delegated or assigned to a non-Federal entity;

(C) any requirement under State law for re-recordation or renewal of the easement; or

(D) any future disestablishment of a Forest Legacy Program area or other Federal project for which the conservation easement was originally acquired.

(3) Construction.—Notwithstanding any provision of State law, conservation easements shall be construed to effect the Federal purposes for which they were acquired and, in interpreting their terms, there shall be no presumption favoring the conservation easement holder or fee owner.

(*l*) Appropriation.—There are authorized to be appropriated such sums as may be necessary to carry out this section. (16 U.S.C. 2103c)

Forest Health Protection

Sec. 8. (a) In General.—The Secretary may protect trees and forests and wood products, stored wood, and wood in use directly on the National Forest System and, in cooperation with others, on other lands in the United States, from natural and man-made causes, to—

(1) enhance the growth and maintenance of trees and forests;

(2) promote the stability of forest-related industries and employment associated therewith through the protection of forest resources;

(3) aid in forest fire prevention and control;

(4) conserve forest cover on watersheds, shelterbelts, and windbreaks;

(5) protect outdoor recreation opportunities and other forest resources; and

(6) extend timber supplies by protecting wood products, stored wood, and wood in use.

(b) Activities.—Subject to subsections (c), (d), and (e) and to such other conditions the Secretary may prescribe, the Secretary may, directly on the National Forest System, in cooperation with other Federal departments on other Federal lands, and in cooperation with State foresters, or equivalent State officials, subdivisions of States, agencies, institutions, organizations, or individuals on non-Federal lands—

(1) conduct surveys to detect and appraise insect infestations and disease conditions and man-made stresses affecting trees and establish a monitoring system throughout the forests of the United States to determine detrimental changes or improvements that occur over time, and report annually concerning such surveys and monitoring;

(2) determine the biological, chemical, and mechanical measures necessary to prevent, retard, control, or suppress incipient, potential, threatening, or emergency insect infestations and disease conditions affecting trees;

(3) plan, organize, direct, and perform measures the Secretary determines necessary to prevent, retard, control, or suppress incipient, potential, threatening, or emergency insect infestations and disease epidemics affecting trees;

(4) provide technical information, advice, and related assistance on the various techniques available to maintain a healthy forest and in managing and coordinating the use of pesticides and other toxic substances applied to trees and other vegetation, and to wood products, stored wood, and wood in use;

(5) develop applied technology and conduct pilot tests of research results prior to the full-scale application of such technology in affected forests;

(6) promote the implementation of appropriate silvicultural or management techniques that may improve or protect the health of the forests of the United States; and

(7) take any other actions the Secretary determines necessary to accomplish the objectives and purposes of this section.

(c) Consent of Entity.—Operations under this section to prevent, retard, control, or suppress insects or diseases affecting forests and trees on land not controlled or administered by the Secretary shall not

be conducted without the consent, cooperation, and participation of the entity having ownership of or jurisdiction over the affected land.

(d) Contribution by Entity.—No money appropriated to implement this section shall be expended to prevent, retard, control, or suppress insects or diseases affecting trees on non-Federal land until the entity having ownership of or jurisdiction over the affected land contributes, or agrees to contribute, to the work to be done in the amount and in the manner determined appropriate by the Secretary.

(e) Allotments to Other Agencies.—The Secretary may, in the Secretary's discretion, and out of any money appropriated to implement this section, make allocations to Federal agencies having jurisdiction over lands held or owned by the United States in the amounts the Secretary determines necessary to prevent, retard, control, or suppress insect infestations and disease epidemics affecting trees on those lands.

(f) Limitation on Use of Appropriations.—

(1) Removing dead trees.—No amounts appropriated shall be used to—

(A) pay the cost of felling and removing dead or dying trees unless the Secretary determines that such actions are necessary to prevent the spread of a major insect infestation or disease epidemic severely affecting trees; or

(B) compensate for the value of any property injured, damaged, or destroyed by any cause.

(2) Insects and diseases affecting trees.—The Secretary may procure materials and equipment necessary to prevent, retard, control, or suppress insects and diseases affecting trees without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), under whatever procedures the Secretary may prescribe, if the Secretary determines that such action is necessary and in the public interest.

(g) Partnerships.—The Secretary, by contract or cooperative agreement, may provide financial assistance through the Forest Service to State foresters or equivalent State officials, and private forestry and other organizations, to monitor forest health and protect the forest lands of the United States. The Secretary shall require contribution by the non-Federal entity in the amount and in the manner determined appropriate. Such non-Federal share may be in the form of cash, services, or equipment, as determined appropriate by the Secretary.

(h) Authorization of Appropriations.—There are authorized to be appropriated annually such sums as may be necessary to carry out subsections (a) through (g).

(i) Integrated Pest Management.—

(1) In general.—Subject to the provisions of subsections (c) and (e), the Secretary shall, in cooperation with State foresters or equivalent State officials, subdivisions of States, or other entities on non-Federal lands (hereafter in this subsection referred to as the "cooperator")—

(A) provide cost-share assistance to such cooperators who have established an acceptable integrated pest management strategy, as determined by the Secretary, that will prevent, retard, control, or suppress gypsy moth, southern pine beetle, spruce budworm infestations, or other major insect infestations in an amount no less than 50 percent nor greater than 75 percent of the cost of implementing such strategy; and

(B) upon request, assist the cooperator in the development of such integrated pest management strategy.

(2) Authorization of appropriations.—There are hereby authorized to be appropriated annually $10,000,000 to implement this subsection. (16 U.S.C. 2104)

Urban and Community Forestry Assistance

Sec. 9. (a) Findings.—The Congress finds that—

(1) the health of forests in urban areas and communities, including cities, their suburbs, and towns, in the United States is on the decline;

(2) forest lands, shade trees, and open spaces in urban areas and communities improve the quality of life for residents;

(3) forest lands and associated natural resources enhance the economic value of residential and commercial property in urban and community settings;

(4) urban trees are 15 times more effective than forest trees at reducing the buildup of carbon dioxide and aid in promoting energy conservation through mitigation of the heat island effect in urban areas;

(5) tree plantings and ground covers such as low growing dense perennial turfgrass sod in urban areas and communities can aid in reducing carbon dioxide emissions, mitigating the heat island effect, and reducing energy consumption, thus contributing to efforts to reduce global warming trends;

(6) efforts to encourage tree plantings and protect existing open spaces in urban areas and communities can contribute to the social well-being and promote a sense of community in these areas; and

(7) strengthened research, education, technical assistance, and public information and participation in tree planting and maintenance programs for trees and complementary ground covers for urban and community forests are needed to provide for the protection and expansion of tree cover and open space in urban areas and communities.

(b) Purposes.—The purposes of this section are to—

(1) improve understanding of the benefits of preserving existing tree cover in urban areas and communities;

(2) encourage owners of private residences and commercial properties to maintain trees and expand forest cover on their properties;

(3) provide education programs and technical assistance to State and local organizations (including community associations and schools) in maintaining forested lands and individual trees in urban and community settings and identifying appropriate tree species and sites for expanding forest cover;

(4) provide assistance through competitive matching grants awarded to local units of government, approved organizations that meet the requirements of section 501(c)(3) of the Internal Revenue Code of 1986, or other local community tree volunteer groups, for urban and community forestry projects;

(5) implement a tree planting program to complement urban and community tree maintenance and open space programs and to reduce carbon dioxide emissions, conserve energy, and improve air quality in addition to providing other environmental benefits;

(6) promote the establishment of demonstration projects in selected urban and community settings to illustrate the benefits of maintaining and creating forest cover and trees;

(7) enhance the technical skills and understanding of sound tree maintenance and arboricultural practices including practices involving the cultivation of trees, shrubs and complementary ground covers, of individuals involved in the plan-

ning, development, and maintenance of urban and community forests and trees; and

(8) expand existing research and educational efforts intended to improve understanding of—

(A) tree growth and maintenance, tree physiology and morphology, species adaptations, and forest ecology,

(B) the value of integrating trees and ground covers,

(C) the economic, environmental, social, and psychological benefits of trees and forest cover in urban and community environments, and

(D) the role of urban trees in conserving energy and mitigating the urban heat island.

(c) General Authority.—The Secretary is authorized to provide financial, technical, and related assistance to State foresters or equivalent State officials for the purpose of encouraging States to provide information and technical assistance to units of local government and others that will encourage cooperative efforts to plan urban forestry programs and to plant, protect, and maintain, and utilize wood from, trees in open spaces, greenbelts, roadside screens, parks, woodlands, curb areas, and residential developments in urban areas. In providing such assistance, the Secretary is authorized to cooperate with interested members of the public, including nonprofit private organizations. The Secretary is also authorized to cooperate directly with units of local government and others in implementing this section whenever the Secretary and the affected State forester or equivalent State official agree that direct cooperation would better achieve the purposes of this section.

(d) Program of Education and Technical Assistance.—The Secretary, in cooperation with State foresters and State extension directors or equivalent State officials and interested members of the public, including nonprofit private organizations, shall implement a program of education and technical assistance for urban and community forest resources. The program shall be designed to—

(1) assist urban areas and communities in conducting inventories of their forest resources, including inventories of the species, number, location, and health of trees in urban areas and communities, identifying opportunities for the establishment of plantings for the purposes of conserving energy, and determining the status of related resources (including fish and wildlife habitat, water resources, and trails);

(2) assist State and local organizations (including community associations and schools) in organizing and conducting urban and community forestry projects and programs;

(3) improve education and technical support in—

(A) selecting tree species appropriate for planting in urban and community environments and for promotion of energy conservation;

(B) providing for proper tree planting, maintenance, and protection in urban areas and communities;

(C) protecting individual trees and preserving existing open spaces with or without tree cover; and

(D) identifying opportunities for expanding tree cover in urban areas and communities;

(4) assist in the development of State and local management plans for trees and associated resources in urban areas and communities; and

(5) increase public understanding of the energy conservation, economic, social, environmental,

and psychological values of trees and open space in urban and community environments and expand knowledge of the ecological relationships and benefits of trees and related resources in these environments.

(e) Procurement of Plant Materials.—The Secretary, in cooperation with State foresters or equivalent State officials, shall assist in identifying sources of plant materials and may procure or otherwise obtain such plant materials from public or private sources and may make such plant materials available to urban areas and communities for the purpose of reforesting open spaces, replacing dead and dying urban trees, promoting energy conservation, and providing other environmental benefits through expanding tree cover in urban areas and communities.

(f) Challenge Cost-Share Program.—

(1) In general.—The Secretary shall establish an urban and community forestry challenge cost-share program. Funds or other support shall be provided under such program to eligible . communities and organizations, on a competitive basis, for urban and community forestry projects. The Secretary shall annually make awards under the program in accordance with criteria developed in consultation with, and after consideration of recommendations received from, the National Urban and Community Forestry Advisory Council established under subsection (g). Each State forester or equivalent State official may make recommendations to the Secretary for awards under the program for project proposals in their State which meet such criteria. Awards shall be consistent with the cost-share requirements of this section.

(2) Cost-sharing.—The Federal share of support for a project provided under this subsection may not exceed 50 percent of the support for that project and shall be provided on a matching basis. The non-Federal share of such support may be in the form of cash, services, or in-kind contributions.

(g) Forestry Advisory Council.—

(1) Establishment and purpose.—The Secretary shall establish a National Urban and Community Forestry Advisory Council (hereafter in this section referred to as the 'Council') for the purpose of—

(A) developing a national urban and community forestry action plan;

(B) evaluating the implementation of that plan; and

(C) developing criteria for, and submitting recommendations with respect to, the urban and community forestry challenge cost-share program under subsection (f).

(2) Composition and operation.—

(A) Composition.—The Council shall be composed of 15 members appointed by the Secretary, as follows:

(i) 2 members representing national nonprofit forestry and conservation citizen organizations,

(ii) 3 members, 1 each representing State, county, and city and town governments,

(iii) 1 member representing the forest products, nursery, or related industries,

(iv) 1 member representing urban forestry, landscape, or design consultants,

(v) 2 members representing academic institutions with an expertise in urban and community forestry activities,

(vi) 1 member representing State forestry agencies or equivalent State agencies,

(vii) 1 member representing a professional renewable natural resource or arboricultural society,

(viii) 1 member from the Extension Service,

(ix) 1 member from the Forest Service, and

(x) 2 members who are not officers or employees of any governmental body, 1 of whom is a resident of a community with a population of less than 50,000 as of the most recent census and both of whom have expertise and have been active in urban and community forestry.

(B) Vacancy.—A vacancy in the Council shall be filled in the manner in which the original appointment was made.

(C) Chairperson.—The Secretary shall select 1 member, from members appointed to the Council, who is not an officer or employee of the United States nor any State, county, city, or town government, who shall serve as the chairperson of the Council.

(D) Terms.—

(i) In general.—Except as provided in clauses (ii) and (iii) of this paragraph, members shall be appointed for terms of 3 years, and no member may serve more than 2 consecutive terms on the Council.

(ii) Staggered terms.—Of the members first appointed—

(I) 5, including the chairperson and 2 governmental employees, shall be appointed for a term of 3 years,

(II) 5, including 2 governmental employees, shall be appointed for a term of 2 years, and

(III) 5, including 2 governmental employees, shall be appointed for a term of 1 year, as designated by the Secretary at the time of appointment.

(iii) Continuation.—Any member appointed to fill a vacancy occurring before the expiration of the term of the member's predecessor shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until the member's successor has taken office.

(E) Compensation.—

(i) In general.—Except as provided in clause (ii), members of the Council shall serve without pay, but may be reimbursed for reasonable costs incurred while in the actual performance of duties vested in the Council.

(ii) Federal officers and employees.—Members of the Council who are full-time officers or employees of the United States shall receive no additional pay, allowances, or benefits by reason of their service on the Council.

(iii) Financial and administrative support.—The Secretary shall provide financial and administrative support for the Council.

(3) Urban and community forestry action plan.—Within 1 year after the date of enactment of this subsection and every 10 years thereafter, the Council shall prepare a National Urban and Community Forestry Action Plan. The plan shall include (but not be limited to) the following:

(A) An assessment of the current status of urban forest resources in the United States.

(B) A review of urban and community forestry programs and activities in the United States, including education and technical assistance activities conducted by the Department of Agriculture, and other Federal agencies, the State forestry organizations, private industry, private nonprofit organizations, community and civic organizations and interested others.

(C) Recommendations for improving the status of the Nation's urban and community forest resources, including education and technical assistance and modifications required in existing programs and policies of relevant Federal agencies.

(D) A review of urban and community forestry research, including—

(i) a review of all ongoing research associated with urban and community forests, arboricultural practices, and the economic, social, and psychological benefits of trees and forest cover in urban and community environments being conducted by the Forest Service, other Federal agencies, and associated land grant colleges and universities;

(ii) recommendations for new and expanded research efforts directed toward urban and community forestry concerns; and

(iii) a summary of research priorities and an estimate of the funds needed to implement such research, on an annual basis, for the next 10 years.

(E) Proposed criteria for evaluating proposed projects under the urban and community forestry challenge cost share program under subsection (f) of this section, with special emphasis given to projects that would demonstrate the benefits of improved forest management (including the maintenance and establishment of forest cover and trees) in urban areas and communities.

(F) An estimate of the resources needed to implement the National Urban and Community Forestry Action Plan for the succeeding 10 fiscal years.

(4) Amendment of the plan.—The plan may be amended by a majority of the Council members. Such amendments shall be incorporated into the Council's annual review of the plan submitted to the Secretary pursuant to paragraph (5) of this subsection.

(5) Review of the plan.—The Council shall submit the plan to the Secretary and the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate upon its completion. Beginning no later than one year after the plan is submitted and annually thereafter, the Counsel shall submit a review of the plan to the Secretary no later than December 31. The review shall consist of—

(A) the Council's assessment of prior year accomplishments in research, education, technical assistance, and related activities in urban and community forestry;

(B) the Council's recommendations for research, education, technical assistance, and related activities in the succeeding year; and

(C) the Council's recommendations for the urban and community forestry challenge cost share projects to be funded during the succeeding year.

The review submitted to the Secretary shall be incorporated into the annual report required under section 1601(d) of this title.

(6) Detail of personnel.—Upon request of the Council, the Secretary is authorized to detail, on a reimbursable basis, any of the personnel of the Department of Agriculture to the Council to assist the Council in carrying out its duties under this chapter.

(h) Definitions.—For the purposes of this section—

(1) the term "Council" means the National Urban and Community Forestry Advisory Council established under subsection (g) of this section;

(2) the term "plan" means the National Urban and Community Forestry Action Plan developed under subsection (g)(3) of this section; and

(3) the term "urban and community area" includes cities, their suburbs, and towns.

(i) Authorization of appropriations.—There are hereby authorized to be appropriated $30,000,000 for each of the fiscal years 1991

through 1995, and such sums as may be necessary for each fiscal year thereafter, for the implementation of this section. (16 U.S.C. 2105)

Emergency Flood Prevention (Agricultural Credit Act of 1978)

- **Act of August 4, 1978 (P.L. 95-420, 92 Stat. 434; 16 U.S.C. 2203)**

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TITLE IV — EMERGENCY CONSERVATION PROGRAM

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Sec. 403. The Secretary of Agriculture is authorized to undertake emergency measures for runoff retardation and soil-erosion prevention, in cooperation with landowners and land users, as the Secretary deems necessary to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or any other natural occurrence is causing or has caused a sudden impairment of that watershed. (16 U.S.C. 2203)

Note—This is the principal legislation relating to functions of the Forest Service in flood control work. In addition to this Act, the Secretary of Agriculture is authorized to conduct flood control measures under the Watershed Protection and Flood Prevention Act of August 4, 1954, to undertake emergency measures for run-off retardation and soil-erosion prevention by the Act of June 28, 1938, as amended by the Act of May 17, 1950, and to initiate works of improvement on certain authorized watersheds under the Act of December 22, 1944, as amended.

American Indian Religious Freedom

- **Act of August 11, 1978 (P.L. 95-341, 92 Stat. 469; 42 U.S.C. 1996(note))**

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefitted from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive,and consistent federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefor, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned: Now, therefor, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

Sec. 2. The President shall direct the various federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back

to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

Secretary of Agriculture — Jurisdiction Over Lands

- **Act of October 10, 1978 (P.L. 95-441, 92 Stat. 1064; 7 U.S.C. 2268)**

Notwithstanding any other provision of law, the Secretary of Agriculture may, whenever he considers it desirable, relinquish to a State all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor of the State concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State may otherwise provide. (7 U.S.C. 2268)

Acceptance of Gifts

- **Act of October 10, 1978 (P.L. 95-442, 92 Stat. 1065; 7 U.S.C. 2269)**

Secretary of Agriculture — Acceptance of Gifts

Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to accept, receive, hold, utilize, and administer on behalf of the United States gifts, bequests, or devises of real and personal property made for the benefit of the United States Department of Agriculture or for the carrying out of any of its functions. For the purposes of the federal income, estate, and gift tax laws, property accepted under the authority of this Act shall be considered as a gift, bequest, or devise to the United States. Any gift of money accepted pursuant to the authority granted in this Act, or the net proceeds from the liquidation of any property so accepted, or the proceeds of any insurance on any gift property not used for its restoration shall be deposited in the Treasury of the United States for credit to a separate fund and shall be disbursed upon order of the Secretary of Agriculture. The Secretary of Agriculture may promulgate regulations to carry out the provisions of this Act. (7 U.S.C. 2269)

Public Rangelands Improvement Act of 1978

- **Act of October 25, 1978 (P.L. 95-514, 92 Stat. 1806; 43 U.S.C. 1901-1908)**

Findings and Declaration of Policy

Sec. 2. (a) The Congress finds and declares that—

(1) vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition;

(2) such rangelands will remain in an unsatisfactory condition and some areas may decline further under present levels of, and funding for, management;

(3) unsatisfactory conditions on public rangelands present a high risk of soil loss, desertification, and a resultant underproductivity for large acreages of the public lands; contribute significantly to unacceptable levels of siltation and salinity in major western watersheds including the Colorado River; negatively impact the quality and availability of scarce western water supplies; threaten important and frequently critical fish and wildlife habitat; prevent expansion of the forage resource and resulting benefits to livestock and wildlife production; increase surface runoff and flood danger; reduce the value of such lands for recreational and aesthetic purposes; and may ultimately lead to unpredictable and undesirable long-term local and regional climatic and economic changes;

(4) the above-mentioned conditions can be addressed and corrected by an intensive public rangelands maintenance, management, and improvement program involving significant increases in levels of rangeland management and improvement funding for multiple-use values;

(5) to prevent economic disruption and harm to the western livestock industry, it is in the public interest to charge a fee for livestock grazing permits and leases on the public lands which is based on a formula reflecting annual changes in the costs of production.

(6) The Act of December 15, 1971 (85 Stat. 649, 16 U.S.C. 1331 et seq.), continues to be successful in its goal of protecting wild free-roaming horses and burros from capture, branding, harassment, and death, but that certain amendments are necessary thereto to avoid excessive costs in the administration of the Act, and to facilitate the humane adoption or disposal of excess wild free-roaming horses and burros which because they exceed the carrying capacity of the range, pose a threat to their own habitat, fish, wildlife, recreation, water and soil conservation, domestic livestock grazing, and other rangeland values;

(b) The Congress therefore hereby establishes and reaffirms a national policy and commitment to:

(1) inventory and identify current public rangeland conditions and trends as a part of the inventory process required by section 201(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711);

(2) manage, maintain and improve the condition of the public

rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712);

(3) charge a fee for public grazing use which is equitable and reflects the concerns addressed in paragraph (a)(5) above;

(4) continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values;

(c) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation, and shall be construed as supplemental to and not in derogation of the purposes for which public rangelands are administered under other provisions of law. (43 U.S.C. 1901)

Sec. 3. As used in this Act—

(a) The terms "rangelands" or "public rangelands" means lands administered by the Secretary of the Interior through the Bureau of Land Management or the Secretary of Agriculture through the Forest Service in the sixteen contiguous Western States on which there is domestic livestock grazing or which the Secretary concerned determines may be suitable for domestic livestock grazing.

(b) The term "allotment management plan" is the same as defined in section 103(k), of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1702(k)), except that as used in this Act such term applies to the sixteen contiguous Western States.

(c) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the sixteen contiguous Western States for the purpose of grazing domestic livestock.

(d) The term "range condition" means the quality of the land reflected in its ability in specific vegetative areas to support various levels of productivity in accordance with range management objectives and the land use planning process, and relates to soil quality, forage values (whether seasonal or year round), wildlife habitat, watershed and plant communities, the present state of vegetation of a range site in relation to the potential plant community for that site, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble that of the desired community for that site.

(e) The term "native vegetation" means those plant species, communities, or vegetative associations which are endemic to a given area and which would normally be identified with a healthy and productive range condition occurring as a result of the natural vegetative process of the area.

(f) The term "range improvement" means any activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

(g) The term "court ordered environmental impact statement" means

any environmental statements which are required to be prepared by the Secretary of the Interior pursuant to the final judgment or subsequent modification thereof as set forth on June 18, 1975, in the matter of Natural Resources Defense Council against Andrus.

(h) The term "Secretary" unless specifically designated otherwise, means the Secretary of the Interior.

(i) The term "sixteen contiguous Western states" means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. (43 U.S.C. 1902)

Rangelands Inventory and Management

Sec. 4. (a) Following enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture shall update, develop (where necessary) and maintain on a continuing basis thereafter, an inventory of range conditions and record of trends of range conditions on the public rangelands, and shall categorize or identify such lands on the basis of the range conditions and trends thereof as they deem appropriate. Such inventories shall be conducted and maintained by the Secretary as a part of the inventory process required by section 201(a) of the Federal Land Policy and Management Act (43 U.S.C. 1711), and by the Secretary of Agriculture in accordance with section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1603); shall be kept current on a regular basis so as to reflect changes in range conditions; and shall be available to the public.

(b) The Secretary shall manage the public rangelands in accordance with the Taylor Grazing Act (43 U.S.C. 315-315(o)), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1782), and other applicable law consistent with the public rangelands improvement program pursuant to this Act. Except where the land use planning process required pursuant to section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712) determines otherwise or the Secretary determines, and sets forth his reasons for this determination, that grazing uses should be discontinued (either temporarily or permanently) on certain lands, the goal of such management shall be to improve the range conditions of the public rangelands so that they become as productive as feasible in accordance with the rangeland management objectives established through the land use planning process, and consistent with the values and objectives listed in sections 2(a) and (b)(2) of this Act. (43 U.S.C. 1903)

Range Improvement Funding

Sec. 5. (a) In order to accomplish the purposes of this Act, there are hereby authorized to be appropriated the sum of an additional $15,000,000 annually in fiscal years 1980 through 1982; for fiscal years 1983 through 1986 an amount no less than the amount authorized for 1982; and for fiscal years 1987 through 1999 an amount not less than $5,000,000 annually more than the amount authorized for fiscal year 1986. Such funds shall be in addition to any range, wildlife, and soil and water management moneys which have been requested by the Secretary under the provisions of section 318 of the Federal Land Policy and Management Act, and in addition to the moneys which are available for range improvements

under section 401 of the Federal Land Policy and Management Act (43 U.S.C. 1751).

(b) Any amounts authorized by this section not appropriated in one or more fiscal years shall be available for appropriation in any subsequent years.

(c) No less that 80 per centum of such funds provided herein shall be used for on-the-ground range rehabilitation, maintenance and the construction of range improvements (including project layout, project design, and project supervision). No more than 15 per centum of such funds provided herein shall be used to hire and train such experienced and qualified personnel as are necessary to implement on-the-ground supervision and enforcement of the land use plans required pursuant to section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712) and such allotment management plans as may be developed. Such funds shall be distributed as the Secretary deems advisable after careful and considered consultation and coordination, including public hearings and meetings where appropriate, with the district grazing advisory boards established pursuant to section 403 of the Federal Land Policy and Management Act (43 U.S.C. 1753), and the advisory councils established pursuant to section 309 of the Federal Land Policy and Management Act (43 U.S.C. 1739), range user representatives, and other interested parties. To the maximum extent practicable, and where economically sound, the Secretary shall give priority to entering into cooperative agreements with range users (or user groups) for the installation and maintenance of on-the-ground range improvements.

(d) Prior to the use of any funds authorized by this section the Secretary shall cause to have prepared an environmental assessment record on each range improvement project. Thereafter, improvement projects may be constructed unless the Secretary determines that the project will have a significant impact on the quality of human environment, necessitating an environmental impact statement pursuant to the National Environmental Policy Act prior to the expenditure of funds. (43 U.S.C. 1904)

Grazing Fees

Sec. 6. (a) For the grazing years 1979 through 1985, the Secretaries of Agriculture and Interior shall charge the fee for domestic livestock grazing on the public rangelands which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the Economic Research Service) added to the Combined Index (Beef Cattle Price Index minus the Price Paid Index) and divided by 100: *Provided,* That the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 per centum of the previous year's fee.

(b) The second sentence of section 401(b)(1) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751(b)(1)) is hereby amended by adding the words "or $10,000,000 per annum, whichever is greater" after the words "50 per centum," and by substituting the word "sixteen" for the word "eleven" before the words "contiguous Western States." (43 U.S.C. 1905)

Grazing Leases and Permits

Sec. 7. (a) Section 402(b)(3) of the Federal Land Policy and Management Act (43 U.S.C. 1752) is amended by striking the period at the end of the proviso and adding: (see P.L. 94-579)

(b) Section 402(a) of the Federal Land Policy and Management Act is hereby amended by substituting the word "sixteen" for the word "eleven" before the words "contiguous Western States." (43 U.S.C. 1752)

Allotment Management Plans

Sec. 8. Sections 402(d) and (e) of the Federal Land Policy and Management Act (43 U.S.C. 1752 (d) and (e)) are hereby amended—

(a) by changing subsection (d) to read as follows: (see P.L. 94-579)

(b) by deleting in subsection (e) the words "Prior to October 1, 1988, or thereafter, in" and by inserting "In". (43 U.S.C. 1752)

Appropriations

Sec. 9. Notwithstanding any other provision of this Act, authority to enter into cooperative agreements and to make payments under this Act shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts. (43 U.S.C. 1906)

Grazing Advisory Boards

Sec. 10. Section 403(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753) is amended by substituting the word "sixteen" for the word "eleven" before the words "contiguous Western States." (43 U.S.C. 1753)

National Grassland Exemptions

Sec. 11. All National Grasslands are exempted from the provisions of this Act. (43 U.S.C. 1907)

Experimental Stewardship Program

Sec. 12. (a) The Secretaries of Interior and Agriculture are hereby authorized and directed to develop and implement, on an experimental basis on selected areas of the public rangelands which are representative of the broad spectrum of range conditions, trends, and forage values, a program which provides incentives to, or rewards for, the holders of grazing permits and leases whose stewardship results in an improvement of the range condition of lands under permit or lease. Such program shall explore innovative grazing management policies and systems which might provide incentives to improve range conditions. These may include, but need not be limited to—

(1) cooperative range management projects designed to foster a greater degree of cooperation and coordination between the federal and State agencies charged with the management of the rangelands and with local private range users,

(2) the payment of up to 50 per centum of the amount due the federal government from grazing permittees in the form of range improvement work,

(3) such other incentives as he may deem appropriate.

(b) No later than December 31, 1985, the Secretaries shall report to the Congress the results of such experimental program, their evaluation of the fee established in section

6 of this Act and other grazing fee options, and their recommendations to implement a grazing fee schedule for the 1986 and subsequent grazing years. (43 U.S.C. 1908)

Advisory Councils

Sec. 13. The first line of section 309(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739) is amended by deleting "is authorized to" and inserting in lieu thereof "shall."

Wild Horses and Burros

Note—See Wild Horses and Burros Act (P.L. 92-195) section 3(b) (1 through 3).

Contract Disputes Act of 1978

- **Act of November 1, 1978 (P.L. 95-563, 92 Stat. 2382; 41 U.S.C. 601 (note), 601-613**

Short Title

This Act may be cited as the "Contract Disputes Act of 1978" (41 U.S.C. 601(note))

Definitions

Sec. 2. As used in this Act—

(1) the term "agency head" means the head and any assistant head of an executive agency, and may "upon the designation by" the head of an executive agency include the chief official of any principal division of the agency;

(2) the term "executive agency" means an executive department as defined in section 101 of title 5, United States Code, an independent establishment as defined by section 104 of title 5, United States Code (except that it shall not include the General Accounting Office): a military department as defined by section 102 of title 5, United States Code, and a wholly owned Government corporation as defined by section 846 of title 31, United States Code, the United States Postal Service, and the Postal Rate Commission;

(3) the term "contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of his authority;

(4) the term "contractor" means a party to a Government contract other than the Government;

(5) the term "Administrator" means the Administrator for Federal Procurement Policy appointed pursuant to the Office of Federal Procurement Policy Act;

(6) The term "agency board" means an agency board of contract appeals established under section 8 of this Act; and

(7) the term "misrepresentation of fact" means a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. (41 U.S.C. 601)

Applicability of Law

Sec. 3. (a) Executive agency contracts. Unless otherwise specifically provided herein, this Act applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28, United States Code) entered into by an executive agency for—

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair or maintenance of real property; or

(4) the disposal of personal property.

(b) Tennessee Valley Authority contracts.—With respect to contracts of the Tennessee Valley Authority, the provisions of this Act shall apply only to those contracts which contain a disputes clause requiring that a contract dispute be resolved through an agency administrative process. Notwithstanding any other provision of this Act, contracts Of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system shall be excluded from the Act.

(c) Foreign government or international contracts.—This Act does not apply to a contract with a foreign government, or agency thereof, or international organization, or subsidiary body thereof, if the head of the agency determines that the application of the Act to the contract would not be in the public interest. (41 U.S.C. 602)

Maritime Contracts

Sec. 4. Appeals under paragraph (g) of section 8 and suits under section 10, arising out of maritime contracts, shall be governed by the Act of March 9, 1920, as amended (41 Stat. 525, as amended; 46 U.S.C. 741—752) or the Act of March 3, 1925, as amended (43 Stat. 1112, as amended; 46 U.S.C. 781-790) as applicable, to the extent that those Acts are not inconsistent with this Act. (41 U.S.C. 603)

Fraudulent Claims

Sec. 5. If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection shall be determined within six years of the commission of such misrepresentation of fact or fraud. (41 U.S.C. 604)

Decision by the Contracting Officer

Sec. 6. (a) Contractor claims. All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this Act. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) Review; performance of contract pending appeal. The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this Act. Nothing in this Act shall prohibit executive agencies from

including a clause in government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(c) Amount of claim; certification; notification; time of issuance; presumption—

(1) A contracting officer shall issue a decision on any submitted claim of $50,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than $50,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the certifier is duly authorized to certify the claim on behalf of the contractor.

(2) A contracting officer shall, within sixty days of receipt of a submitted certified claim over $50,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(4) A contractor may request the agency board of contract appeals to direct a contracting officer to issue a decision in a specified period of time, as determined by the board, in the event of undue delay on the Part of the contracting officer.

(5) Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of the appeal or suit on the claim as otherwise provided in this Act. However, in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer, the tribunal concerned may, at its option, stay the proceedings to obtain a decision on the claim by the contracting officer.

(6) The contracting officer shall have no obligation to render a final decision on any claim of more than $50,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of jurisdiction over that claim. Prior to the entry of a final judgement by a court or a decision by a agency board of contract appeals, the court or agency board shall require a defective certification to be corrected.

(7) The certification required by paragraph (1) may be executed by any person duly authorized to bind the contractor with respect to the claim.

(d) Alternative means of dispute resolution.—Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of Title 5, or other mutually agreeable procedures, for resolving claims. In a case in which such alternative means of dispute

resolution or other mutually agreeable procedures are used, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his or her knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. All provisions of subchapter IV of chapter 5 of Title 5 shall apply to such alternative means of dispute resolution.

(e) Cessation of authority in dispute resolution.—The authority of agencies to engage in alternative means of dispute resolution proceedings under subsection (d) of this section shall cease to be effective on October 1, 1995, except that such authority shall continue in effect with respect to then pending dispute resolution proceedings which, in the judgment of the agencies that are parties to such proceedings, require such continuation, until such proceedings terminate. (41 U.S.C. 605)

Contractor's Right of Appeal to Board of Contract Appeals

Sec. 7. Within ninety days from the date of receipt of a contracting officer's decision under section 6, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 8. (41 U.S.C. 606)

Agency Boards of Contract Appeals

Sec. 8. (a) Establishment; consultation; TVA.—

(1) Except as provided in paragraph (2) an agency board of contract appeals may be established within an executive agency when the agency head, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least three members who shall have no other inconsistent duties. Workload studies will be updated at least once every three years and submitted to the Administrator.

(2) The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals for the Authority of an indeterminate number of members.

(b) Appointment of members; chairman.—

(1) Except as provided in paragraph (2), the members of agency boards shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. Full-time members of agency boards serving as such on the effective date of this Act shall be considered qualified. The chairman and vice chairman of each board shall be designated by the agency head from members so appointed. Compensation for the chairman, the vice chairman, and all other members of an agency board shall be determined under section 5372a of Title 5.

(2) The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to its agency board of contract appeals established in subsection (a)(2), and shall designate a chairman of such board. The chairman of such board shall receive compensation at a rate equal to the daily rate paid a GS-18 under the General Schedule contained in section 5332, United States Code for each day he is engaged in the actual performance of his duties as a member of such board. All other

members of such board shall receive compensation at a rate equal to the daily rate paid a GS-16 under such General Schedule for each day they are engaged in the actual performance of their duties as members of such board.

(c) Appeals; inter-agency arrangements.—If the volume of contract claims is not sufficient to justify an agency board under subsection (a) or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency. In the event an agency head is unable to make such an arrangement with another agency, he shall submit the case to the Administrator for placement with an agency board. The provisions of this subsection shall not apply to the Tennessee Valley Authority.

(d) Jurisdiction.—Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal. In exercising this jurisdiction, the agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims.

(e) Decisions.—An agency board shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

(f) Accelerated appeal disposition.—The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less. The accelerated procedure shall be applicable at the sole election of only the contractor. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure.

(g) Review.—

(1) The decision of an agency board of contract appeals shall be final, except that—

(A) a contractor may appeal such a decision to the Court of Claims within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the United States Court of Claims for judicial review, under section 2510 of title 28, United States Code, as amended herein, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision.

(2) Notwithstanding the provisions of paragraph (1), the decision of the board of contract appeals of the Tennessee Valley Authority shall be final, except that—

(A) a contractor may appeal such a decision to a United States district court pursuant to the provisions of section 1337 of title 28, United States Code within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) The Tennessee Valley Authority may appeal the decision to a United States district court pursuant to the provisions of section

1337 of title 28, United States Code, within one hundred twenty days after the date of the decision in any case.

(3) An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 through 13 of Title 9, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.

(h) Pursuant to the authority conferred under the Office of Federal Procurement Policy Act, (41 U.S.C. 401 et seq.) the Administrator is authorized and directed as may be necessary or desirable to carry out the provisions of this Act, to issue guidelines with respect to criteria for the establishment, functions, and procedures of the agency boards (except for a board established by the Tennessee Valley Authority). (41 U.S.C. 607)

Small Claims

Sec. 9. (a) Accelerated disposition of appeals.—The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $10,000 or less. The small claims procedure shall be applicable at the sole election of the contractor.

(b) Simplified rules of procedure.—The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal thereunder. Such appeals may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(c) Time of decision.—Appeals under the small claims procedure shall be resolved, whenever possible, within one hundred twenty days from the date on which the contractor elects to utilize such procedure.

(d) Finality of decision.—A decision against the Government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.

(e) Effect of decision.—Administrative determinations and final decisions under this section shall have no value as precedent for future cases under this Act.

(f) Review of requisite amount in controversy.—The Administrator is authorized to review at least every three years, beginning with the third year after the enactment of the Act, the dollar amount defined in section 9(a) as a small claim, and based upon economic indexes selected by the Administrator adjust that level accordingly. (41 U.S.C. 608)

Actions in Court: Judicial Review of Board Decisions

Sec. 10. (a) Actions in United States Claims Court.—

(1) Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 6 to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of title 28, United States Code, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall

proceed de novo in accordance with the rules of the appropriate court.

(b) Finality of board decision.—In the event of an appeal by a contractor or the Government from a decision of any agency board pursuant to section 8, notwithstanding any contract provision, regulation, or rules of law to the contrary, the decision of the agency board on any question of law shall not be final or conclusive, but the decision on any question of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith or if such decision is not supported by substantial evidence.

(c) Remand or retention of case.—In any appeal by a contractor or the Government from a decision of an agency board pursuant to section 8, the court may render an opinion and judgment and remand the case for further action by the agency board or by the executive agency as appropriate, with such direction as the court considers just and proper, or, in its discretion and in lieu of remand it may retain the case and take such additional evidence or action as may be necessary for final disposition of the case.

(d) Consolidation.—If two or more suits arising from one contract are filed in the United States Court of Federal Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the United States Court of Federal Claims may order the consolidation of such suits in that court or transfer any suits to or among the agency boards involved.

(e) Judgments.—In any suit filed pursuant to this Act involving two or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one such claim can be divided for purposes of decision or judgment, and in any such suit where multiple parties are involved, the court, whenever such action is appropriate, may enter a judgment as to one or more but fewer than all of the claims, portions thereof, or parties. (41 U.S.C. 609)

Subpena, Discovery, and Deposition

Sec. 11. A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpena by a person who resides, is found, or transacts business within the jurisdiction Of a United States district court, the court, upon application of the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring him to appear before the agency board or a member thereof, to produce evidence or to give testimony, or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof. (41 U.S.C. 610)

Interest

Sec. 12. Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 6 (a) from the contractor until payment thereof. The interest provided for in this section shall be

paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92—41 (85 Stat. 97) for the Renegotiation Board. (41 U.S.C. 611)

Payment of Claims

Sec. 13. (a) Judgments.—Any judgment against the United States on a claim under this Act shall be paid promptly in accordance with the procedures provided by section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a).

(b) Monetary awards.—Any monetary award to a contractor by an agency board of contract appeals shall be paid promptly in accordance with the procedures contained in subsection (a) above.

(c) Reimbursements.—Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a) by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes.

(d) TVA.—

(1) Notwithstanding the provisions of subsection (a) through (c), any judgment against the Tennessee Valley Authority on a claim under this Act shall be paid promptly in accordance with the provisions of section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831(h)).

(2) Notwithstanding the provisions of subsection (a) through (c), any monetary award to a contractor by the board of contract appeals for the Tennessee Valley Authority shall be paid in accordance with the provisions of section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831(h)). (41 U.S.C. 612)

Severability Clause

Sec. 15. If any provision of this Act, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby. (41 U.S.C. 613)

Public Utility Regulatory Policies Act of 1978

- **Act of November 9, 1978 (P.L. 95-617, 92 Stat. 3117 as amended; 16 U.S.C. 824a-3, 2701, 2705, 2706, 2708)**

TITLE II — CERTAIN FEDERAL ENERGY REGULATORY COMMISSION AND DEPARTMENT OF ENERGY AUTHORITIES

* * * *

Cogeneration and Small Power Production

Sec. 210. (a) Cogeneration and Small Power Production Rules.—Not later than 1 year after November 9, 1978, the Commission shall prescribe, and from time to time thereafter revise, such rules as it determines necessary to encourage cogeneration and small power production, and to encourage geothermal small power production facilities of not more than 80 megawatts capacity, which rules require electric utilities to offer to—

(1) sell electric energy to qualifying cogeneration facilities and qualifying small power production facilities and

(2) purchase electric energy from such facilities. Such rules shall be prescribed, after consultation with representatives of Federal and State regulatory agencies having ratemaking authority for electric utilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments. Such rules shall include provisions respecting minimum reliability of qualifying cogeneration facilities and qualifying small power production facilities (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies. Such rules may not authorize a qualifying cogeneration facility or qualifying small power production facility to make any sale for purposes other than resale.

(b) Rates for Purchases by Electric Utilities.—The rules prescribed under subsection (a) shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

(1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and

(2) shall not discriminate against qualifying cogenerators or qualifying small power producers.

No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

* * * *

(d) Definition.—For purposes of this section, the term "incremental cost of alternative electric energy" means, with respect to electric energy purchased from a qualifying cogenerator or qualifying small power producer, the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power

producer, such utility would generate or purchase from another source.

(e) Exemptions.—(1) Not later than 1 year after November 9, 1978, and from time to time thereafter, the Commission shall, after consultation with representatives of State regulatory authorities, electric utilities, owners of cogeneration facilities and owners of small power production facilities, and after public notice and a reasonable opportunity for interested persons (including State and Federal agencies) to submit oral as well as written data, views, and arguments, prescribe rules under which geothermal small power production facilities of not more than 80 megawatts capacity, qualifying cogeneration facilities and qualifying small power production facilities are exempted in whole or part from the Federal Power Act, from the Public Utility Holding Company Act, from State laws and regulations respecting the rates, or respecting the financial or organizational regulation, of electric utilities, or from any combination of the foregoing, if the Commission determines such exception is necessary to encourage cogeneration and small power production.

(2) No qualifying small power production facility (other than a qualifying small power production facility which is an eligible solar, wind, waste, or geothermal facility as defined in section 3(17)(E) of the Federal Power Act) which has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), exceeds 30 megawatts, or 80 megawatts for a qualifying small power production facility using geothermal energy as the primary energy source, may be exempted under rules under paragraph (1) from any provision of law or regulation referred to in paragraph (1), except that any qualifying small power production facility which produces electric energy solely by the use of biomass as a primary energy source, may be exempted by the Commission under such rules from the Public Utility Holding Company Act and from State laws and regulations referred to in such paragraph (1).

(3) No qualifying small power production facility or qualifying cogeneration facility may be exempted under this subsection from—

(A) any State law or regulation in effect in a State pursuant to subsection (f),

(B) the provisions of section 210, 211, or 212 of the Federal Power Act or the necessary authorities for enforcement of any such provision under the Federal Power Act, or

(C) any license or permit requirement under part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

* * * *

(j) New dams and diversions.—Except for a hydroelectric project located at a Government dam (as defined in section 3(10) of the Federal Power Act at which non-Federal hydroelectric development is permissible, this section shall not apply to any hydroelectric project which impounds or diverts the water of a natural watercourse by means of a new dam or diversion unless the project meets each of the following requirements:

(1) At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water

quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

(2) At the time the application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

(3) The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(k) Definition of new dam or diversion.—For the purposes of this section, the term "new dam or diversion" means a dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices).

(l) Definitions.—For purposes of this section, the terms "small power production facility", qualifying small power production facility", "qualifying small power producer", "primary energy source", "cogeneration facility", "qualifying cogeneration facility", and "qualifying cogenerator" have the respective meanings provided for such terms under section 3 (17) and (18) of the Federal Power Act. (16 U.S.C. 824a-3)

* * * *

TITLE IV — SMALL HYDROELECTRIC POWER PROJECTS

Establishment of Program

Sec. 401. The Secretary shall establish a program in accordance with this title to encourage municipalities, electric cooperatives, industrial development agencies, nonprofit organizations, and other persons to undertake the development of small hydroelectric power projects in connection with existing dams which are not being used to generate electric power. (16 U.S.C. 2701)

* * * *

Simplified and Expeditious Licensing Procedures.

Sec. 405. (a) Establishment of Program.—The Commission shall establish, in such manner as the Commission deems appropriate, consistent with the applicable provisions of law, a program to use simple and expeditious licensing procedures under the Federal Power Act for small hydroelectric power projects in connection with existing dams.

(b) Prerequisites.—Before issuing any license under the Federal Power Act for the construction or operation

of any small hydroelectric power project the Commission—

(1) shall assess the safety of existing structures in any proposed project (including possible consequences associated with failure of such structures), and

(2) shall provide an opportunity for consultation with the Council on Environmental Quality and the Environmental Protection Agency with respect to the environmental effects of such project.

Nothing in this subsection exempts any such project from any requirement applicable to any such project under the National Environmental Policy Act of 1969, the Fish and Wildlife Coordination Act, the Endangered species Act, or any other provision of Federal law.

(c) Fish and Wildlife Facilities.—The Commission shall encourage applicants for licenses for small hydroelectric power projects to make use of public funds and other assistance for the design and construction of fish and wildlife facilities which may be required in connection with any development of such project.

(d) Exemptions from Licensing Requirements in Certain Cases.—The Commission may in its discretion (by rule or order) grant an exemption in whole or in part from the requirements (including the licensing requirements) of part I of the Federal Power Act to small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less, on a case-by-case basis or on the basis of classes or categories of projects, subject to the same limitations (to ensure protection for fish and wildlife as well as other environmental concerns) as those which are set forth in subsections (c) and (d) of section 30 of the Federal Power Act with respect to determinations made and exemptions granted under subsection (a) of such section 30; and subsections (c) and (d) of such section 30 shall apply with respect to actions taken and exemptions granted under this subsection. Except as specifically provided in this subsection, the granting of an exemption to a project under this subsection shall in no case have the effect of waiving or limiting the application (to such project) of the second sentence of subsection (b) of this section. (16 U.S.C. 2705)

New Impoundments.

Sec. 406. Nothing in this title authorizes (1) the loan of funds for construction of any new dam or other impoundment, or (2) the simple and expeditious licensing of any such new dam or other impoundment. (16 U.S.C. 2706)

* * * *

Definitions

Sec. 408. For purposes of this title, the term—

(1) "small hydroelectric power project" means any hydroelectric power project which is located at the site of any existing dam, which uses the water power potential of such dam, and which has not more than 30,000 kilowatts of installed capacity;

(2) "electric cooperative" means any cooperative association eligible to receive loans under section 4 of the Rural Electrification Act of 1936 (7 U.S.C. 904);

(3) "industrial development agency" means any agency which is permitted to issue obligations the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1954 (26 U.S.C. 103);

(4) "project costs" means the cost of acquisition or construction of

all facilities and services and the cost of acquisition of all land and interests in land used in the design and construction and operation of a small hydroelectric power project;

(5) "nonprofit organization" means any organization described in section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954 and exempt from tax under section 501(a) of such Code (but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying section 513(a) to such organization);

(6) "existing dam" means any dam, the construction of which was completed or on before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project;

(7) "municipality" has the meaning provided in section 3 of the Federal Power Act; and

(8) "person" has the meaning provided in section 3 of the Federal Power Act. (16 U.S.C. 2708)

(b) The requirement in subsection (a)(1) of this section that a project be located at the site of an existing dam in order to qualify as a small hydroelectric power project, and the other provisions of this chapter which require that a project be at or in connection with an existing dam (or utilize the potential of such dam) in order to be assisted under or included within such provisions, shall not be construed to exclude—

(1) from the definition contained in such subsection (a)(1), or

(2) from any other provision of this chapter, any project which utilizes or proposes to utilize natural water features for the generation of electricity, without the need for any dam or impoundment, in a manner which (as determined by the Commission) will achieve the purposes of this chapter and will do so without any adverse effect upon such natural water features. (16 U.S.C. 2708)

Archaeological Resources Protection Act of 1979

- **Act of October 31, 1979 (P.L. 96-95, 93 Stat. 721, as amended; 16 U.S.C. 470aa-470mm)**

Findings and Purpose

Sec. 2. (a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979. (16 U.S.C. 470aa)

Definitions

Sec. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of part human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or

instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

(i) the National Park System,

(ii) the National Wildlife Refuge System, or

(iii) the National Forest System; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. (16 U.S.C. 470bb)

Excavation and Removal

Sec. 4. (a) Any person may apply to the federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the

federal land manager, before issuing such permit, the federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such federal land manager upon assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431-433), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the governor of any State, the federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act. (16 U.S.C. 470cc)

Custody of Resources

Sec. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities,

museums, or other scientific or education institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 /U.S.C. 469-469c) or the Act of June 8, 1906 (16 U.S.C. 431-433). Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law,, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act. (16 U.S.C. 470dd)

Prohibited Acts and Criminal Penalties

Sec. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4 of this Act, a permit referred to in section 4(h)(2) of this Act, or the exemption contained in section 4(g)(1) of this Act.

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchase, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: *Provided, however,* That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on

the surface of the ground. (16 U.S.C. 470ee)

Civil Penalties

Sec. 7. (a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved. Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the federal land manager and shall sustain this action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty, the federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid

to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpeona served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the federal land manager or to appear and produce documents before the federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (16 U.S.C. 470ff)

Rewards; Forfeiture

Sec. 8. (a) Upon the certification of the federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 an amount equal to one-half of such penalty or fine, but not to exceed $500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6,

(2) assessment of a civil penalty against such person under section 7 with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section. (16 U.S.C. 470gg)

Confidentiality

Sec. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469-469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation, the federal land manager concerned shall provide to the governor information concerning the nature and location of archaeological resources within the State of the requesting governor. (16 U.S.C. 470hh)

Regulations; Intergovernmental Coordination

Sec. 10. (a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources. Each such land manager shall submit an annual report to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate regarding the actions taken under such program. (16 U.S.C. 470ii)

Cooperation with Private Individuals

Sec. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of

the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations. (16 U.S.C. 470jj)

Savings Provisions

Sec. 12. (a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land. (16 U.S.C. 470kk)

Report

Sec. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469-469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals. (16 U.S.C. 470*ll*)

Surveys

Sec. 14. The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall:

(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies. (16 U.S.C. 470mm)

ACTS OF THE 1980'S

Energy Security Act

- **Act of June 30, 1980 (P.L. 96-294, 94 Stat. 611; 42 U.S.C. 8801(note), 8854, 8855)**

* * * *

TITLE II—BIOMASS ENERGY AND ALCOHOL FUELS

Short Title

Sec. 201. This title may be cited as the "Biomass Energy and Alcohol Fuels Act of 1980." (42 U.S.C. 8801(note))

* * * *

Utilization of National Forest System in Wood Energy

Development Projects

Sec. 261. The Secretary of Agriculture may make available the timber resources of the National Forest System, in accordance with appropriate timber appraisal and sale procedures, for use by biomass energy projects. (42 U.S.C. 8854)

Forest Service Leases and Permits

Sec. 262. It is the intent of the Congress that the Secretary of Agriculture shall process applications for leases of National Forest System lands and for permits to explore, drill, and develop resources on land leased from the Forest Service, notwithstanding the current status of any plan being prepared under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604). (42 U.S.C. 8855)

National Aquaculture Act of 1980

- **Act of September 26, 1980 (P.L. 96-362, 94 Stat. 1198, 16 U.S.C. 2801 (note), 2801, 2802, 2803; 15 U.S.C. 1511 (note); 16 U.S.C. 2804, 2805; 42 U.S.C. 6601 (note); 16 U.S.C. 2806-2810**

Short Title

Sec. 1. This Act may be cited as the "National Aquaculture Act of 1980". (16 U.S.C. 2801(note))

Findings, Purpose, and Policy

Sec. 2. (a) Findings.—Congress finds the following:

(1) The harvest of certain species of fish and shellfish exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and shellfish, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 13 percent of world seafood production, less than 6 percent of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

(4) Aquacultural production of aquatic plants can provide sources of food, industrial materials, pharmaceuticals, and energy, and can assist in the control and abatement of pollution.

(5) The rehabilitation and enhancement of fish and shellfish resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States must rest with the private sector.

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many scientific, economic, legal, and production factors, such as in adequate credit, diffused legal jurisdiction, the lack of management information, the lack of supportive government policies, and the lack of reliable supplies of seed stock.

(8) Many areas of the United States are suitable for aquaculture, but are subject to land-use or water--use management policies that do not adequately consider the potential for aquaculture and may inhibit the development of aquaculture.

(b) Purpose.—It is the purpose of this Act to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national aquaculture development plan;

(3) establishing the Department of Agriculture as the lead Federal agency with respect to the coordination and dissemination of national aquaculture information by designating the Secretary of Agriculture as the permanent chairman of the coordinating group and by establishing a National Aquaculture Information Center within the Department of Agriculture; and

(4) encouraging aquaculture activities and programs in both the

public and private sectors of the economy, that will result in increased aquacultural production, the coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) Policy.—Congress declares that aquaculture has the potential for reducing the United States trade deficit in fisheries products, for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States. (16 U.S.C. 2801)

Definitions

Sec. 3. As used in this Act, unless the context otherwise requires—

(1) The term "aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those states where such ranching is prohibited by law).

(2) The term "aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture and is located in any State. Such term includes, but is not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

(3) The term "aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant.

(4) The term "coordinating group" means the interagency aquaculture coordinating group established by section 6.

(5) The term "person" means any individual who is a citizen or national of the United States or of any State, any Indian tribe, any institution of higher education, and any corporation, partnership, association or other entity (including, but not limited to, any community development corporation, producer cooperative, or fishermen's cooperative) organized or existing under the laws of any State.

(6) The term "Plan" means the National Aquaculture Development Plan required to be established under section 4.

(7) The term "Secretaries" means the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Interior.

(8) The term "Secretary" means the Secretary of Agriculture.

(9) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States. (16 U.S.C. 2802)

National Aquaculture Development Plan

Sec. 4. (a) In general.—

(1) Within eighteen months after the date of the enactment of this Act, the Secretaries shall establish the National Aquaculture Development Plan.

(2) In developing the Plan, and revisions thereto under subsection

(d), beginning not later than six months after the date of enactment of this Act, the Secretary shall consult with the Secretary of Commerce and the Secretary of the Interior, other appropriate Federal officers, States, regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852), and representatives of the aquaculture industry. In addition, the Secretary shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(b) Contents of Plan.—The Plan shall—

(1) identify aquatic species that the Secretaries determine have significant potential for culturing on a commercial or other basis;

(2) recommend actions to be taken by the public and private sectors (which may include, but are not limited to, research and development, technical assistance, demonstration, extension education, and training activities) that are necessary to achieve such potential;

(3) address, after taking into account the status of aquaculture regarding the aquatic species concerned—

(A) aquaculture facility design and operation,

(B) water quality management,

(C) use of waste products (including thermal effluents),

(D) nutrition and the development of economical feeds,

(E) life history, genetics, physiology, pathology, and disease control (including research regarding organisms that may not be harmful to fish and shellfish, but are harmful to humans,

(F) processing and market development,

(G) production management and quality control and,

(H) the development of adequate supplies of seed stock;

(4) include, where appropriate, research programs on the effect of aquaculture on estuarine and other water areas and on the management of such areas for aquaculture;

(5) include, where appropriate, programs to analyze, and formulate proposed resolutions of, the legal or regulatory constraints that may affect aquaculture; and

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretaries deem necessary or appropriate to carry out this Act. In formulating the Plan, the Secretaries shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person, and (ii) may affect the implementation of the Plan.

(c) Actions and Implementation.—The Plan shall specify—

(1) with respect to those actions that the Secretary determines should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (including, but not limited to, Reorganization Plan Numbered 4 of 1970); (15 U.S.C. 1511 (note)) and

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to he action required under the activity concerned.

(C) the concurrence of the Secretaries.

(d) Revision of Plan.—The Secretaries shall undertake periodic reviews of the operation and effectiveness of the Plan. If as a result of any such review, or the aquaculture assessment required under subsection (e), the Secretaries determine that—

(1) any aquatic species not currently identified in the Plan has significant potential for aquaculture;

(2) any action specified in the Plan is not being accomplished on a successful and timely basis; or

(3) any action specified in the Plan should be terminated because its objectives have been achieved or its projected benefits do not warrant further support;

the Secretaries shall appropriately amend the Plan.

(e) Continuing Aquaculture Assessment.—The Secretaries, through the coordinating group, shall undertake a continuing assessment of aquaculture in the United States for the purpose of maintaining, on a continuing basis—

(1) a complete profile of the aquacultural industry with respect to the incidence, size, and status of commercial aquacultural enterprises;

(2) the identification of the private and public institutions and organizations involved in aquacultural research, extension, credit, and market development;

(3) the identification of the various aquatic species being cultured and a description of the status of commercial development of each of those species;

(4) to the extent practicable, the identification of aquacultural production regions, species, and markets that have significant potential for development;

(5) a catalog describing all Federal programs and activities that directly or indirectly encourage, support, or assist aquaculture; and

(6) the identification of the economic, physical, legal, institutional, and social constraints that inhibit the development of aquaculture in the United States. (16 U.S.C. 2803)

Functions and Powers of Secretaries

Sec. 5. (a) Mandatory functions.—In implementing the Plan, the Secretaries shall—

(1) provide advisory, educational, and technical assistance (including training) with respect to aquaculture to interested persons, and in providing such assistance, shall, to the maximum extent practicable, avoid duplication of similar assistance provided by other Federal departments and agencies and by State agencies;

(2) consult and cooperate with interested persons, Federal departments and agencies, State agencies, and regional fishery management councils established under section 302 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1852);

(3) encourage the implementation of aquacultural technology in the rehabilitation and enhancement of publicly owned fish and shellfish stocks (including rehabilitation and enhancement by private nonprofit enterprises), and in the development of private commercial aquacultural enterprises; and

(4) prescribe such regulations as may be necessary to carry out the Plan.

(b) Discretionary Functions.—In implementing the Plan, the Secretaries may—

(1) for the purposes of assessing the biological, technical, and economic feasibility of any aquacultural system—

(A) conduct tests of the system, and, if necessary to demonstrate its feasibility, construct, operate, and maintain developmental aquaculture facilities for testing laboratory results, and

(B) conduct such other tests or analyses as may be necessary;

(2) develop method to enhance seed stocks of aquatic species; and

(3) conduct such other tests or analyses or take such other actions as the Secretaries deem necessary or appropriate.

(c) Information services.—

(1) In addition to performing such other mandatory functions under this Act,—

(A) the Secretaries shall collect and analyze scientific, technical, legal, and economic information relating to aquaculture, including acreages, water use, production, marketing, culture techniques, and other relevant matter;

(B) the Secretary shall—

(i) establish, within the Department of Agriculture, a National Aquaculture Information Center that shall serve as a repository for the information generated under subparagraph (A) and other provisions of this chapter and shall, on a request basis, make that information available to the public,

(ii) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service, and

(iii) conduct a study of the extent to which the United States aquaculture industry has access to relevant Federal programs which assist the agricultural sector and report to Congress on the findings of such study by December 31, 1986;

(C) the Secretary of Commerce shall conduct a study, and report to Congress thereon by December 31, 1987, to determine whether existing capture fisheries could be adversely affected by competition form products produced by commercial aquacultural enterprises and include in such study an assessment of any adverse effect, by species and by geographical region, on such fisheries and recommend measures to ameliorate any such effect; and

(D) the Secretary of the Interior, in consultation with the Secretary of Commerce, shall undertake a study, and report to Congress thereon by December 31, 1987, to identify exotic species introduced into the United States waters as a result of aquaculture activities, and to determine the potential benefits and impacts of the introduction of exotic species.

(2) Any production information submitted to the Secretaries under paragraph (1)(A) shall be confidential and may only be disclosed if required under court order. The Secretaries shall preserve such to confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) Biennial report.—The Secretaries, through the coordinating group and in consultation with the Secretary of Commerce and the Secretary of the Interior, shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, an explanation of any revisions made

to the Plan under section 4(d) during the reporting period, and such other comments and recommendations as the Secretary deem appropriate. The first report required under this subsection shall be submitted to Congress no later than February 1, 1, 1988. (16 U.S.C. 2804)

Coordination of National Activities Regarding Aquaculture

Sec. 6. (a) Establishment.—There is established within the Office of Science and Technology Policy an interagency aquaculture coordinating group that shall, subject to subsection (f), operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978 (42 U.S.C. 6601 (note)). The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture, who shall be the permanent chairman of the coordinating group.

(2) The Secretary of Commerce.

(3) The Secretary of the Interior.

(4) The Secretary of Energy.

(5) The Secretary of Health and Human Services.

(6) The Administrator of the Environmental Protection Agency.

(7) The Chief of Engineers.

(8) The Administrator of the Small Business Administration.

(9) The Administrator of the Agency for International Development.

(10) The Chairman of the Tennessee Valley Authority.

(11) The Director of the National Science Foundation.

(12) The Governor of the Farm Credit Administration.

(13) The heads of such other Federal agencies as are deemed appropriate by the Director of the Office of Science and Technology Policy (hereinafter in this section referred to as the "Director"), after consultation with the coordinating group.

(b) Purpose and functions.—The purpose of the coordinating group is to increase the overall effectiveness and productivity of Federal aquaculture research, transfer, and assistance programs. In fulfilling this purpose the coordinating group shall—

(1) review the national needs for aquaculture research, transfer, and assistance;

(2) assess the effectiveness and adequacy of Federal efforts to meet those national needs;

(3) undertake planning, coordination, and communication among Federal agencies engaged in the science, engineering, and technology of aquaculture;

(4) collect, compile, and disseminate information on aquaculture;

(5) encourage joint programs among Federal agencies in areas of mutual interest; and

(6) recommend to the Federal Council specific actions on issues, problems, plans, and programs in aquaculture.

(c) Reports.—The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(d) Federal Consistency.—Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement

of the purpose and policy of this Act, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this Act.

(e) Functions if Federal Council terminated.—If at any time after the date of the enactment of this Act, the functions of the Federal Council are by executive action terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) and the reports required under subsection (d) shall be made to the Director. (16 U.S.C. 2805)

Contracts and Grants

Sec. 7. (a) In general.—Secretaries may each carry out any action that such Secretary is responsible for implementing under the Plan through grants to, or contracts with, any person, any other Federal department or agency, any State agency, or any regional commission.

(b) Terms and conditions.—Any contract entered into, or any grant made, under subsection (a) shall contain such terms and conditions as the Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. No contract may be entered into, and no grant may be made under subsection (a), for any purpose that is in violation of any applicable State or local law.

(c) Limitation.—The amount of any grant made under subsection(a) may not exceed an amount equal to one-half the estimated cost of the project for which the grant is made.

(d) Audit.—Each recipient of a grant or contract under this section shall make available to the Secretary concerned and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper, or record that is pertinent to the funds received under such grant or contract. (16 U.S.C. 2806)

Capital Requirements for Aquaculture

Sec. 8. (a) Capital Requirements Study.—The Secretaries, through the coordinating group, shall conduct within twelve months after the date of enactment of this Act, a study of the capital requirements of the United States aquaculture industry. The study shall—

(1) document and analyze any capital constraints that affect the development of aquaculture in the United States; and

(2) evaluate the role that appropriate Federal financial assistance does or could play in filling gaps in the normal credit market with respect to aquaculture. The study will identify the capital needs of the United States aquaculture industry, with emphasis on the needs that are not being filled either in normal credit channels or through government programs for direct loans, loan guarantees, disaster loans, and insurance. Upon its completion, the Secretaries shall submit the results of the study to Congress.

(b) Capital Requirements Plan.—Based on the results of the Capital Requirements Study conducted under subsection (a), and within six months of the completion of the study, the Secretaries shall formulate a plan for acting on the study's findings. The plan shall include—

(1) those Federal actions, if any, found to be necessary to meet financial needs unmet through normal credit channels and existing Federal programs; and

(2) recommendations, if any, for legislative actions. Upon completion, the plan shall be submitted to Congress. (16 U.S.C. 2807)

Regulatory Constraints on Aquaculture

Sec. 9. (a) Regulatory Constraints Study.—The Secretaries, through the coordinating group, shall conduct, within twelve months after the date of enactment of this Act, a study of the State and Federal regulatory restrictions to aquaculture development in the United States. The study shall—

(1) include a literature review and a descriptive list identifying the parameters of the issue;

(2) identify and list relevant current and pending Federal regulations restricting the development of commercial aquaculture operations;

(3) identify and list relevant current State regulations restricting the development of commercial aquaculture operations in five States selected randomly in five separate geographic regions of the United States;

(4) conduct case studies of ten commercial aquaculture operations in the United States representing a wide range of marine and fresh water species to determine the practical effects of regulatory restrictions on aquaculture; and

(5) develop a flow-chart time line using the information obtained by means of paragraphs (1) through (4) to identify those regulations and restrictions that could have the most detrimental effect in establishing commercial aquaculture operations in the United States. Upon completion of the study, the Secretaries shall submit its results to Congress.

(b) Regulatory Constraints Plan.—Based on the results of the Regulatory Constraints Study conducted under subsection (a), and within six months of the study's completion, the Secretaries shall formulate a plan for acting on the study's findings. The plan will contain specific steps the Federal Government can take to remove unnecessarily burdensome regulatory barriers to the initiation and operation of commercial aquaculture ventures. Upon its completion the Secretaries shall submit the plan to Congress. (16 U.S.C. 2808)

Authorizations for Appropriations

Sec. 10. For purposes of carrying out the provisions of this Act, there are authorized to be appropriated—

(1) to the Department of Agriculture, $1,000,000 for each of the fiscal years 1991, 1992, and 1993;

(2) to the Department of Commerce, $1,000,000 for each of the fiscal years 1991, 1992, and 1993; and

(3) to the Department of Interior, $1,000,000 for each of the fiscal years 1991, 1992, and 1993

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act. (16 U.S.C. 2809)

Disclaimer

Sec. 11. Nothing in this Act shall be construed to amend repeal, or otherwise modify the authority of any Federal Officer, department, or agency to perform any function, responsibility, or activity authorized under any other Provision of law. (16 U.S.C. 2810)

Fish and Wildlife Conservation Act of 1980

- **Act of September 29, 1980 (P.L. 96-366, 96 Stat. 1322, 16 U.S.C. 2901(note), 2901-2904; 16 U.S.C. 2905-2911)**

Short Title

Sec. 1. That this Act may be cited as the "Fish and Wildlife Conservation Act of 1980". (16 U.S.C. 2901 (note))

Declaration of Findings and Purpose

Sec. 2. (a) Findings.—The Congress finds and declares the following—

(1) Fish and wildlife are of ecological, educational, aesthetic, cultural, recreational, economic, and scientific value to the Nation.

(2) The improved conservation and management of fish and wildlife, particularly nongame fish and wildlife, will assist in restoring and maintaining fish and wildlife and in assuring a productive and more aesthetically pleasing environment for all citizens.

(3) Many citizens, particularly those residing in urban areas, have insufficient opportunity to participate in recreational and other programs designed to foster human interaction with fish and wildlife and thereby are unable to have a greater appreciation and awareness of the environment.

(4) Historically, fish and wildlife conservation programs have been focused on the more recreationally and commercially important species within any particular ecosystem. As a consequence such programs have been largely financed by hunting and fishing license revenues or excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the conservation needs of nongame fish and wildlife.

(5) Each State should be encouraged to develop, revise, and implement, in consultation with appropriate Federal, State, and local and regional agencies, a plan for the conservation of fish and wildlife, particularly those species which are indigenous to the State.

(b) Purpose.—It is the purpose of this Act—

(1) to provide financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife; and

(2) to encourage all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act. (16 U.S.C. 2901)

Definitions

Sec. 3. As used in this act—

(1) The term "approved conservation plan" means the conservation plan of a State approved by the Secretary pursuant to section 5(a) of this Act.

(2) The term "conservation plan" means a plan developed by a

State for the conservation of fish and wildlife which meets the requirements set forth in section 4.

(3) The terms "conserve", "conserving", and "conservation" mean to use, and the use of, such methods and procedures which are necessary to ensure, to the maximum extent practicable, the well being and enhancement of fish and wildlife and their habitats for the ecological, educational, aesthetic, cultural, recreational, and scientific enrichment of the public. Such methods and procedures may include, but are not limited to, any activity associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, maintenance, development, information, education, population manipulation, propagation, technical assistance to private landowners, live trapping, and transplantation.

(4) The term "designated State agency" means the commission, department, division, or other agency of a State which has primary legal authority for the conservation of fish and wildlife. If any State has placed such authority in more than one agency, "such term" means each such agency acting with respect to its assigned responsibilities but such agencies, for purposes of this Act, shall submit a single conservation plan.

(5) The term "fish and wildlife" means wild vertebrate animals that are in an unconfined state, including, but not limited to, nongame fish and wildlife.

(6) The term "nongame fish and wildlife" means wild vertebrate animals that are in an unconfined state and that—

(A) are not ordinarily taken for sport, fur, or food, except that if under applicable State law, any of such animals may be taken for sport, fur, or food in some, but not all, areas of the State, any such animals within any area of the State in which such taking is not permitted may be deemed to be nongame fish and wildlife;

(B) are not listed as endangered species under the Endangered Species Act of 1973 (16 U.S.C 1531-1543); and

(C) are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)).

Such term does not include any domesticated species that has reverted to a feral existence.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. (16 U.S.C. 2902)

Conservation Plans

Sec. 4. The conservation plan for any State must—

(1) provide for the vesting in the designated State agency of the overall responsibility for the development and revision of the conservation plan;

(2) provide for an inventory of the nongame fish and wildlife, and such other fish and wildlife as the designated State agency deems appropriate, that are within the State and are valued for ecological, educational, aesthetic, cultural, recreational, economic, or scientific benefits by the public;

(3) with respect to those species identified under paragraph (2) (hereinafter in this section referred to as "plan species"), provide for—

(A) the determination of the size, range, and distribution of their populations, and

(B) the identification of the extent, condition, and location of their significant habitats;

(4) identify the significant problems which may adversely affect the plan species and their significant habitats;

(5) determine those actions which should be taken to conserve the plan species and their significant habitats;

(6) establish priorities implementing the conservation actions determined under paragraph(5);

(7) provide for the monitoring, on a regular basis, of the plan species and the effectiveness of the conservation actions determined under paragraph (5);

(8) provide for plan review and revision, if appropriate, at intervals of not more than 3 years;

(9) ensure that the public be given opportunity to make its views known and considered during the development, revision, and implementation of the plan; and

(10) provide that the designated State agency consult, as appropriate, with Federal agencies, and other State agencies during the development, revision, and implementation of the plan, in order to minimize duplication of efforts and to ensure that the best information is available to all such agencies. (16 U.S.C. 2903)

Approval of Conservation Plans and Certain Nongame Fish and Wildlife Conservation Actions

Sec. 5. (a) Approval by Secretary of Plans.—

(1) Any State may apply to the Secretary for approval of a conservation plan.

(2) Applications for the approval of conservation plans shall be made and reviewed by the Secretary in such manner as the Secretary shall by regulation prescribe.

(3) As soon as practicable, but not later than 180 days, after the date on which a State submits (or resubmits in the case of prior disapproval) an application for the approval of a conservation plan the Secretary shall—

(A) approve the conservation plan, and designate it as an approved conservation plan, if he determines that the plan—

(i) meets the requirements set forth in section 4, and

(ii)is substantial in character and design; or

(B) disapprove the conservation plan if he determines that—

(i) the plan does not meet the requirements set forth in section 4, or

(ii) to implement any part of the plan on the basis of the specifications, determinations, identifications, or priorities therein would threaten the natural stability and continued viability of any of the plan species concerned.

If the Secretary disapproves a plan, he shall give the State concerned a written statement of the reasons for disapproval and provide the State opportunity for consultation with respect to deficiencies in the plan and modifications required for approval.

(b) Effect of approval of plans.—If the Secretary approves the conservation plan of any State under subsection (a)—

(1) that portion of such plan that pertains to wildlife conservation shall be deemed to be an approved plan for purposes of section 6(a)(1) of the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act; and

(2) that portion of such plan that pertains to fish conservation

shall be deemed to be an approved plan for the purposes of section 6(a)(1) of the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(c) Conservation actions.—If the Secretary approves the conservation plan of any State under subsection (a), those conservation actions set forth in the plan which pertain to nongame fish and wildlife shall be deemed to be eligible as nongame fish and wildlife projects for which reimbursement is available under section 6.

(d) Nongame conservation actions in the absence of an approved plan.—In the absence of an approved conservation plan, and on a showing of need by the State, the Secretary may deem certain conservation actions to be nongame fish and wildlife projects for which reimbursement is available under section 6(a)(3) if they—

(1) are consistent with such of the requirements set forth in section 4 as may be appropriate, including, but not limited to, the requirements in paragraphs (3), (4), (5), and (7) of such section; and

(2) are substantial in character and design. (16 U.S.C. 2904)

Reimbursement of State Costs for Developing, Revising, and Implementing Conservation Plans and Implementing Certain Nongame Fish and Wildlife Conservation Actions

Sec. 6. (a) In general.—Any State may apply to the Secretary for reimbursement under this section for costs incurred by the State for the following:

(1) The development of a conservation plan.

(2) The revision of an approved conservation plan.

(3) The implementation of nongame fish and wildlife conservation actions approved under section 5(c) and (d).

(4) The implementation of conservation actions specified in an approved conservation plan.

(5) The coordination, consolidation, or implementation of the conservation plan or conservation actions approved under this Act with other related plans or actions developed pursuant to the Act of September 2, 1937 (16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act and the Act of August 9, 1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act.

(b) Applications.—Application for reimbursement under this section shall be made in such manner as the Secretary shall by regulation prescribe and shall contain such information as is necessary to enable the Secretary to determine whether the State meets the eligibility requirements set forth in subsection (c).

(c) Eligibility.—No State is eligible for reimbursement under this section unless the Secretary finds that the costs, for which reimbursement is sought, have been incurred by the State as follows:

(1) If reimbursement is sought under subsection (a)(1), such costs have been incurred in developing a conservation plan that meets the requirements set forth in section 4.

(2) If reimbursement is sought under subsection (a)(2), such costs have been incurred in revising the plan in a manner consistent with such requirements.

(3) If reimbursement is sought under subsection (a)(3), such costs have been incurred in implementing the conservation actions as approved by the Secretary.

(4) If reimbursement is sought under subsection (a)(4), such costs have been incurred in implementing conservation actions specified in, and in a manner consistent with, the approved conservation plan.

(5) If reimbursement is sought under section (a)(5), such costs have been incurred in consolidating, coordinating or implementing conservation plans and actions approved under this Act with approved plans and actions under the Act of August 9,1950 (16 U.S.C. 777c(a)(1)), commonly referred to as the Dingell-Johnson Sport Fish Restoration Act and the Act of September 2, 1937(16 U.S.C. 669e(a)(1)), commonly referred to as the Pittman-Robertson Wildlife Restoration Act in a manner consistent with sections 2 and 4 of this Act.

(d) Reimbursement.— Subject to the limitations in subsection (c) and the terms and conditions imposed under section 7, and to the availability of finds appropriated under section 11, the Secretary shall reimburse each State which the Secretary finds to be eligible therefor under subsection (c).

(e) Limitations.—(1) The total amount of the reimbursement paid to any State under this section with respect to any fiscal year may not exceed the allocation available to the State under section 8 for such year.

(2) No reimbursement may be paid under this section to any State for any cost incurred by the State during any fiscal year—

(A) after September 30, 1991, in developing a conservation plan;

(B) after September 30, 1986, for costs incurred in implementing certain nongame fish and wildlife actions approved under section 5(d);

(C) in which less than 80 percent of the costs to be reimbursed are for the principal benefit of nongame fish and wildlife or the users of nongame fish and wildlife; (D) in implementing an approved conservation plan, unless the cost was incurred in implementing actions approved under section 5(c) or (d);

(E) in implementing an approved conservation plan covering only nongame fish and wildlife, or any nongame fish and wildlife conservation action approved under section 5 (c) or (d), to the extent that more than 10 percent of such costs are paid for with moneys collected during such year by the State

(i) from the sale of hunting, fishing, and trapping licenses, and

(ii) as penalties (including forfeitures) for violations of the hunting, fishing, and trapping laws of the State; or

(F) in implementing an approved conservation plan or any nongame fish and wildlife conservation action approved under section 5(c) or (d),to the extent that—

(i) more than 10 percent of such costs are applied for purposes of conservation law enforcement under any such plan or action, and

(ii) more than 10 percent of such costs in any such year are accounted for by personal service or other inkind contributions.

(3) The amount of the reimbursement paid to any State under this section with respect to any fiscal year—

(A) may not exceed 75 percent for the development of a conservation plan except that during fiscal years 1982, 1983, and 1984 such amount shall not exceed 90 percent;

(B) for the implementation of nongame fish and wildlife conservation actions approved under section 5(c) or (d), may not exceed 75 percent of the cost of implementing the action during such fiscal

year, except that if such action is undertaken by two or more States such amount shall not exceed 90 percent;

(C) during and after the fiscal year in which the conservation plan of the State is approved under section 5(a), may not exceed 75 percent of the cost of implementing and revising conservation plan during such fiscal year, or if two or more States cooperate in implementing or revising such plan, such cost shall not exceed 90 percent, and

(D) after September 30, 1991, may not exceed

(i) 50 percent of the cost of implementing and revising the plan during the fiscal year, if the approved conservation plan of the State covers only nongame fish and wildlife, or

(ii) 75 percent of the cost of implementing and revising the plan during such fiscal year, if the approved conservation plan of the State coordinates and consolidates planning for fish and wildlife.

(4)(A) In computing the costs incurred by any State during any fiscal year in developing or revising conservation plans, in implementing approved conservation plans, or in implementing nongame fish and wildlife conservation actions approved under section 5(c) or (d), for which reimbursement may be available under this section, the Secretary shall—

(i) take into account, in addition to each outlay, the value of inkind contributions and real and personal property received and applied during such year by the State for such purposes; and

(ii) not include any other Federal moneys received by such State and applied by it, directly or indirectly for such purposes.

(B) For purposes of subparagraph (A), inkind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies regarding fish and wildlife. The Secretary shall by regulation establish (i) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as in kind contributions; and (ii) the standards under which the Secretary will determine the value of inkind contributions and real and personal property for purposes of subparagraph (A).

(C) Any valuation determination made by the Secretary for purposes of this paragraph shall be final and conclusive. (16 U.S.C. 2905)

Terms and Conditions of Reimbursement

Sec. 7. Reimbursements made to the States under section 6 shall be subject to such terms and conditions as the Secretary shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States. Such terms and conditions shall include, but not be limited to, the following:

(1) Each State and each designated State agency shall keep such records as the Secretary shall require as being necessary or appropriate for fully disclosing the amount and purposes of costs incurred by the State for which reimbursement under section 6 is, or may be, sought. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to such records.

(2) Upon a finding by the Secretary, after notice and opportunity for an agency hearing on the record, that any State received reimbursement under section 6 for

which it is not eligible, or has violated any term or condition imposed under this section, the State shall thereafter be ineligible to receive reimbursement under such section until restitution satisfactory to the Secretary is made, such violation ceases, or adverse effects resulting from such violation are remedied. (16 U.S.C. 2906)

Allocation of Funds for Administration and Reimbursement of States

Sec 8. (a) In general.—The total amount appropriated pursuant to section 11 for any fiscal year shall be available for administration and for allocation among the States as provided in this section.

(b) Allocation formula.—Of the total amount appropriated for any year pursuant to section 11—

(1) the Secretary shall deduct so much, but not to exceed 8 percent thereof, as may be necessary for administering during such fiscal year the provisions of this Act relating to the purposes for which so appropriated;

(2) less the deduction under paragraph (1), the Secretary shall allocate—

(A) for the District of Columbia and the Commonwealth of Puerto Rico each a sum equal to not more than one-half of 1 percent of such amount; and

(B) for Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands each a sum equal to not more than one-sixth of 1 percent of such amount; and

(3) less the deduction under paragraph (1) and the sums allocated under paragraph b (2), the Secretary shall allocate for each of the States (other than those provided for in paragraph (2)) a sum—

(A) one-third of which is based on the ratio to which the area of such State bears to the total area of all such States, and

(B) two-thirds of which is based on the ratio to which the population of such State bears to the total population of all such States, except all sums allocated under this paragraph shall be adjusted equitably so that no State shall be allocated a sum which is less than one-half of 1 percent of the amount available for allocation under this paragraph for any fiscal year or more than 5 percent of such amount.

(c) Treatment of amounts allocated but not used for any fiscal year.—

(1) That portion of any amount deducted by the Secretary under subsection (b)(1) for administrative purposes for any fiscal year and not expended during such fiscal year shall remain available for administrative purposes until the close of the next succeeding fiscal year and if not obligated or expended by the close of such succeeding fiscal year shall be available for disbursement by the Secretary without regard to subsection (b), to the States to carry out the purposes of this Act

(2) That portion of any amount allocated to any State under subsection (b) (2) or (3) for any fiscal year and not disbursed to the State for such fiscal years under section 6 shall remain available for disbursement to the State under such section for the next succeeding fiscal year and if not disbursed for such succeeding fiscal year shall be available for disbursement by the Secretary, without regard to subsection (b), to the States to carry out the purpose of this Act. (16 U.S.C. 2907)

Other Federal Assistance and Actions

Sec. 9. The Secretary and the chief executive officer of any other appropriate Federal department or agency may loan to any State such personnel and equipment of the department or agency, share such scientific or other appropriate information, and provide such other assistance as the Secretary or officer determines appropriate for purposes of assisting any State to develop or revise conservation plans. (16 U.S.C. 2908)

Disclaimers

Sec. 10. Nothing in this Act shall be construed as affecting—

(1) the authority, jurisdiction, or responsibility of the States to manage, control, or rate fish and resident wildlife under State law;

(2) any requirement under State law that lands, waters, and interests therein may only be acquired for conservation purposes if the owner thereof is a willing seller; and

(3) the authority of the Secretary Agriculture under the Act of March 2, 1931 (46 Stat. 1468-1469; 7 U.S.C. 426-426b). (16 U.S.C. 2909)

Authorization of Appropriations

Sec 11. There are authorized to be appropriated for purposes of reimbursements under section 6 to States for the development and implementation of conservation plans and for administration of this Act under section 8 not to exceed $5,000,000 for each of fiscal years 1992, 1993, 1994, and 1995, 1996, and 1997. (16 U.S.C. 2910)

Study on Most Equitable and Effective Mechanism for Funding State Conservation Plans; Report to Congressional Committees

Sec. 12. The Director of the United States Fish and Wildlife Service, in consultation with affected parties, shall conduct a comprehensive study to determine the most equitable and effective mechanism for funding State conservation plans and actions under this chapter, including, but not limited to, funding by means of an excise tax on appropriate items. On or before December 31, 1984, the Director shall report to the Committee on Environment and Public Works of the Senate and to the Committee on Merchant Marine and Fisheries of the House of Representatives the results of such study, together with his recommendations with respect thereto. (16 U.S.C. 2911)

Reforestation Tax Incentives and Trust Fund

- **Act of October 14, 1980 (P.L. 96-451, Title III, 94 Stat. 1983 as amended; 26 U.S.C. various sections, 16 U.S.C. 1606a)**

Note—This is Title III of the Recreational Boating Safety and Facilities Act of 1980

* * * *

TITLE III—REFORESTATION

Amortization of Reforestation Expenditures

Sec. 301. (a) In general.—Part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"**Sec. 194.** Amortization of Reforestation Expenditures.

"(a) Allowance of Deduction.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall be entitled to a deduction with respect to the amortization of the amortizable basis of qualified timber property based on a period of 84 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The 84-month period shall begin on the first day of the first month of the second half of the taxable year in which the amortizable basis is acquired.

"(b) Limitations.—

"(1) Maximum dollar amount.—The aggregate amount of amortizable basis acquired during the taxable year which may be taken into account under subsection (a) for such taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 143)).

"(2) Allocation of dollar limit.—

"(A) Controlled group.—For purposes of applying the dollar limitation under paragraph (1)—

"(i) all component members of a controlled group shall be treated as one taxpayer, and

"(ii) the Secretary shall, under regulations prescribed by him, apportion such dollar limitation among the component members of such controlled group.

"For purposes of the preceding sentence, the term 'controlled group' has the meaning assigned to it by section 1563(a), except that the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1). (26 U.S.C. 1563)

"(B) Partnerships.—In the case of a partnership, the dollar limitation contained in paragraph (1) shall apply with respect to the partnership and with respect to each partner.

"(3) Section not to apply to trusts.—This section shall not apply to trusts.

"(4) Estates.—The benefit of the deduction for amortization provided by this section shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under this section to such beneficiary.

"(c) Definitions and Special Rule.—For purposes of this section—

"(1) Qualified timber property.—The term 'qualified timber property' means a woodlot or other site located in the United States which will contain trees in significant commercial quantities and which is held by the taxpayer for the planting, cultivating, caring for, and cutting of trees for sale or use in the commercial production of timber products.

"(2) Amortizable basis.—The term 'amortizable basis' means that portion of the basis of the qualified timber property attributable to reforestation expenditures.

"(3) Reforestation expenditures.—

"(A) In general.—The term 'reforestation expenditures' means direct costs incurred in connection with forestation or reforestation by planting or artificial or natural seeding, including costs—

"(i) for the preparation of the site;

"(ii) of seeds or seedlings; and

"(iii) for labor and tools, including depreciation of equipment such as tractors, trucks, tree planters, and similar machines used in planting or seeding.

"(B)Cost-sharing programs.—Reforestation expenditures shall not include any expenditures for which the taxpayer has been reimbursed under any governmental reforestation cost-sharing program unless the amounts reimbursed have been included in the gross income of the taxpayer.

"(4) Basis allocation.—If the amount of the amortizable basis acquired during the taxable year of all qualified timber property with respect to which the taxpayer has made an election under subsection (a) exceeds the amount of the limitation under subsection (b)(1), the taxpayer shall allocate that portion of such amortizable basis with respect to which a deduction is allowable under subsection (a) to each such qualified timber property in such manner as the Secretary may by regulations prescribe.

"(d) Life tenant and remainderman.—In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant." (26 U.S.C. 194)

* * * *

(b) Adjusted gross income.—Section 62 of such Code (relating to definition of adjusted gross income) is amended by inserting after paragraph (14) the following:

"(15) Reforestation expenses.—The deduction allowed by section 194." (26 U.S.C. 62)

(c) Conforming amendments.—

(1)(A) Paragraph (2) of section 1245(a) of such Code (relating to gain from dispositions of certain depreciable property) is amended by striking out "190, 193" each place it

appears and inserting in lieu thereof "190, 193, 194."

(B) Paragraphs (2) and (3)(D) of such section 1245(a) are each amended by striking out "or 193" and inserting "193, or 194."

(C) Section 1245(b) of such Code (relating to exceptions and limitations) is amended by adding at the end thereof the following new paragraph:

"(8) Timber property.—In determining, under subsection (a)(2), the recomputed basis of property with respect to which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized." (26 U.S.C. 1245)

(d) Effective date.—The amendments made by this section shall apply with respect to additions to capital account made after December 31, 1979. (26 U.S.C. 194(note))

Investment Credit

Sec. 302. (a) General rule.—Paragraph (1) of section 48(a) of the Internal Revenue Code of 1954 (relating to definition of section 38 property) is amended—

(1) by striking out the period at the end of subparagraph (E) and inserting ", or";

(2) by inserting after subparagraph (E) the following new paragraph:

"(F) in the case of qualified timber property (within the meaning of section 194(c)(1)), that portion of the basis of such property constituting the amortizable basis acquired during the taxable year (other than that portion of such amortizable basis attributable to property which otherwise qualifies as section 38 property) and taken into account under section 194 (after the application of section 194(b)(1))."; and

(3) by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to property described in subparagraph (F) and, for purposes of this subpart, the useful life of such property shall be treated as its normal growing period." (26 U.S.C. 48, 38)

(b) Effective date.—The amendments made by this section shall apply with respect to additions to capital account made after December 31, 1979. (26 U.S.C. 48(note))

Note—For more detailed coverage of tax provisions relating to forestry, see A Guide to Federal Income Tax for Timber Owners, U.S.D.A. Handbook No. 596; I.R.C. (26 U.S.C. et seq.)

* * * *

Reforestation Trust Fund

Sec. 303. (a) Establishment; source of funds.—There is established in the Treasury of the United States a trust fund, to be known as the Reforestation Trust Fund (hereinafter in this section referred to as the "Trust Fund"), consisting of such amounts as are transferred to the Trust Fund under subsection (b)(1) and any interest earned on investment of amounts in the Trust Fund under subsection (c)(2).

(b)(1) Transfer of receipts to Trust Fund.—Subject to the limitation in paragraph (2), the Secretary of the Treasury shall transfer to the Trust Fund an amount equal to the sum of the tariffs received in the Treasury after January 1, 1989, under headings 4401 through 4412 and subheadings 4418.500.00,

4418.90.20, 4420.10.00, 4420.90.80, 4421.90.10 through 4421.90.20, and 4421.90.70 of chapter 44, subheadings 6808.00.00 and 6809.11.00 of chapter 68 and subheading 9614.10.00 of chapter 96 of the Harmonized Tariff Schedule of the United States.

(2) The Secretary shall not transfer more than $30,000,000 to the Trust Fund for any fiscal year.

(3) The amounts required to be transferred to the Trust Fund under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury to the Trust Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustment shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(c)(1) Report to Congress.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and Senate document of the session of the Congress to which the report is made.

(2)(A) It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (i) on original issue at the issue price, or (ii) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of Title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt; except that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

(B) Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d) Obligations from Trust Fund.—The Secretary of Agriculture is hereafter authorized to obligate such sums as are available in the Trust Fund (including any amounts not obligated in previous fiscal years) for—

(1) reforestation and timber stand improvement as specified in

section 3(d) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601(d)); and

(2) properly allocable administrative costs of the Federal Government for the activities specified above.

(d) Obligations from trust fund.—The Secretary of Agriculture is hereafter authorized to obligate such sums as are available in the Trust Fund (including any amounts not obligated in previous fiscal years) for—

(1) reforestation and timber stand improvement as specified in section (3)(d) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601(d)); and

(2) properly allocable administrative costs of the Federal Government for the activities specified above.

(e) Repealed by P.L. 99-190, Section 101(d) [Title II, Section 201], December 19, 1985, 99 Stat. 1245. (16 U.S.C. 1606a)

Fifth Circuit Court of Appeals Reorganization Act of 1980

- **Act of October 14, 1980 (P.L. 96-452, as amended; 94 stat. 1994; 28 U.S.C. 41 (note))**

Note—Section numbers refer to U.S.C. sections

Sec.
41. Number and composition of circuits
42. Allotment of Supreme Court justices to circuits
43. Creation and composition of courts
44. Appointment, tenure, residence and salary of circuit judges.
45. Chief judges; precedence of judges.
46. Assignment of judges; divisions; hearings; quorum.
47. Disqualification of trial judge to hear appeal.
48. Terms of court.

Number and Composition of Circuits

Sec. 41. The twelve judicial circuits of the United States are constituted as follows:

Circuits	*Composition*
District of Columbia	District of Columbia
First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second	Connecticut, New York, Vermont.
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	District of the Canal Zone, Louisiana, Mississippi, Texas.
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh	Alabama, Florida, Georgia.

Allotment of Supreme Court Justices to Circuits

Sec. 42. The Chief Justice of the United States and the associate justices of the Supreme Court shall from time to time be allotted as circuit justices among the circuits by order the Supreme Court. The Chief Justice may make such allotments in vacation.

A justice may be assigned to more than one circuit, and two or more justices may be assigned to the same circuit.

Creation and Composition of Courts

Sec. 43. (a) There shall be in each circuit a court of appeals, which shall be a court of record, known as the United States Court of Appeals for the circuit.

(b) Each court of appeals shall consist of the circuit judges of the circuit in regular active service. The circuit justice and justices or judges designated or assigned shall also be competent to sit as judges of the court.

As amended Nov. 13, 1963, P.L. 88-176, Sec. 1(a), 77 Stat. 331.

Appointment, Tenure, Residence and Salary of Circuit Judges

Sec 44. (a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	*Number of Judges*
District of Columbia	Nine
First	Three
Second	Nine
Third	Nine
Fourth	Seven
Fifth	Fourteen
Sixth	Nine
Seventh	Eight
Eighth	Eight
Ninth	Thirteen
Tenth	Seven
Eleventh	Twelve

(b) Circuit judges shall hold office during good behavior.

(c) Except in the District of Columbia, each circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service.

(d) Each circuit judge shall receive a salary of $33,000 a year.

Chief Judges; Precedence of Judges

Sec. 45 (a) The circuit judge in regular service who is senior in commission and under seventy years of age shall be the chief judge of the circuit. If all the circuit judges in regular active service are seventy years of age or older the youngest shall act as chief judge until a judge has been appointed and qualified who is under seventy years of age, but a judge may not act as chief judge until he has served as a circuit judge for one year.

(b) The chief judge shall have precedence and preside at any session of the court which he attends. Other circuit judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The circuit justice, however, shall have precedence over all the circuit judges and shall preside at any session which he attends.

(c) If the chief justice desires to be relieved of his duties as chief judge while retaining his active status as circuit judge, he may so certify to the Chief Justice of the United States, and thereafter the circuit judge in active service next in precedence and willing to serve shall be designated by the Chief Justice as the chief judge of the circuit.

(d) If a chief judge is temporarily unable to perform his duties as such, they shall be performed by the circuit judge in active service, present

in the circuit and able and qualified to act, who is next in precedence.

Assignment of Judges; Divisions; Hearings, Quorum

Sec. 46. (a) Circuit judges shall sit on the court and its divisions in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate divisions, each consisting of three judges. Such divisions shall sit at the times and places and hear the cases and controversies assigned as the court directs.

(c) Cases and controversies shall be heard and determined by a court or division of not more than three judges, unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service. A circuit judge of the circuit who has retired from regular active service shall also be competent to sit as a judge of the court in banc in the rehearing of a case or controversy if he sat in the court or division at the original hearing thereof.

(d) A majority of the number of judges authorized to constitute a court or division thereof, as provided in paragraph (c), shall constitute a quorum.

Disqualification of Trial Judge to Hear Appeal

Sec. 47. No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

Terms of Court

Sec. 48. Terms or sessions of courts of appeals shall be held annually at the places listed below, and at such other places within the respective circuits as may be designated by rule of court. Each court of appeals may hold special terms at any place within its circuit.

Circuits	*Places*
District of Columbia	Washington
First	Boston
Second	New York
Third	Philadelphia
Fourth	Richmond, Asheville
Fifth	New Orleans, Fort Worth, Jacksonville
Sixth	Cincinnati
Seventh	Chicago
Eighth	St. Louis, Kansas City, Omaha, St. Paul
Ninth	San Francisco, Los Angeles, Portland, Seattle
Ten	Denver, Wichita, Oklahoma City
Eleventh	Atlanta, Jacksonville, Montgomery

Any court of appeal may, with the consent of the Judicial Conference of the Unites States, pretermit any regular term or session of the court at any place for insufficient business or other good cause.

Assignments

Each circuit judge in regular active service of the former fifth circuit whose official station on the day before the effective date of this Act—

(1) is in Louisiana, Mississippi, or Texas is assigned as a circuit judge of the new fifth circuit; and

(2) is in Alabama, Florida, or Georgia is assigned as a circuit judge of the eleventh circuit. (28 U.S.C. 41(note))

Senior Judges, Assignment Election

Each judge who is a senior judge of the former fifth circuit on the day before the effective date of this Act may elect to be assigned to the new fifth circuit or to the eleventh circuit and shall notify the Director of the Administrative Office of the United States Courts of such election. (28 U.S.C. 41(note))

Seniority

The seniority of each judge—

(1) who is assigned under section 5 of this Act; or

(2) who elects to be assigned under section 6 of this Act; shall run from the date of commission of such judge as a judge of the former fifth circuit. (28 U.S.C. 41(note))

Eleventh Circuit, Temporary Site

The eleventh circuit is authorized to hold terms or sessions of court at New Orleans, Louisiana, until such time as adequate facilities for such court are provided in Atlanta, Georgia. (28 U.S.C. 41(note))

Cases, Applicable Provisions

The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this Act, an appeal or other proceeding has been filed with the former fifth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this Act had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this Act been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this Act, or submitted before the effective date of this Act and decided on or after the effective date as provided in paragraph (1) of this section shall be treated in the same manner and with the same effect as though this Act had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this Act had not been enacted. (28 U.S.C. 41(note))

Definitions

(1) "former fifth circuit" means the fifth judicial circuit of the United States as in existence on the day before the effective date of this Act;

(2) the term "new fifth circuit" means the fifth judicial circuit of the United States established by the amendment made by section 2(2) of this Act; and

(3) the term "eleventh circuit" means the eleventh judicial circuit of the United States established by the amendment made by section 2(3) of this Act. (28 U.S.C. 41(note))

Termination

The court of appeals for the fifth circuit as constituted on the day

before the effective date of this Act may take such administrative action as may be required to carry out this Act. Such court shall cease to exist for administrative purposes on July 1, 1984. (28 U.S.C. 41(note))

Effective Date

This Act and the amendments made by this Act shall take effect on October 1, 1981. (28 U.S.C. 41(note))

Stevenson-Wydler Technology Innovation Act of 1980

- **Act of October 21, 1980 (P.L. 96-480, 94 Stat. 2311; 15 U.S.C. 3701-3704, 3710, 3712)**

* * * *

Findings

Sec. 2. The Congress finds and declares that:

* * * *

(3) Many new discoveries and advances in science occur in universities and federal laboratories, while the application of this new knowledge to commercial and useful public purposes depends largely upon actions by business and labor. Cooperation among academia, federal laboratories, labor, and industry, in such forms as technology transfer, personnel exchange, joint research projects, and others, should be renewed, expanded, and strengthened.

* * * *

(8) No comprehensive national policy exists to enhance technological innovation for commercial and public purposes. There is a need for such a policy, including a strong national policy supporting domestic technology transfer and utilization of the science and technology resources of the federal government.

(9) It is in the national interest to promote the adaptation of technological innovations to State and local government uses. Technological innovations can improve services, reduce their costs, and increase productivity in State and local governments.

(10) The federal laboratories and other performers of federally funded research and development frequently provide scientific and technological developments of potential use to State and local governments and private industry. These developments, including inventions, software, and training technologies, should be made accessible to those governments and industry. There is a need to provide means of access and to give adequate personnel and funding support to these means. (15 U.S.C. 3701)

Purpose

Sec. 3. It is the purpose of this Act to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishing of cooperative research centers; for

(3) stimulating improved utilization of federally funded technology developments including inventions, software, and training technologies, by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging the exchange of scientific and technical

personnel among academia, industry, and federal laboratories. (15 U.S.C. 3702)

Definitions

Sec. 4. As used in this Act, unless the context otherwise requires, the term—

(1) "Office" means the Office of Industrial Technology established under section 5 of this Act.

(2) "Secretary" means the Secretary of Commerce.

(3) "Under Secretary" means the Under Secretary of Commerce for Technology appointed pursuant to section 5 of this Act.

(4) "Centers" means the Centers for Industrial Technology established under section 6 or section 8 of this Act.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 6 of section 8 of this Act that is owned, leased, or otherwise used by a Federal agency and funded by the federal government, whether operated by the government or by a contractor.

(7) "Supporting agency" means either the Department of Commerce or the National Science Foundation, as appropriate. (15 U.S.C. 3703)

(8) "Federal agency" means any executive agency as defined in section 105 of Title 5 and the military departments as defined in section 102 of such title, as well as any agency of the legislative branch of the Federal Government.

(9) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under Title 35 or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(10) "Made" when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

(11) "Small business firm" means a small business concern as defined in section 632 of this title and implementing regulations of the Administrator of the Small Business Administration.

(12) "Training technology" means computer software and related materials which are developed by a Federal agency to train employees of such agency, including but not limited to software for computer-based instructional systems and for interactive video disc systems.

(13) "Clearinghouse" means the Clearinghouse for State and Local Initiatives on Productivity, Technology, and Innovation established by section 3704a of this title.

Sec. 5. Commerce and Technological Innovation.—

(a) . . . .

(b) . . . .

(c) Duties.—The Secretary through the Under Secretary as appropriate, shall—

* * * *

(9) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

* * * *

(14) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and (15 U.S.C. 3704)

* * * *

Utilization of Federal Technology

Sec. 11. (a) Policy.—

(1) It is the continuing responsibility of the federal government to ensure the full use of the results of the Nation's federal investment in research and development. To this end the federal government shall strive where appropriate to transfer federally owned or originated technology to State and local governments and to the private sector.

(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.

(b) Establishment of research and technology applications offices.—Each federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each federal laboratory and the federal agency operating or directing the laboratory, except that—(1) each laboratory having a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each federal agency which operates or directs one or more federal laboratories shall make available not less that 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications. The agency head may waive the requirements set forth in (1) and/or (2) of this subsection. If the agency head waives either requirement (1) or (2), the agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(1) each laboratory having 200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions as staff for its Office of Research and Technology Applications, and

(2) each Federal agency which operates or directs one or more Federal laboratories shall make available sufficient funding, either as a separate line item or from the agency's research and development budget, to support the technology transfer function at the agency and at its laboratories, including support of the Offices of Research and Technology Applications.

Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development programs so as to ensure that

highly competent technical managers are full participants in the technology transfer process.

The agency head shall submit to congress at the time the President submits the budget to Congress an explanation of the agency's technology transfer program for the preceding year and the agency's plans for securing intellectual property rights in laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of the United States industry.

(c) Functions of Research and Technology Applications Offices.—It shall be the function of each Office of Research and Technology Applications—

(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer, and other organizations which link the research and development resources of that laboratory and the federal government as a whole to potential users in State and local government and private industry;

(4) to provide technical assistance to State and local government officials; and

(5) to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located. Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

(d) Dissemination of technical information.—The National Technical Information Service shall—

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information on federally owned or originated technologies having potential application to State and local governments and to private industry;

(2) utilize the expertise and services of the National Science Foundation and the existing Federal Laboratory Consortium for Technology Transfer; particularly in dealing with State and local governments;

(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;

(4) provide funding, at the discretion of the Secretary, for federal laboratories to provide the assistance specified in subsection (c)(4);

(5) use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems; and

(6) maintain a permanent archival repository and clearinghouse for the collection and dissemination of nonclassified scientific, technical, and engineering information; and

(7) respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service.

(e) Establishment of Federal Laboratory Consortium for Technology Transfer.—

(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the "Consortium") which, in cooperation with Federal Laboratories and the private sector, shall—

(A) develop and (with the consent of the Federal laboratory concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service, and

(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary,

(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations;

(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curriculum design, long-term research planning, personnel needs projections, and productivity assessments; and

(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government).

(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) of this section and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a senior representative appointed from each Federal agency with one or more member laboratories.

(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

(4) The Director of the National Institute of Standards and Technology shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Institute, as requested by the Consortium and approved by such Director.

(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

(6) Not later than one year after October 20, 1986, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made. Such report shall include an annual independent audit of the financial statements of the Consortium, conducted in accordance with generally accepted accounting principles.

(7)(A) Subject to subparagraph (B), an amount equal to 0.008 percent of the budget of each Federal agency from any Federal source, including related overhead, that is to be utilized by or on behalf of the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Institute of Standards and Technology at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Institute to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, or 1996.

(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.

(8) Repealed. P.L. 102-245, Title III, Sec. 301(d), Feb. 14, 1992, 106 Stat. 20

(f) Agency reporting.—Each Federal agency which operates or directs one or more Federal laboratories shall report annually to the Congress, as part of the agency's annual budget submission, on the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section.

(g) Functions of Secretary.—

(1) The Secretary, through the Under Secretary, and in consultation with other Federal agencies, may—

(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

(2) Two years after October 20, 1986 and every two years thereafter, the Secretary shall submit a summary report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this chapter. Other Federal agencies shall cooperate in the report's preparation.

(3) Not later than one year after October 20, 1986, the Secretary shall submit to the President and the Congress a report regarding—

(A) any copyright provisions or other types of barriers which tend to restrict or limit the transfer of federally funded computer software to the private sector and to State and local governments, and agencies of such State and local governments; and

(B) the feasibility and cost of compiling and maintaining a current and comprehensive inventory of all federally funded training software.

(h) Repealed. P.L. 100-519, Title II, Sec. 212(a)(4), Oct. 24, 1988, 102 Stat. 2595

(i) Research equipment.—The Director of a laboratory, or the head of any Federal agency or department, may give research equipment that is excess to the needs of the laboratory, agency, or department to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities. Title of ownership shall transfer with a gift under the section.

* * * *

Personnel Exchanges

Sec. 13. The Secretary and the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without federal funding. (15 U.S.C. 3712)

Alaska National Interest Lands Conservation Act

- **Act of December 2, 1980 (P.L. 96-487, Title XIII; 94 Stat. 2457; 16 U.S.C. 3210)**

Note—This section is not limited to the State of Alaska but has nationwide application to National Forest System lands.

Access

Sec. 1323. (a) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: *Provided,* That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.

(b) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of the Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: *Provided,* That such owner comply with rules and regulations applicable to access across public lands. (16 U.S.C. 3210)

CERCLA
Comprehensive Environmental Response, Compensation, and Liability Act of 1980

- **Act of December 11, 1980 (P.L. 96-510, 94 Stat. 2767; 42 U.S.C. 9601, 9603, 9607, 9620)**

Definitions

Sec. 101. For the purpose of this subchapter—

(1) The term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

* * * *

(11) The term "Fund" or "Trust Fund" means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

* * * *

(16) The term "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act [16 U.S.C.A. 1801 et seq.]) any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. (42 U.S.C. 9601)

* * * *

Notification Requirements Respecting Released Substances

Sec. 103. (a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center established under the Clean Water Act [33 U.S.C.A. 1251 et seq.] of such release. The National Response Center shall convey the notification expeditiously to all appropriate Government agencies, including the Governor of any affected State.

* * * *

(c) Within one hundred and eighty days after December 11, 1980, any person who owns or operates or at the time of disposal for transport and selected, a facility at which hazardous substances(as defined in section 9601(14)(C) of this title) are or have been stored, treated, or disposed of shall, unless such facility has a permit issued under, or has been accorded interim status under, subtitle C of the Solid

Waste Disposal Act (42 U.S.C. 6921 et seq.), notify the Administrator of the Environmental Protection Agency of the existence of such facility, specifying the amount and type of any hazardous substance to be found there, and any known, suspected, or likely releases of such substances from such facility. The Administrator may be prescribe in greater detail the manner and form of the notice and the information included. The Administrator shall notify the affected State agency, or any department designated by the Governor to receive such notice, of the existence of such facility. Any person who knowingly fails to notify the Administrator of the existence of any such facility shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. . . . (42 U.S.C. 9603)

* * * *

Liability

Sec. 107. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 104(i).

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1954. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

* * * *

(d)(1) In general.—Except as provided in paragraph (2), no person shall be liable under this subchapter for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ("NCP") or at the direction of an on scene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(2) State and local governments.—No State or local government shall be liable under this subchapter for costs or damages as a result of actions taken in response to an emergency created by the release or threatened release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or local government. For the purpose of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

* * * *

(f)(1) Natural resources liability.—In the case of an injury to, destruction of, or loss of natural resources under subparagraph (C) of subsection (a) of this section liability shall be to the United Stated Government and to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State and to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such tribe, or held in trust for the benefit of such tribe, or belonging to a member of such tribe if such resources are subject to a trust restriction on alienation: Provided, however, that no liability to the United States or State or Indian tribe shall be imposed under subparagraph (C) of subsection (a) of this section, where the party sought to be charged has demonstrated that the damages to natural resources complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environment analysis, and the decision to grant a permit or license authorizes such commitment of natural resources, and the facility or project was otherwise operating within the terms of its permit or license, so long as, in the case of damages to an Indian tribe occurring pursuant to a Federal permit or license, the issuance of that permit or license was not inconsistent with the fiduciary duty of the United States with respect to such Indian tribe. The President, or the authorized representative of any State, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subparagraph (C) of subsection (a) shall not be limited by the sums

which can be used to restore or replace such resources. There shall be no double recovery under this chapter for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same release and natural resource. There shall be no recovery under the authority of subparagraph (C) of subsection (a) of this section where such damages and the release of a hazardous substance from which such damages resulted have occurred wholly before December 11, 1980.

(2) Designation of federal and state officials.—

(A) Federal.—The President shall designate in the National Contingency Plan published under section 9605 of this title the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter and section 311 of the Federal Water Pollution Control Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this chapter and such section 311 for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship.

(B) State.—The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this chapter and section 311 of the Federal Water Pollution Control Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this chapter and such section 311 for those natural resources under their trusteeship.

(C) Rebuttable presumption.—Any determination or assessment of damages to natural resources for the purposes of this chapter and section 311 of the Federal Water Pollution Control Act made by a Federal or State trustee in accordance with the regulations promulgated under section 9651(c) of this title shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter or section 311 of the Federal Water Pollution Control Act.

(g) Federal agencies.—For provision relating to Federal agencies, see section 9620 of this title.

* * * *

(j) Obligations or liability pursuant to federally permitted release.—Recovery by any person (including the United States or any State or Indian tribe) for response costs or damaged resulting from a federally permitted release shall be pursuant to existing law in lieu of this section. Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance. In addition, costs of response incurred by the Federal Government in connection with a discharge specified in section 9601(10)(B) or (C) of this title shall be recoverable in an action brought under section 1319(b) of Title 33. (42 U.S.C. 9607)

* * * *

Federal Facilities

Sec. 120. (a) Application of chapter to Federal government.—

(1) In general.—Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this title. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

(2) Application of requirements to Federal facilities.—All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this chapter for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this chapter.

(3) Exceptions.—This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this chapter shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(b) Notice.—Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal agency hazardous waste compliance docket.—The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the "docket") which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this chapter with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

(3) Information submitted by each department, agency, or instrumentality under section 9603 of this title.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and evaluation.—Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(1) evaluate such facilities in accordance with the criteria established in accordance with section 9605 under the National Contingency Plan for determining priorities among releases; and

(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

(e) Required action by department.—

(1) RI/FS.—Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; interagency agreement.—The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commence at each facility not later that 15 months after completion of the investigation and study. All such interagency agreement, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

(3) Completion of remedial actions.—Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be sued to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of agreement.—Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) Annual report.—Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List. With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such report shall also be submitted to the affected States.

(6) Settlements with other parties.—If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under

section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this title.

(f) State and local participation.—The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

(g) Transfer of authorities.—Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any officer or employee of the United States or to any other person.

(h) Property transferred by Federal agencies.—

(1) Notice.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quality of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations.—Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds.—After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(A) to the extent such information is available on the basis of a complete search of agency files—

(i) a notice of the type and quantity of such hazardous substances,

(ii) notice of the time at which such storage, release, or disposal took place, and

(iii) a description of the remedial action taken if any, and

(B) a covenant warranting that—

(i) all remedial action necessary to protect human health and the environment with respect to any

such substance remaining on the property has been taken before the date of such transfer, and

(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States. The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

* * * *

(i) Obligations under Solid Waste Disposal Act.—Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) (including corrective action requirements). (42 U.S.C. 9620)

* * * *

RPA Statement of Policy

- **Act of December 12, 1980 (P.L. 96-514, 96 Stat. 2957)**

Note—This is found in the (Interior Department and Related Agencies, Appropriations for Fiscal Year 1981)

* * * *

Sec. 310. The Statement of Policy transmitted by the President to the Senate on June 19, 1980, as required under section 8 of the Forest and Rangeland Renewable Resources Planning Act of 1974, is revised and modified to read as follows:

Statement of Policy

Basic Principles

It is the policy of the United States—

(1) forests and rangeland, in all ownerships, should be managed to maximize their net social and economic contributions to the Nation's well being, in an environmentally sound manner.

(2) the Nation's forested land, except such public land that is determined by law or policy to be maintained in its existing or natural state, should be managed at levels that realize its capabilities to satisfy the Nation's need for food, fiber, energy, water, soil stability, wildlife and fish, recreation, and aesthetic values.

(3) the productivity of suitable forested land, in all ownerships, should be maintained and enhanced to minimize the inflationary impacts of wood product prices on the domestic economy and permit a net export of forest products by the year 2030.

(4) in order to achieve this goal, it is recognized that in the major timber growing regions most of the commercial timber lands will have to be brought to and maintained, where possible, at 90 percent of their potential level of growth, consistent with the provisions of the National Forest Management Act of 1976 on federal lands, so that all resources are utilized in the combination that will best meet the needs of the American people.

(5) forest and rangeland protection programs should be improved to more adequately protect forest and rangeland resources from fire, erosion, insects, disease, and the introduction or spread of noxious weeds, insects, and animals.

(6) the federal agencies carrying out the policies contained in this Statement will cooperate and coordinate their efforts to accomplish the goals contained in this Statement and will consult, coordinate, and cooperate with the planning efforts of the States.

(7) in carrying out the Assessment and the Program under the Forest and Rangeland Renewable Resources Planning Act of 1974 and the Appraisal and the Program under the Soil and Water Resources Conservation Act of 1977, the Secretary of Agriculture shall assure that resource and economic information and evaluation data will be continually improved so that the best possible information is always available for use by federal agencies and the public.

Rangeland Data Base And Its Improvement

The data on and understanding of the cover and condition of range lands is less refined than the data on and understanding of commercial forest land. Range lands have significant value in the production of water and protection of watersheds; the production of fish wildlife food and habitat; recreation; and the production of livestock forage. An adequate data base on the cover and condition of range lands should be developed by the year 1990. Currently, cattle production from these lands is annually estimated at 213 million animal unit months of livestock forage. These lands should be maintained and enhanced, including their water and other resource values, so that they can annually provide 310 million animal units months of forage by the year 2030, along with other benefits.

General Acceptance of High Bound Program

Congress generally accepts the "high-bound" program described on pages 7 through 18 of the 1980 Report to Congress on the Nation's Renewable Resources prepared by the Secretary of Agriculture. However, Congress finds that the "high-bound" program may not be sufficient to accomplish the goals contained in this statement, particularly in the areas of range and watershed resources, State and private forest cooperation and timber management.

State and Private Lands

States and owners of private forest and rangelands will be encouraged, consistent with their individual objectives, to manage their land in support of this Statement of Policy. The State and private forestry and range programs of the Forest Service will be essential to the furtherance of this Statement of Policy.

Funding the Goals

In order to accomplish the policy goals contained in this statement by the year 2030, the federal government should adequately fund programs of research (including cooperative research), extension, cooperative forestry assistance and protection, and improved management of the forestry assistance and protection, and improved management of the forest and rangeland. The Secretary of Agriculture shall continue his efforts to evaluate the cost-effectiveness of the renewable resource programs.

Donation of Real Property to U.S.

- **Act of December 17, 1980 (P.L. 96-541, 94 Stat. 3207; 26 U.S.C. 170(note), 170)**

Note—This Act amends the Internal Revenue Code of 1954 by adding new provisions which govern the tax consequences of donation of property to the United States for conservation purposes.

* * * *

Charitable, Etc., Contributions and Gifts

Sec. 6. (a) Allowance of deduction—

(1) General rule.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary

(2) Corporations on accrual basis.—In the case of a corporation reporting its taxable income on the accrual basis, if—

(A) the board of directors authorizes a charitable contribution during any taxable year, and

"(B) payment of such contribution is made after the close of such taxable year and on or before the 15th day of the third month following the close of such taxable year, then the taxpayer may elect to treat such contribution as paid during such taxable year. The election may be made only at the time of the filing of the return for such taxable year, and shall be signified in such manner as the Secretary shall by regulations prescribe.

"(3) Future interests in tangible personal property.—For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interest in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a future which is intended to be severed from the real property shall be treated as tangible personal property.

"(f) Disallowance of deduction in certain cases and special rules.—

"(3) Denial of deduction in case of certain contributions of partial interests in property.—

"(A) In general.—In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

"(B) Exceptions.— Subparagraph (A) shall not apply to—

"(iii) a qualified conservation contribution.

"(h) Qualified conservation contribution.—

"(1) In general.—For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

"(A) of a qualified real property interest,

"(B) to a qualified organization,

"(C) exclusively for conservation purposes.

"(2) Qualified real property interest.—For purposes of this subsection, the term "qualified real property interest" means any of the following interest in real property:

"(A) the entire interest of the donor other than a qualified mineral interest,

"(B) a remainder interest, and

"(C) a restriction (granted in perpetuity) on the use which may be made of the real property. (26 U.S.C. 170)

"(3) Qualified organization.—For the purpose of paragraph (1), the term "qualified organization" means an organization which—

"(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

"(B) is described in section 501(e)(3) and—

"(i) meets the requirements of section 509(a)(2), or

"(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

"(4) Conservation purpose defined.—

"(A) In general.—For purposes of this subsection, the term "conservation purpose" means—

"(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

"(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

"(iii) the preservation of open space (including farmland and forest land) where such preservation is—

"(I) for the scenic enjoyment of the general public, or

"(II) pursuant to a clearly delineated federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

"(iv) the preservation of an historically important land area or a certified historic structure.

"(B) Certified historic structure.—For purposes of subparagraph (A)(iv), the term "certified historic structure" means any building, structure, or land area which—

"(i) is listed in the National Register, or

"(ii) is located in a registered historic district (as defined in section 191(d)(2)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

"(5) Exclusively for conservation purposes.—For purposes of this subsection—

"(A) Conservation purposes must be protected.—A contribution shall not be treated as exclusively for conservation purposes unless the

conservation purpose is protected in perpetuity.

"(B) No surface mining permitted.—

"(i) In general.—Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

"(ii) Special rule.—With respect to any contribution of property in which the ownership of the surface was established and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

"(6) Qualified mineral interest.—For purposes of this subsection, the term "qualified mineral interest" means—

"(A) subsurface oil, gas, or other minerals, and

"(B) the right to access to such minerals." (26 U.S.C. 170)

Deduction for Contributions for Conservation Purposes Made Permanent

Effective date.—The amendments made by subsection (a) and (b) shall apply to transfers made after the date of the enactment of this Act in taxable years ending after such date. (26 U.S.C. 170(note))

Wood Residue Utilization Act of 1980

- **Act of December 19, 1980 (P.L. 96-554, 94 Stat. 3257; 16 U.S.C. 1600(note), 1681(note), 1681-1687)**

Sec. 1. This Act may be cited as the "Wood Residue Utilization Act of 1980". (16 U.S.C. 1600(note))

Sec. 2. The purpose of this Act is to develop, demonstrate, and make available information on feasible methods that have potential for commercial application to increase and improve utilization, in residential, commercial, and industrial or powerplant applications, of wood residues resulting from timber harvesting and forest protection and management activities occurring on public and private forest lands, and from the manufacture of forest products, including wood-pulp. (16 U.S.C. 1681)

Pilot Projects and Demonstrations

Sec. 3. (a) The Secretary may establish pilot projects and demonstrations to carry out the purposes of this Act. The pilot projects and demonstrations established under this section (1) may be operated by the Secretary; or (2) may be carried out through contracts or agreements with owners of private forest lands or other persons, or in conjunction with projects, contracts, or agreements entered into under any other authority which the Secretary may possess: *Provided,* That nothing contained in this Act shall abrogate or modify provisions of existing contracts or agreements, including contracts or agreements for the sale of National Forest timber, except to the extent such changes are mutually agreed to by the parties to such contracts or agreements.

(b) Pilot projects and demonstrations carried out under this section may include, but are not limited to—(1) establishment and operation of utilization demonstration areas; (2) establishment and operation of fuel wood concentration and distribution centers; and (3) construction of access roads needed to facilitate wood residue utilization: *Provided,* That residue removal credits may be utilized by the Secretary only as provided in section 4. (16 U.S.C. 1682)

Residue Removal Credits

Sec. 4. The Secretary may carry out pilot wood residue utilization projects under which purchasers of National Forest System timber under contracts awarded prior to October 1, 1986, may, except as otherwise provided in this section, be required to remove wood residues not purchased by them to points of prospective use in return for compensation in the form of "residue removal credits." Such projects may be carried out where the Secretary identifies situations in which pilot wood residue utilization projects on the National Forest System can provide important information on various methods and approaches to increasing the utilization, in residential, commercial, and industrial or powerplant applications, of wood residues and where such information cannot reasonably be obtained unless the pilot projects are done in conjunction with normal National Forest timber sale activities. The residue removal credits shall be

applied against the amount payable for the timber purchased and shall represent the anticipated cost of removal of wood residues. The following guidelines shall apply to projects carried out under this section:

(1) Except in cases where wood residue removal is determined to be necessary for fire prevention, site preparation for regeneration, wildlife habitat improvement, or other land management purposes, the Secretary may not provide for removal of wood residues in instances where the anticipated cost of removal would exceed the anticipated value.

(2) The residue removal credits authorized by this section shall not exceed the amount payable by the purchaser for timber after the application of all other designated charges and credits.

(3) The Secretary may sell the wood residues removed to points of prospective use for not less than their appraised value.

(4) Pilot projects, demonstrations, and other programs established pursuant to this Act shall be carried out in a manner which does not result in an adverse effect on the furnishing of timber, free of charge, under any other provision of law.

(5) Wood residues shall be collected from a site so as to avoid soil depletion or erosion giving full consideration to the protection of wildlife habitat.

(6) For the purposes of the sixth undesignated paragraph under the heading "Forest Service" in the Act of May 23, 1908 (35 Stat. 260; 16 U.S.C. 500), and section 13 of the Act of March 1, 1911 (36 Stat. 963; 16 U.S.C. 500), (A) any residue removal credit applied under this section shall be considered as "money received" or "moneys received", respectively, and (B) the "money received" or "moneys received", respectively, from the sales of wood residues removed to points of prospective use shall be the proceeds of the sales less the sum of any residue removal credit applied with respect to such residues plus any costs incurred by the Forest Service in processing and storing such residues. (16 U.S.C. 1683)

Reports to Congress

Sec. 5. The Secretary shall make annual reports to the Congress on the programs authorized by this Act. These reports shall be submitted with the reports required under section 8(c) of the Forest and Rangeland Renewable Resources Planning Act of 1974. (16 U.S.C. 1684)

Regulations

Sec. 6. The Secretary shall issue such regulations as the Secretary deems necessary to implement the provisions of this Act. (16 U.S.C. 1685)

Definitions

Sec. 7. For purposes of this Act, the term:

(1) "Anticipated cost of removal" means the projected cost of removal of wood residues from timber sale areas to points of prospective use, as determined by the Secretary at the time of advertisement of the timber sales contract in accordance with appropriate appraisal and sale procedures.

(2) "Anticipated value" means the projected value of wood residues as fuel or other merchantable wood products, as determined by the Secretary at the time of advertisement

of timber sales contract in accordance with appropriate appraisal and sale procedures.

(3) "Points of prospective use" means the locations where the wood residues are sold or otherwise put to use, as determined by the Secretary in accordance with appropriate appraisal and sale procedures.

(4) "Person" means an individual, partnership, joint-stock company, corporation, association, trust, estate, or any other legal entity, or any agency of federal or State government or of a political subdivision of a State.

(5) "Secretary" means the Secretary of Agriculture.

(6) "Wood residues" includes, but is not limited to, logging slash, down timber material, woody plants, and standing live or dead trees which do not meet utilization standards because of size, species, merchantable volume, or economic selection criteria and which, in the case of live trees, are surplus to growing stock needs. (16 U.S.C. 1686)

Appropriation Authorization

Sec. 8. There is hereby authorized to be appropriated not to exceed $25,000,000 for each of the fiscal years 1982, 1983, 1984, 1985, and 1986 to carry out the pilot projects and demonstrations authorized by section 3 of this Act, the residue removal credits authorized by section 4 of this Act, and the other provisions of this Act: *Provided,* That not to exceed $2,500,000 of such amount may be appropriated for administrative expenses to carry out this Act for the period beginning October 1, 1981, and ending September 30, 1986. Such sums shall be in addition to those provided under other provisions of law and shall remain available until expended. (16 U.S.C. 1687)

Effective Date

Sec. 9. This Act shall become effective October 1, 1981. (16 U.S.C. 1681(note))

Salmon and Steelhead Resource Conservation Act of 1980

- **Act of December 22, 1980 (P.L. 96-561, Chapter 52; 94 Stat. 3275, 16 U.S.C. 3301(note), 3301–3302, 3311–3315, 3321–3325, 3341–3345)**

TITLE I — CONSERVATION AND ENHANCEMENT OF SALMON AND STEELHEAD RESOURCES

Part A — General Provisions

Short Title

Sec. 101. This title may be cited as the "Salmon and Steelhead Conservation and Enhancement Act of 1980". (16 U.S.C. 3301(note))

Findings and Purposes

Sec. 102. (a) Findings.—The Congress finds and declares the following—

(1) The stocks of salmon and steelhead which originate in the rivers of the conservation areas constitute valuable and renewable natural resources. Many groups of commercial, recreational, and treaty fishermen have historically depended upon these stocks of fish for their livelihoods and avocations. These fishery resources contribute to the food supply and economic health of the Pacific Northwest and the Nation as a whole, provide valuable recreational experiences for thousands of citizens from various parts of the United States, and represent a central element of the cultures and economies of Indian tribes and the citizens of the Pacific Northwest.

(2) Over a period of several decades, competing uses of salmon and steelhead habitat and historical problems relating to conservation measures, the regulation of harvest and enhancement have depressed several of these stocks of salmon and steelhead.

(3) Improved management and enhancement planning and coordination among salmon and steelhead managers will help prevent a further decline of salmon and steelhead stocks and will assist in increasing the supply of these stocks.

(4) Due in principal part to the Federal court decisions in the United States against Washington and Sohappy against Smith, the fishing capacity of nontreaty fishermen in the conservation areas established by this title exceeds that required to harvest the available salmon resources. This excess capacity causes severe economic problems for these fishermen.

(5) The supply of salmon and steelhead can be increased through carefully planned enhancement measures designed to improve the survival of stocks and to augment the production of artificially propagated stocks. By careful choice of species, areas, and stocking procedures, enhancement programs can be used to—

(A) improve the distribution of fish among different groups of treaty and nontreaty fishermen; and

(B) add stability to the treaty and nontreaty fisheries by reducing variations in fish availability.

(b) Purposes.—In order to assist the harvesters of the salmon and steelhead resources within the Columbia River conservation area and

the Washington conservation area established by this title to overcome temporary dislocations arising from the decisions in the cases of United States against Washington and Sohappy against Smith and from other causes, this title authorizes the establishment of a cooperative program involving the United States, the States of Washington and Oregon, the treaty tribes acting through the appropriate tribal coordinating bodies, and other parties, to—

(1) encourage stability in and promote the economic well being of the treaty and nontreaty commercial fishing and charter fishing industries and improve the distribution of fishing power between treaty and nontreaty fisheries through—

(A) the purchase of nontreaty commercial and charter fishing vessels, gear, and licenses; and

(B) coordinated research, enhancement, and management of salmon and steelhead resources and habitat; and

(2) improve the quality of, and maintain the opportunities for, salmon and steelhead recreational fishing. (16 U.S.C. 3301)

Definitions

Sec. 103. As used in this title—

(1) The term "appropriate tribal coordinating body" means the Columbia River tribal coordinating body or the Washington tribal coordinating body, as the context requires.

(2) The term "charter vessel" means any vessel licensed by the State to carry passengers for hire for the purpose of recreational salmon fishing.

(3) The term "charter fishing" means fishing undertaken aboard charter vessels.

(4) The term "Columbia River conservation area" means—

(A) all habitat within the Columbia River drainage basin; and

(B) those areas in—

(i) the fishery conservation zone over which the Pacific Fishery Management Council has jurisdiction, and

(ii) the territorial seas of Oregon and Washington, in which one or more stocks that originate in the habitat described in subparagraph (A) migrate.

(5) The term "Columbia River tribal coordinating body" means the organization duly authorized by those treaty tribes of the Columbia River drainage basin to coordinate activities for them for purposes of this title.

(6) The term "commercial fishing" means fishing for the purpose of sale or barter.

(7) The term "commercial fishing vessel" or "fishing vessel" means any vessel, boat, ship, or other craft which is licensed for, and used for, equipped to be used for, or of a type which is normally used for, commercial salmon fishing.

(8) The term "enhancement" means projects undertaken to increase the production of naturally spawning or artificially propagated stocks of salmon or steelhead, or to protect, conserve, or improve the habitat of such stocks.

(9) The term "habitat" means those portions of the land or water, including the constituent elements thereof—

(A) which salmon or steelhead occupy at any time during their life cycle, or

(B) which affect the salmon or steelhead resources.

(10) The term "recreational fishing" means fishing for personal use and enjoyment using conventional angling gear, and not for sale or barter.

(11) The term "salmon" means any anadromous species of the family Salmonidae and Genus Oncorhynchus, commonly known as Pacific salmon.

(12) The term "salmon or steelhead resource" means any stock of salmon or steelhead.

(13) The term "steelhead" means the anadromous rainbow trout species Salmo gairdneri, commonly known as steelhead.

(14) The term "stock" means a species, subspecies, race, geographical grouping, run, or other category of salmon or steelhead.

(15) The term "treaty" means any treaty between the United States and any treaty tribe that relates to the reserved right of such tribe to harvest salmon and steelhead within the Washington or Columbia River conservation areas.

(16) The term "treaty tribe" means any Indian tribe recognized by the United States Government, with usual and accustomed fishing grounds in the Washington or Columbia River conservation areas, whose fishing right under a treaty has been recognized by a Federal court.

(17) The term "Washington conservation area" means all salmon and steelhead habitat within the State of Washington except for the Columbia River drainage basin, and in the fishery conservation zone adjacent to the State of Washington which is subject to the jurisdiction of the United States.

(18) The term "Washington tribal coordinating body" means the organization duly authorized by the treaty tribes of the Washington conservation area to coordinate their activities for them for the purposes of this title. (16 U.S.C. 3302)

Part B — Coordinated Management of Salmon and Steelhead

Salmon and Steelhead Advisory Commission

Sec. 110. (a) Establishment.—Within 90 days after the date of the enactment of this Act, the Secretary of Commerce (hereinafter in this part referred to as the "Secretary") shall establish the Salmon and Steelhead Advisory Commission (hereinafter referred to in this title as the "Commission"), which shall consist of one voting member from each of the following:

(1) The State of Washington.

(2) The State of Oregon.

(3) The Washington tribal coordinating body.

(4) The Columbia River tribal coordinating body.

(5) The Pacific Fishery Management Council.

(6) The National Marine Fisheries Service.

(b) Membership.—

(1) The voting representatives shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable State, by each appropriate tribal coordinating body, and by the Pacific Fishery Management Council. The representative for the National Marine Fisheries Service shall be the Northwest regional director of the Service or his designee.

(2) The Commission shall have 6 nonvoting members, 5 of which shall be qualified individuals appointed by the Secretary. The sixth nonvoting member shall be the regional director of the United States Fish and Wildlife Service or his designee,

(3) For the purposes of this subsection, the term "qualified individual" means an individual who is knowledgeable with regard to the management, conservation, or harvesting of the salmon and steelhead resources of the conservation areas.

(c) Report by commission.—Within 15 months after the date of the establishment of the Commission, it shall prepare, and submit to the Secretary and Congress, a comprehensive report containing conclusions, comments, and recommendations for the development of a management structure (including effective procedures, mechanisms, and institutional arrangements) for the effective coordination of research, enhancement, management, and enforcement policies for the salmon and steelhead resources of the Columbia River and Washington conservation areas, and for the resolution of disputes between management entities that are concerned with stocks of common interest. The principal objectives of, and the standards for, the management structure shall include, but not be limited to—

(1) the development of common principles to govern and coordinate effectively management and enhancement activities;

(2) the prevention of overfishing;

(3) the use of the best scientific information available;

(4) the consideration of, and allowance for, variations among, and contingencies in, fisheries and catches;

(5) the promotion of harvest strategies and regulations which will encourage continued and increased investment by the salmon and steelhead producing jurisdictions;

(6) the optimization of the use of resources for enforcement;

(7) the consideration of harvest activities as they relate to existing and future international commitments;

(8) the minimization of costs and the avoidance of unnecessary duplication; and

(9) the harvest of fish by treaty tribes, in accordance with treaty rights, unless agreed otherwise by the affected treaty tribes.

(d) Unanimous vote required.—No report or revision thereto may be submitted by the Commission to the Secretary for approval under this section unless the report or revision is approved by all of the voting members of the Commission.

(e) Secretarial action on report.—Within 4 months after the date of the submission of the comprehensive report, or any revision thereto, under subsection (c), the Secretary, in consultation with the Secretary of the Interior, shall review the report and, if he finds that the management structure recommended in the report would, if implemented, meet the objectives and standards specified in this section and be consistent with this title, approve the report. If the Secretary, in consultation with the Secretary of the Interior, finds that such structure is not in conformity with the standards and objectives set forth in this section, the provisions of this title, or other applicable law, he shall return the report to the Commission together with a written statement of the reasons for not approving the report. If the Commission submits a revised report to the Secretary within 2 months after the date of return, the Secretary shall approve the report if he finds that the objections on which the prior disapproval was based are overcome.

(f) Per diem and travel allowances.—The members of the Commission (other than those who are full-time employees of the Federal or a State government), while away from their homes or regular places of business for purposes of carrying out their duties as members, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons

intermittently employed in Government service.

(g) Administrative support.—The Secretary shall provide such clerical and technical support as may be necessary to enable the Commission to carry out its functions.

(h) Termination of Commission.—Unless otherwise agreed to by the voting members of the Commission and approved by the Secretary, the Commission shall terminate upon the Secretary's approval of the Commission's report pursuant to subsection (e). (16 U.S.C. 3311)

Eligibility for Assistance Under Approval Enhancement Plans

Sec. 111. Upon approval by the Secretary of the Commission's report under section 110, a State represented by a voting member on the Commission and any treaty tribe represented by a tribal coordinating body shall be eligible for financial assistance under part C if the State or treaty tribe enters into an agreement with the Secretary under which that State or treaty tribe obligates itself—

(1) to implement and enforce the provisions of the report and revisions thereto, through laws, regulations, ordinances, or other appropriate means, within such geographical areas and with respect to such persons as may be subject to its jurisdiction and to the extent of its enforcement power; and

(2) to engage in such coordination and consultation as may be necessary or appropriate to ensure, to the maximum extent practicable, that the report and revisions thereto are fully and effectively implemented. (16 U.S.C. 3312)

Coordination Grants

Sec. 112. The Secretary, in consultation with the Secretary of the Interior, is authorized to establish a program to provide grants to prepare reports and plans provided for in parts B and C in order to promote coordinated research, enforcement, enhancement, and management of the salmon and steelhead resources within the Washington and Columbia River conservation areas consistent with the purposes of this title. Such grants shall be available for use by the State of Washington, the State of Oregon, appropriate tribal coordinating bodies, or any joint governmental entity established for undertaking research, or providing advice on or mechanisms for coordinating management or enforcement, or preparing the reports and plans described in parts B and C. (16 U.S.C. 3313)

Discontinuance of Assistance Under Parts B and C

Sec. 113. If the Secretary finds that as of the close of the 18th month after secretarial approval of the Commission report under section 110(e), the number of parties which have adopted and implemented the Commission's management program in accordance with the provisions of this title and the report is insufficient to ensure that the management structure is effective and consistent with the standards and objectives in section 110(c), he shall discontinue any further funding under part B or C of this title. (16 U.S.C. 3314)

Authorization of Appropriations

Sec. 114. There are authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this part in fiscal years commencing after September 30, 1981, an aggregate amount of $3,000,000. Funds appropriated pursuant to this section remain

available to the Secretary until expended. (16 U.S.C. 3315)

Part C — Resource Enhancement

Grants for Projects Under Approved Enhancement Plans

Sec. 120. (a) Authority.—The Secretary of the Interior (hereinafter referred to in this part as the "Secretary"), in consultation with the Secretary of Commerce, is authorized to establish a program to provide grants for projects for the enhancement of the salmon and steelhead resources of the Washington conservation area and the Columbia River conservation area.

(b) Plans.—Any such project in the Washington conservation area must be in accordance with a comprehensive enhancement plan developed and agreed to by the State of Washington and the Washington tribal coordinating body within 18 months after the date of enactment of this title. Any enhancement project in the Columbia River conservation area must be in accordance with a comprehensive enhancement plan developed and agreed to by the State of Washington, the State of Oregon, and the Columbia River tribal coordinating body within 18 months after the date of enactment of this title. Such plans must be approved by the Secretary, in consultation with the Secretary of Commerce, as provided in this part. The States shall solicit and consider the comments and views of interested commercial and recreational fishermen, and other interested parties, in developing the comprehensive enhancement plan.

(c) Scope.—Each comprehensive enhancement plan, and any revisions, or modifications of such plan, shall describe all enhancement projects in the conservation area, and associated stocking policies (when relevant), including any related research necessary to such enhancement anticipated by the States and the treaty tribes (acting through the appropriate tribal coordinating body) for a period of at least 5 years.

(d) Standards.—Each comprehensive enhancement plan shall include such standards, restrictions, or conditions as are necessary, to assure that any project included in the plans contributes to the balanced and integrated development of the salmon and steelhead resources of the area. Such standards shall include, but not be limited to, provisions designed to—

(1) assure that all commercial and recreational fishermen and the treaty tribes shall have a reasonable opportunity to participate in the benefits, considered as a whole, of the salmon and steelhead resources development;

(2) minimize, to the extent practicable, significant adverse interaction between naturally spawning and artificially propagated stocks;

(3) ensure that all projects included within the plan are designed to complement the contribution of sound State, Federal, and tribal enhancement activities;

(4) ensure that all projects included within the plan are economically and biologically sound and supported by adequate scientific research;

(5) assure that all projects included within the plan achieve significant benefits relative to the overall cost of each such project;

(6) consider the effect of enhancement activities as they relate to existing and future international commitments; and

(7) notwithstanding any of the above measures, provide for the harvest of fish by treaty tribes in accordance with treaty rights, unless agreed otherwise by the affected treaty tribes.

(e) Approval.—

(1) The Secretary, in consultation with the Secretary of Commerce, shall review each comprehensive enhancement plan and approve such plan within 120 days of the date of its receipt, if found to be consistent with this title and other applicable law. If the Secretary, in consultation with the Secretary of Commerce, finds that a plan is not in conformity with the provisions of this title or other applicable law, he shall return such plan to the State of Washington or the State of Oregon, or both, as appropriate, and the appropriate tribal coordinating body with recommendations.

(2) Upon receiving such a plan, the Secretary, in consultation with the Secretary of Commerce, shall—

(A) publish a notice in the Federal Register of the availability of the plan;

(B) provide a copy of the plan to the Pacific Fishery Management Council and, upon request, to any other interested person or group, and solicit and consider the comments and views of such persons or groups with respect to the plan;

(C) undertake a biological and technical review of the plan, in consultation with individuals who are knowledgeable with regard to the management, conservation, enhancement, and harvest of the salmon and steelhead resources of the area;

(D) provide a copy of the plan to and consult with the Secretary of State and the Secretary of Commerce, with respect to the effect of such plan on any international fisheries; and

(E) determine whether the State of Washington or the State of Oregon, as appropriate, and the treaty tribes, acting through their chosen agency or agencies, have the authority to carry out the plan in accordance with this title, and in accordance with standards included within the plan.

(3) The Secretary, in consultation with the Secretary of Commerce, shall not approve a comprehensive enhancement plan unless the State of Washington or the State of Oregon, or both, as appropriate, and the treaty tribes, acting through the appropriate tribal coordinating body, agree not to undertake any salmon or steelhead enhancement project, using funds provided pursuant to this part or otherwise, that would be inconsistent with the plan.

(4) The Secretary may not approve a comprehensive plan unless the Secretary of Commerce concurs that such plan satisfactorily complies with standards (1), (6), and (7) of subsection (d) of this section.

(f) Review, modification, or revisions.—Each comprehensive enhancement plan shall be reviewed periodically. The Secretary, the Secretary of Commerce, the State of Washington, the State of Oregon, or the appropriate tribal coordinating body may request a review, modification, or revision of a plan at any time. Any revision or modification of a plan, developed and agreed to by the State of Washington or the State of Oregon, as appropriate, and the appropriate tribal coordinating body, shall be approved by the Secretary, in consultation with the Secretary of Commerce, within 45 days of receipt of the proposed revision or modification, if such revision or modification is in conformity with this title and other applicable law. The Secretary, in consultation with the Secretary of Commerce, may withdraw approval of a plan if he finds that—

(1) the plan or its implementation is not consistent with this title and

(2) no modification or revision has been agreed to by the State of

Washington or the State of Oregon, as appropriate, and the appropriate tribal coordinating body to correct any such inconsistencies. (16 U.S.C. 3321)

Enhancement Project Proposals

Sec. 121. After the approval of a comprehensive enhancement plan, the State of Washington, the State of Oregon, or a treaty tribe acting through the appropriate tribal coordinating body may submit project proposals to the Secretary in such manner and form as the Secretary shall prescribe. Such application shall include, but not be limited to—

(1) plans, specifications, and cost estimates of the proposed enhancement project, including estimates of both the capital construction costs of the project and the operation and maintenance costs after commencement of the project;

(2) the enhancement goals that are sought to be achieved by the proposed project, including, but not limited to—

(A) a description of the affected stock;

(B) an analysis of the expected impacts on the salmon and steelhead resource; and

(C) a projection of the expected impacts on each type of commercial, recreational and treaty Indian fishing;

(3) evidence that the State of Washington, the State of Oregon, or the treaty tribe, acting through its chosen agency or agencies, has obtained or is likely to obtain any necessary titles to, interests in, rights-of-way over, or licenses covering the use of the relevant land;

(4) an analysis of, and supporting data for, the economic and biological integrity and viability of the project;

(5) such other information as the Secretary, in Consultation with the Secretary of Commerce, determines is necessary to assure that the proposed project is consistent with the approved enhancement plan and the provisions of this title; and

(6) after approval of the Commission's report pursuant to section 110 of this title, documentation that the appropriate State or treaty tribe submitting or undertaking the project proposal has adopted and begun all necessary implementation of the Commission's management program. (16 U.S.C. 3322)

Approval and Funding of Projects

Sec. 122. (a) In general.—The Secretary, in consultation with the Secretary of Commerce, may approve any project that is consistent with an approved enhancement plan and the provisions of this title, and shall promptly notify the States, the treaty tribes and, upon request, any other interested party of the approval of a project and the amount of funding made available under this title for such project.

(b) Limitations on federal share.—The total Federal share of all enhancement projects funded annually by this section shall not exceed 50 percent of the total amount expended for such projects, except that this limitation shall not apply to projects proposed by treaty tribes acting through the appropriate tribal coordinating body. A State share may include both real and personal property. Title to, or other interest in, such property shall remain within the State. The State of Washington shall be treated on the date of the enactment of this title as having expended $32,000,000 (reduced by the amount treated as expended by the State under section 135 of this title) on enhancement

projects set forth in the plan which are eligible for assistance under this title. The Federal share shall be paid in such amounts and at such times as the Secretary deems appropriate, consistent with this title and the goals of the comprehensive plan. (16 U.S.C. 3323)

Monitoring and Evaluation of Enhancement Projects

Sec. 123. The Secretary, in cooperation with the Secretary of Commerce, shall establish, in consultation with the State of Washington, the State of Oregon, and the appropriate tribal coordinating body, a system to monitor and evaluate on a continuing basis all enhancement projects for which funds have been distributed under this part, and may discontinue or suspend distribution of all or part of the funds if any project is not being carried out in a manner consistent with the comprehensive enhancement plan concerned and this title. Each recipient of a grant under this part shall make available to the Secretary and to the Comptroller General of the United States for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under the grant. (16 U.S.C. 3324)

Authorization of Appropriations

Sec. 124. (a) Salmon enhancement.—For purposes of carrying out the provisions of this part for salmon enhancement (including, but not limited to, the operation and maintenance of enhancement facilities) there are authorized to be appropriated not to exceed $45,000,000 for the ten-year period beginning on October 1, 1982, for the Washington conservation area and not to exceed $25,000,000 for the ten-year period beginning on such date for the Columbia River conservation area.

(b) Steelhead enhancement.—In addition to the amounts authorized under subsection (a), there are authorized to be appropriated to carry out steelhead enhancement projects under this part (including, but not limited to, operation and maintenance of enhancement facilities) not to exceed $7,000,000 for the ten-year period beginning on October 1, 1982, for the Washington conservation area; and not to exceed $7,000,000 for the ten-year period beginning on such date for the Columbia River conservation area.

(c) Limitation.—No moneys appropriated pursuant to subsection (a) or (b) may be used for the operation and maintenance of enhancement programs and related facilities as they existed on or before the date of the approval by the Secretary under section 120 of the enhancement plan for the conservation area concerned. (16 U.S.C. 3325)

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Part E — Miscellaneous

Regulations

Sec. 140. The Secretary of Commerce and the Secretary of the Interior may each promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out his functions under this title. (16 U.S.C. 3341)

Reports and Monitoring

Sec. 141. (a) Reports.—The State of Washington, the State of Oregon, and the appropriate tribal coordinating bodies shall submit to the appropriate Secretary an annual report on the status of the programs

authorized by this title or any other relevant report requested by such Secretary.

(b) Monitoring.—After the 18-month period after approval of the report of the Salmon and Steelhead Advisory Commission under Part B, the Secretary of Commerce shall establish a system to monitor and evaluate on a continuing basis whether the management program set forth in the report is being effectively implemented. If at any time after the monitoring system is established, the Secretary finds that—

(1) the number of parties referred to in section 113 has been reduced to the extent that such program cannot be implemented effectively; or

(2) the general implementation of the program is ineffective; the Secretary shall immediately discontinue any further funding under part C. (16 U.S.C. 3342)

Construction with Fishery Conservation and Management Provisions

Sec. 142. (a) Consistency.—Nothing in this title shall be construed as affecting the provisions of title III of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1851) as it applies with respect to fishery management plans and their application to any fishery, except that the Pacific Fishery Management Council shall ensure that existing and future fishery management plans are consistent with any recommended program approved under section 110 and any enhancement plan under part C.

(b) Fleet mobility.—The Secretary of Commerce in coordination with the Pacific Fishery Management Council in its salmon management plan shall ensure that the fishing effort reduction that results from the fleet adjustment program of part D and the license moratorium of the State of Washington is not replaced by new fishing effort from outside such State. (16 U.S.C. 3343)

Construction with Other Laws

Sec. 143. Nothing in this title shall be construed—

(1) to diminish Federal, State, or tribal jurisdiction, responsibility, or rights in the field of resource enhancement and management, or control of water resources, submerged lands, or navigable waters; nor to limit the authority of Congress to authorize and fund projects; or

(2) as superseding, modifying, or repealing any existing applicable law, except as provided for in section 143 of this title. (16 U.S.C. 3344)

Authorization of Additional Appropriation

Sec. 144. In addition to other authorizations of appropriations contained in this title, there are authorized to be appropriated to the Secretary of Commerce beginning October 1, 1981, an amount not to exceed $5,000,000 for the purpose of developing fisheries port facilities in the State of Oregon. The Secretary shall obligate such funds for projects proposed by units of State or local government, Indian tribes, or private nonprofit entities, and approved by the State of Oregon in consultation with the National Marine Fisheries Service and the Economic Development Administration. To the extent practicable, the Secretary shall assure that projects under this section are integrated with planning and assistance under the Public Works and Economic Development Act. Funds available under this section shall not be used for

any navigational improvement or other modification of the navigable waters of the United States. Funds appropriated pursuant to this section shall remain available until expended. (16 U.S.C. 3345)

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Lacey Act Amendments of 1981

- **Act of November 16, 1981 (P.L. 97-79, 95 Stat. 1073; 16 U.S.C. 3371(note), 3371-3378)**

Short Title

Sec. 1. That this Act may be cited as the "Lacey Act Amendments of 1981". (16 U.S.C 3371 (note))

Definitions

Sec. 2. For the purposes of this Act—

(a) The term "fish or wildlife" means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.

(b) The term "import" means to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(c) The term "Indian tribal law" means any regulation of, or other rule of conduct enforceable by, any Indian tribe, band, or group but only to the extent that the regulation or rule applies within Indian country as defined in section 1151 of title 18, United States Code.

(d) The terms "law," "treaty," "regulation," and "Indian tribal law" mean laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants.

(e) The term "person" includes any individual, partnership, association, corporation, trust, or any officer, employee, agent, department, or instrumentality of the Federal Government or of any State or political subdivision thereof, or any other entity subject to the jurisdiction of the United States.

(f) The terms "plant" and "plants" mean any wild member of the plant kingdom, including roots, seeds, and other parts thereof (but excluding common food crops and cultivars) which is indigenous to any State and which is either (A) listed on an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or (B) listed pursuant to any State law that provides for the conservation of species threatened with extinction.

(g) The term "Secretary" means, except as otherwise provided in the Act, the Secretary of the Interior or the Secretary of Commerce, as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970 (84 Stat. 2090); except that with respect to the provisions of this Act which pertain to the importation or exportation of plants the term means the Secretary of Agriculture.

(h) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and any other territory, commonwealth, or possession of the United States.

(i) The term "taken" means captured, killed, or collected.

(j) The term "transport" means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, conveyance, carriage, or shipment. (16 U.S.C. 3371)

Prohibited Acts

Sec. 3. (a) Offenses other than marking offenses.—It is unlawful for any person—

(1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken or possessed in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce—

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law, or

(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State;

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18, United States Code.)—

(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law or Indian tribal law, or

(B) to possess any plant taken, possessed, transported, or sold in violation of any law or regulation of any State;

(4) to attempt to commit any act described in paragraphs (1) through (4).

(b) Marking offenses.—It is unlawful for any person to import, export, or transport in interstate commerce any container or package containing any fish or wildlife unless the container or package has previously been plainly marked, labeled, or tagged in accordance with the regulations issued pursuant to paragraph (2) of subsection 7(a) of this Act.

(c) Sale and purchase of guiding and outfitting services and invalid licenses and permits.—

(1) Sale.—It is deemed to be a sale of fish or wildlife in violation of this chapter for a person for money or other consideration to offer or provide—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license or permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(2) Purchase.—It is deemed to be a purchase of fish or wildlife in violation of this chapter for a person to obtain for money or other consideration—

(A) guiding, outfitting, or other services; or

(B) a hunting or fishing license permit;

for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife.

(d) False labeling offenses.—It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be—

(1) imported, exported, transported, sold, purchased, or received from any foreign country; or

(2) transported in interstate or foreign commerce. (16 U.S.C. 3372)

Penalties and Sanctions

Sec. 4. (a) Civil penalties.—

(1) Any person who engages in conduct prohibited by any

provision of this Act (other than subsection 3(b)) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation and any person who knowingly violates section 2 of this act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation: *Provided*, That when the violation involves fish or wildlife or plants with a market value of less than $350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, or $10,000, whichever is less.

(2) Any person who violates subsection 3(b) may be assessed a civil penalty by the Secretary of not more than $250.

(3) For purposes of paragraphs (1) and (2), any reference to a provision of this Act or to a section of this Act shall be treated as including any regulation issued to carry out any such provision or section.

(4) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which a person may have taken or been in possession of the said fish or wildlife or plants.

(5) Any civil penalty assessed under this subsection may be remitted or mitigated by the Secretary.

(6) In determining the amount of any penalty assessed pursuant to paragraphs (1) and (2), the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed, and with respect to the violator, the degree of culpability, ability to pay, and such other matters as justice may require.

(b) Hearings.—Hearings held during proceedings for the assessment of civil penalties shall be conducted in accordance with section 554 of title 5, United States Code. The administrative law judge may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Review.—Any person against whom a civil penalty is assessed under this section may obtain review thereof in the

appropriate District Court of the United States by filing a complaint in such court within 30 days after the date of such order and by simultaneously sending a copy of such complaint by certified mail to the Secretary, the Attorney General, and the appropriate United States attorney. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.

(d) Criminal penalties.—

(1) Any person who—

(A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act (other than subsection 3(b)), or

(B) violates any provision of this Act (other than subsections (b) and (d) of section 2,) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of $350, knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than $20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly engages in conduct prohibited by any provision of this Act (other than subsections (b) and (d) of section 2) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than $10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates section 3(d) of this Act—

(A) shall be fined under Title 18, or imprisoned for not more than 5 years, or both, if the offense involves—

(i) the importation or exportation of fish or wildlife or plants; or

(ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than $350; and

(B) shall be fined under Title 18, or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A) of this subsection.

(e) Permit sanctions.—The Secretary may also suspend, modify, or cancel any Federal hunting or fishing license, permit, or stamp, or any license or permit authorizing a person to import or export fish or wildlife or plants (other than a permit or license issued pursuant to the Fishery Conservation and Management Act of 1976), (16 U.S.C. 1801 (note)) or to operate a quarantine station or rescue center for imported wildlife or plants, issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation issued hereunder. The Secretary shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any licenses, permits, stamps, or other agreements pursuant to this section. (16 U.S.C. 3373)

Forfeiture

Sec. 5. (a)In general.—

(1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3 of this Act (other than subsection 3(b)), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution included in section 4 of this Act.

(2) All vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring or purchasing of fish or wildlife or plants in a criminal violation of this Act for which a felony conviction is obtained shall be subject to forfeiture to the United States if (A) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of this Act, and (B) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants.

(b) Application of customs laws.—All provisions of law relating to the seizure, forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department may, for the purposes of this Act, also be exercised or performed by the Secretary or by such persons as he may designate: *Provided*, That any warrant for search or seizure shall be issued in accordance with rule 41 of the Federal Rules of Criminal Procedure.

(c) Storage cost.—Any person convicted of an offense, or assessed a civil penalty, under section 4 shall be liable for the costs incurred in the storage, care, and maintenance of any fish or wildlife or plant seized in connection with the violation concerned. (16 U.S.C. 3374)

Enforcement

Sec. 6. (a) In general.—The provisions of this Act and any regulations issued pursuant thereto shall be enforced by the Secretary, the

Secretary of Transportation, or the Secretary of the Treasury. Such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency or Indian tribe for purposes of enforcing this Act.

(b) Powers.—Any person authorized under subsection (a) of this section to enforce this Act may carry firearms; may, when enforcing this Act, make an arrest without a warrant, in accordance with any guidelines which may be issued by the Attorney General, for any offense under the laws of the United States committed in the person's presence, or for the commission of any felony under the laws of the United States, if the person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation: *Provided*, That an arrest for a felony violation of this Act that is not committed in the presence or view of any such person and that involves only the transportation, acquisition, receipt, purchase, or sale of fish or wildlife or plants taken or possessed in violation of any law or regulation of any State shall require a warrant; may make an arrest without a warrant for a misdemeanor violation of this Act if he has reasonable grounds to believe that the person to be arrested is committing a violation in his presence or view; and may execute and serve any subpena, arrest warrant, search warrant issued in accordance with rule 41 of the Federal Rules of Criminal Procedure, or other warrant of civil or criminal process issued by any court of competent jurisdiction for enforcement of this Act. Any person so authorized, in coordination with the Secretary of the Treasury, may detain for inspection and inspect any vessel, vehicle, aircraft or other conveyance or any package, crate, or other container, including its contents, upon the arrival of such conveyance or container in the United States or the customs waters of the United States from any point outside the United States or such customs waters, or, if such conveyance or container is being used for exportation purposes, prior to departure from the United States or the customs waters of the United States. Such person may also inspect and demand the production of any documents and permits required by the country of natal origin, birth, or reexport of the fish or wildlife. Any fish, wildlife, plant, property, or item seized shall be held by any person authorized by the Secretary pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, plants, property, or item pursuant to section 5 of this Act; except that the Secretary may, in lieu of holding such fish, wildlife, plant, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(c) District court jurisdiction.—The several district courts of the United States, including the courts enumerated in Section 460 of title 28, United States Code, shall have jurisdiction over any actions arising under this Act. The venue provisions of title 18 and title 28 of the United States Code shall apply to any actions arising under this Act. The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulations issued thereunder.

(d) Rewards.—Beginning in fiscal year 1983, the Secretary or

the Secretary of the Treasury shall pay a reward from sums received as penalties, fines, or forfeitures of property for any violation of this Act or any regulation issued hereunder to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this Act or any regulation issued hereunder. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection. (16 U.S.C 3375)

Administration

Sec. 7. (a) Regulations.—

(1) The Secretary, after consultation with the Secretary of the Treasury, is authorized to issue such regulations, except as provided in paragraph (2), as may be necessary to carry out the provisions of section 4 and section 5 of this Act.

(2) The Secretaries of the Interior and Commerce shall jointly promulgate specific regulations to implement the provisions of Subsection 3(b) of this Act for the marking and labeling of containers or packages containing fish or wildlife. These regulations shall be in accordance with existing commercial practices.

(b) Contract authority.—Beginning in fiscal year 1983, to the extent and in the amounts provided in advance in appropriations Acts, the Secretary may enter into such contracts, leases, cooperative agreements, or other transactions with any Federal or State agency, Indian tribe, public or private institution, or other person, as may be necessary to carry out the purposes of this Act. (16 U.S.C. 3376)

Exceptions

Sec. 8. (a) The provisions of paragraph (1) of subsection 3(a) of this Act Shall not apply to any activity regulated by a fishery management plan in effect under the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

(b) The provisions of paragraphs (1), (2)(A), and (3)(A) of subsection 3(a) of this Act shall not apply to—

(1) any activity regulated by the Tuna Conventions Act of 1950 (16 U.S.C. 951-961) or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971-971(h)); or

(2) any activity involving the harvesting of highly migratory Species (as defined in paragraph (14) of section 3 of the Fishery Conservation and Management Act of 1976) (16 U.S.C. 1802) taken on the high seas (as defined in paragraph (13) of such section 3) if such species are taken in violation of the laws of a foreign nation and the United States does not recognize the jurisdiction of the foreign nation over such species.

(c) The provisions of paragraph (2) of subsection 3(a) of this Act shall not apply to the interstate shipment or transshipment through Indian country as defined in section 1151 of title 18, United States Code, or a State of any fish or wildlife or plant legally taken if the shipment is en route to a State in which the fish or wildlife or plant may be legally possessed. (16 U.S.C. 3377)

Miscellaneous provisions

Sec. 9. (a) Effect on powers of states.—Nothing in this Act shall be construed to prevent the several States or Indian tribes from making

or enforcing laws or regulations not inconsistent with the provisions of this Act.

(b) Repeals.—The following provisions of law are repealed:

(1) The Act of May 20, 1926 (commonly known as the Black Bass Act; 16 U.S.C. 851-856).

(2) Section 5 of the Act of May 25, 1900 (16 U.S.C. 667e), and sections 43 and 44 of title 18, United States Code (commonly known as provisions of the Lacey Act).

(3) Sections 3054 and 3112 of title 18, United States Code.

(c) Disclaimers.—Nothing in this Act shall be construed as—

(1) repealing, superseding, or modifying any provision of Federal law other than those specified in subsection (b);

(2) repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established pursuant to treaty, statute, or executive order pertaining to any Indian tribe, band, or community; or

(3) enlarging or diminishing the authority of any State or Indian tribe to regulate the activities of persons within Indian reservations.

(d) Travel and transportation expenses.—The Secretary of the Interior is authorized to pay from agency appropriations the travel expense of newly appointed special agents of the United States Fish and Wildlife Service and the transportation expense of household goods and personal effects from place of residence at time of selection to first duty station to the extent authorized by section 5724 of title 5 for all such special agents appointed after January 1, 1977.

(e) Interior appropriation budget proposal.—The Secretary shall identify the funds utilized to enforce this Act and any regulations thereto as a specific appropriations item in the Department of the Interior appropriations budget proposal to the Congress. (16 U.S.C. 3378)

Agriculture and Food Act of 1981

- **Act of December 22, 1981 (P.L. 97-98, 95 Stat. 1213; 7 U.S.C. 4201(note), 4201-4203; 16 U.S.C. 590h, 3401, 3412-3420, 3451, 3453-3456, 3461)**

TITLE XVI—NATIONAL AGRICULTURAL RESEARCH,EXTENSION, AND TEACHING POLICY ACT AMENDMENTS OF 1981

Aquaculture and Rangeland Research

Sec. 1440. (a) The National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3101 et seq.) is amended by adding at the end thereof the following new subtitles L and M: (see P.L. 95-113, Tile XIV)

TITLE XV—RESOURCE CONSERVATION

Policy

Sec. 1501. Congress hereby reaffirms its policy to promote soil and water conservation, improve the quality of the Nation's waters, and preserve and protect natural resources through the use of effective conservation and pollution abatement programs. (16 U.S.C. 3401)

SUBTITLE B — SPECIAL AREAS CONSERVATION PROGRAM

* * * *

Formulation and Implementation of Special Areas Conservation Program

Sec. 1503. (a) The Secretary of Agriculture (hereafter in this subtitle referred to as the "Secretary") shall establish a program for the conservation of soil, water, and related resources in special areas designated pursuant to section 1504 (hereafter in this subtitle referred to as "designated special areas") by providing technical and financial assistance to owners and operators or groups of owners and operators of farm, ranch, and certain other lands at their request. Such assistance with respect to State, county, and other public land shall be limited to those lands that are an integral part of a private farm operating unit and under the control of the private landowner or operator.

(b) To carry out the program established under this subtitle, the Secretary may enter into contracts with owners and operators of farm, ranch, or other land in a designated special area having such control over the land as the Secretary deems necessary. Contracts may be entered into with respect to land in a designated special area which is not farm or ranch land only if the erosion-related problems of such land are so severe as to make contracts with respect to such land necessary for the effective protection of farm or ranch land in that designated special area. Contracts under this subtitle shall be designed to provide assistance to the owners or operators of such farm, ranch, or other land to make voluntary changes in their cropping systems which are needed to conserve or protect the soil, water, and related resources of such lands, and to carry out the soil and

water conservation practices and measures needed under such changed systems and uses.

(c) The basis for such contracts shall be a conservation plan approved by the Secretary and the soil and water conservation district in which the land on which the plan is to be carried out is situated. The Secretary shall provide to the landowner or operator, upon request, such technical assistance as may be needed to prepare and submit to the Secretary a conservation plan that—

(1) incorporates such soil and other conservation practices and measures as may be determined to be practicable to protect such land from erosion or water-related problems;

(2) outlines a schedule for the implementation of changes in cropping systems or use of land or of water and of conservation practices and measures proposed to be carried out on the farm, ranch, or other land during the contract period;

(3) is designed to take into account the local social, economic, and environmental conditions, which will help solve the particular erosion or water-related problems of the designated area;

(4) may allow for such varying levels of conservation application as are appropriate to address the problems and may be developed to cover all or part of a farm, ranch, or other land as determined to be necessary to solve the conservation problems;

(5) may include practices and measures for enhancing fish and wildlife and recreation resources and for reducing or controlling agricultural-related pollution; and

(6) identifies those conservation practices and measures, including planned grazing systems, needed to improve vegetative conditions, reduce erosion, and conserve water on range and pasturelands.

(d) The landowner or operator, in any contract entered into under this subtitle, shall agree—

(1) to carry out the plan for the owner's or operator's farm, ranch, or other land substantially in accordance with the schedule outlined therein unless any requirement thereof is waived or modified by the Secretary pursuant to subsection (f);

(2) to forfeit further payments under the contract and refund to the United States all payments received thereunder, including interest, upon violation by the owner or operator of the contract at any stage during the time the owner or operator has control of the land if the Secretary, after considering the recommendations of the soil and water conservation district board for the district in which the lands are located, determines that such violation is of such a nature as to warrant termination of the contract, or to make refunds, including interest, or accept such payment adjustments as the Secretary may deem appropriate if the Secretary determines that the violation by the owner or operator does not warrant termination of the contract;

(3) not to adopt any practice or measure specified by the Secretary in the contract which would tend to defeat the purposes of the contract; and

(4) upon transfer, during the contract period, of the rights or interests of the owner or operator in the farm, ranch, or other land on which the plan is to be carried out, to forfeit all rights to further payments under the contract and refund to the United States all payments received thereunder, including interest, unless the transferee of any such land agrees with the Secretary to assume all obligations of the contract.

(e) In return for such agreement by the landowner or operator, the Secretary shall agree to share the cost of carrying out those conservation practices and measures set forth in the contract for which the Secretary determines that cost sharing is appropriate and in the public interest. The portion of the costs to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the implementation, and, if applicable, the maintenance of the conservation practices and measures under the contract, including the cost of labor. In determining the share of costs to be borne by the federal government, the Secretary shall take into consideration the particular social, economic, and environmental conditions of the geographic area involved and the degree of conservation to be achieved. The Secretary shall determine the maximum amount of cost-share assistance that may be provided to any single recipient. If adjustments from cultivated crops to permanent vegetative cover or changes in crop varieties are undertaken as a conservation practice or measure under the contract, cost-share assistance may be provided under such contract with regard to the income lost as a result of such adjustments.

(f) The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest. The Secretary may agree to such modification of contracts previously entered into as the Secretary may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to similar conservation or other programs administered by the Secretary.

(g) The Secretary may also enter into contracts with landowners or operators for the purpose of maintaining any conservation practice or measure established under this subtitle or other conservation practice or measure which has been adequately established, and to provide necessary assistance to retain the practice or measure on the land. The provisions and administration of such contracts shall be in accordance with the requirements set forth in subsections (b) through (f) of this section. (16 U.S.C. 3412)

Program to be Directed at Specific Problems

Sec. 1504. (a) The program established under this subtitle shall be directed toward identifying and correcting such erosion-related or water management-related problems as may exist within each designated special area. Assistance under this subtitle may be provided to any geographic area of the United States only if such area is first designated by the Secretary as having severe and chronic erosion-related or water management-related problems.

(b) In designating a geographic area as a special area under this subtitle, the Secretary shall review national resources inventory data, river basin plans, special studies, and other resource information; consider tons of soil loss prevented, acres protected, and volume of water conserved; and evaluate the degree and type of interagency cooperation, the degree of local acceptance of the planned target activity, and the significant favorable and adverse impacts of the targeted activity. The Secretary shall prepare and publish a report setting forth an assessment of the problems, objectives, and priorities in such area, and a schedule for the implementation of the program

under this subtitle. The report shall also indicate how the program with respect to such area takes into consideration ongoing programs of federal, State, and local agencies, including soil conservation districts, relating to soil and water conservation, pollution abatement, or the improvement or protection of forest land. The Secretary shall, to the extent practicable, assure that all Department of Agriculture conservation programs operating in a designated special area complement the conservation objectives outlined for such area. (16 U.S.C. 3413)

Contract Limitations

Sec. 1505. Special areas may be designated pursuant to section 1504 of this subtitle at any time within the period beginning on the date of enactment of this subtitle and ending on September 30, 1991. Contracts authorized by subsections (b) and (g) of section 1503 of this subtitle may be entered into at any time within ten years after the designation of the special area to which they relate and may not exceed ten years in duration. The total dollar amount of such contracts that may be entered into in any one fiscal year shall not exceed such amounts as may be provided for in advance in appropriations Acts. (16 U.S.C. 3414)

Notification of Congress and Approval of Designations

Sec. 1506. The Secretary shall submit a copy of each special area report developed and published pursuant to section 1504(b) of this subtitle to the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture of the House of Representatives at least forty-five days prior to entering into any contract under section 1503 of this subtitle with respect to land in the designated special area. (16 U.S.C. 3415)

Utilization of Services and Facilities

Sec. 1507. In carrying out the provisions of this subtitle, the Secretary may utilize the services of local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) and the technical services of the Department of Agriculture, soil and water conservation districts, and other State or local agencies. The Secretary may utilize the services and facilities of the Commodity Credit Corporation in carrying out this subtitle. (16 U.S.C., 3416)

Improvement of Technology

Sec. 1508. The Secretary may expend funds directly or through grants for such research as is needed to assist in developing new or improving existing technologies for controlling erosion or water-related problems in designated special areas. (16 U.S.C. 3417)

Authorization for Appropriations

Sec. 1509. There are authorized to be appropriated annually, to be available until expended, such sums as may be necessary to carry out the program authorized by this subtitle. (16 U.S.C. 3418)

Report to Congress

Sec. 1510. The Secretary shall submit a report to Congress by January 1, 1986, and at the end of each five-year interval thereafter concerning the operation of the program provided for in this subtitle. Such report shall contain an

evaluation of the operation of such program and shall include recommendations for such additional legislation as may be necessary to solve identified soil, water, and related resources problems in areas designated by the Secretary under this subtitle and to utilize new technology and research related to such problems. (16 U.S.C. 3419)

Protection of Participants

Sec. 1511. No person shall be disqualified from participating in, or suffer any forfeiture or reduction in benefits under, any other program administered by the Secretary by virtue of participation in the program provided for in this subtitle. (16 U.S.C. 3420)

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SUBTITLE H — RESOURCE CONVERSATION AND DEVELOPMENT PROGRAM

Purpose

Sec. 1528. It is the purpose of this subtitle to encourage and improve the capability of State and local units of government and local nonprofit organizations in rural areas to plan, develop, and carry out programs for resource conservation and development. (16 U.S.C. 3451)

* * * *

Resource Conservation and Development Program

Sec. 1530. The Secretary shall establish a resource conservation and development program under which the Secretary shall make available to States, local units of government, and local nonprofit organizations the technical and financial assistance necessary to permit such States, local units of government, and local nonprofit organizations to operate and maintain a planning and implementation process needed to conserve and improve the use of land, develop natural resources, and improve and enhance the social, economic, and environmental conditions in rural areas of the United States. (16 U.S.C. 3453)

Selection of New Designated Areas

Sec. 1531. The Secretary shall select designated areas for assistance under this subtitle on the basis of the elements specified in section 1529(1). (16 U.S.C. 3454)

Authority of the Secretary

Sec. 1532. In carrying out the provisions of this subtitle, the Secretary may—

(1) provide technical assistance to any State, local unit of government, or local nonprofit organization within a designated area to assist in developing and implementing an area plan for that area;

(2) cooperate with other departments and agencies of the federal government, State, and local units of government, and with local nonprofit organizations in conducting surveys and inventories, disseminating information, and developing area plans;

(3) assist in carrying out an area plan approved by the Secretary for any designated area by providing technical and financial assistance to any State, local unit of government, or local nonprofit organization designated to receive such assistance by the governor or legislature of the State concerned; and

(4) enter into agreements with States, local units of government,

and local nonprofit organizations, as provided in section 1533. (16 U.S.C. 3455)

Agreement, Terms and Conditions

Sec. 1533. (a) Technical and financial assistance, including loans, may be provided by the Secretary to any State, local unit of government, or local nonprofit organization to assist in carrying out works of improvement specified in an area plan approved by the Secretary only if—

(1) such State, local unit of government, or local nonprofit organization agrees in writing to carry out such works of improvement and to finance or arrange for financing of any portion of the cost of carrying out such works of improvement and to finance or arrange for financing of any portion of the cost of carrying out such works of improvement for which financial assistance is not provided by the Secretary under this subtitle;

(2) the works of improvement for which assistance is to be provided under this subtitle are included in an area plan and have been approved by the State, local unit of government, or local nonprofit organization to be assisted;

(3) the Secretary determines that assistance to finance the type of works of improvement concerned is not reasonably available to such State, local unit of government, or local nonprofit organization under any other federal program;

(4) the works of improvement provided for in the area plan are consistent with any current comprehensive plan for such area;

(5) the cost of the land or an interest in the land acquired or to be acquired under such plan by any State, local unit of government, or local nonprofit organization is borne by such State, local unit of government, or local nonprofit organization; and

(6) the State, local unit of government, or local nonprofit organization participating in an area plan agrees to maintain and operate all works of improvement installed under such plan.

(b) Loans made under this subtitle shall be made on such terms and conditions as the Secretary may prescribe, except that such loans shall have a repayment period of not more than thirty years from the date of completion of the work of improvement for which the loan is made and shall bear interest at the average rate of interest paid by the United States on its obligations of a comparable term, as determined by the Secretary of the Treasury.

(c) Assistance may not be made available to any State, local unit of government, or local nonprofit organization to carry out any area plan unless such plan has been submitted to and approved by the Secretary.

(d) The Secretary may withdraw technical and financial assistance with respect to any area plan if the Secretary determines that such assistance is no longer needed or that sufficient progress has not been made toward developing or implementing the elements of such plan. (16 U.S.C. 3456)

* * * *

Authorization for Appropriations

Sec. 1538. There are authorized to be appropriated for each of the five fiscal years 1991 through 1995, such sums as may be necessary to carry out the provisions of this subtitle, except that not more than $15,000,000 may be appropriated for loans for any fiscal year. Funds appropriated pursuant to this subtitle shall remain available until expended. (16 U.S.C. 3461)

SUBTITLE I — FARMLAND PROTECTION POLICY ACT

Short Title

Sec. 1539. This subtitle may be cited as the "Farmland Protection Policy Act." (7 U.S.C. 4201(note))

* * * *

(c) As used in this subtitle—

(1) the term "farmland" includes all land defined as follows:

(A) prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion, as determined by the Secretary. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage;

(B) unique farmland is land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yield of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables; and. . . (7 U.S.C. 4201)

* * * *

Farmland Protection Policy

Sec. 1541. (a) The Department of Agriculture, in cooperation with other departments, agencies, independent commissions, and other units of the federal government, shall develop criteria for identifying the effects of federal programs on the conversion of farmland to nonagricultural uses.

(b) Departments, agencies, independent commissions, and other units of the federal government shall use the criteria established under subsection (a) of this section, to identify and take into account the adverse effects of federal programs on the preservation of farmland; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that such federal programs, to the extent practicable, are compatible with State, unit of local government, and private programs and policies to protect farmland.

(c) The Department of Agriculture may make available to States, units of local government, individuals, organizations, and other units of the federal government information useful in restoring, maintain, and improving the quantity and quality of farmland. (7 U.S.C. 4202)

Existing Policies and Procedures

Sec. 1542. (a) Each department, agency, independent commission, or other unit of the federal government, with the assistance of the Department of Agriculture, shall review current provisions of law, administrative rules and regulations, and policies and procedures applicable to it to determine whether any provision thereof will prevent such

unit of the federal government from taking appropriate action to comply fully with the provisions of this subtitle.

(b) Each department, agency, independent commission, or other unit of the federal government, with the assistance of the Department of Agriculture, shall, as appropriate, develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of this subtitle. (7 U.S.C. 4203)

* * * *

Money and Finance
Chapter 13—Appropriations

- **Act of September 13, 1982 (P.L. 97-258, 96 Stat. 923; 31 U.S.C. 1341–1343, 1349–1351)**

An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance".

Note—Because this law codified existing laws into this code, the section numbers below refer to U.S.C.

SUBCHAPTER III—LIMITATIONS, EXCEPTIONS AND PENALTIES

Limitations on Expending and Obligating Amounts

Sec. 1341. (a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without liability of the United States Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

Limitation on Voluntary Services

Sec. 1342. An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

Buying and Leasing Passenger Motor Vehicles and Aircraft

Sec. 1343. (a) In this section, buying a passenger motor vehicle or aircraft includes a transfer of the vehicle or aircraft between agencies.

(b) An appropriation may be expended to buy or lease passenger motor vehicles only—

(1) for the use of—

(A) the President;

(B) the secretaries to the President; or

(C) the heads of executive departments listed in section 101 of title 5; or

(2) as specifically provided by law.

(c)(1) Except as specifically provided by law, an agency may use an appropriation to buy a passenger motor vehicle (except a bus or ambulance) only at a total cost (except costs required only for transportation) that—

(A) includes the price of systems and equipment the Administrator of General Services decides is incorporated customarily in standard passenger motor vehicles completely equipped for ordinary operation;

(B) includes the value of a vehicle used in exchange;

(C) is not more than the maximum price established by the agency having authority under law to establish a maximum price; and

(D) is not more than the amount specified in a law.

(2) Additional systems and equipment may be bought for a passenger motor vehicle if the Administrator decides the purchase is appropriate. The price of additional systems or equipment is not included in deciding whether the cost of the vehicle is within a maximum price specified in a law.

(d) An appropriation (except an appropriation for the armed forces) is available to buy, maintain, or operate an aircraft only if the appropriation specifically authorizes the purchase, maintenance, or operation.

(e) This section does not apply to—

(1) buying, maintaining, and repairing passenger motor vehicles by the United States Capitol Police;

(2) buying, maintaining, and repairing vehicles necessary to carry out projects to improve, preserve, and protect rivers and harbors; or

(3) leasing, maintaining, repairing, or operating motor passenger vehicles necessary in the field work of the Department of Agriculture.

* * * *

Adverse Personnel Actions

Sec. 1349. (a) An officer or employee of the United States Government or of the District of Columbia government violating section 1341(a) or 1342 of this title shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.

(b) An officer or employee who willfully uses or authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government (except for an official purpose authorized by section 1344 of this title) or otherwise violates section 1344 shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office.

Criminal Penalty

Sec. 1350. An officer or employee of the United States Government or of the District of Columbia

government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

Reports on violations

Sec. 1351. If an officer or employee of an executive agency or an officer or employee of the District of Columbia government violates section 1341(a) or 1342 of this title, the head of the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

Money and Finance
Chapter 15—Appropriation Accounting

- **Act of September 13, 1982 (P.L. 97-258, 96 Stat. 928; 31 U.S.C. 1511–1513, 1515–1519)**

An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance".

Note—Because this law codified existing laws into this code, the section numbers below refer to U.S.C.

SUBCHAPTER II—APPORTIONMENT

Definition and Application

Sec. 1511. (a) In this subchapter, "appropriations" means—

(1) appropriated amounts;

(2) funds, and

(3) authority to make obligations by contract before appropriations.

(b) This subchapter does not apply to—

(1) amounts (except amounts for administrative expenses) available—

(A) for price support and surplus removal of agricultural commodities; and

(B) under section 32 of this Act of August 24, 1935 (7 U.S.C. 612c);

(2) a corporation getting amounts to make loans (except paid in capital amounts) without legal liability on the part of the United States Government; and

(3) the Senate, the House of Representatives, a committee of Congress, a member, officer, employee, or office of either House of Congress, or the Office of the Architect of the Capitol or an officer or employee of that Office.

Apportionment and Reserves

Sec. 1512. (a) Except as provided in this subchapter, an appropriation available for obligation for a definite period shall be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period. An appropriation for an indefinite period and authority to make obligations by contract before appropriations shall be apportioned to achieve the most effective and economical use. An apportionment may be reapportioned under this section.

(b)(1) An appropriation subject to apportionment is apportioned by—

(A) months, calendar quarters, operating seasons, or other time periods;

(B) activities, functions, projects, or objects; or

(C) a combination of the ways referred to in clauses (A) and (B) of this paragraph.

(2) The official designated in section 1513 of this title to make apportionments shall apportion an appropriation under paragraph (1) of this subsection as the official considers appropriate. Except as specified by the official, an amount apportioned is available for obligation under the terms of the appropriation on a cumulative basis unless reapportioned.

(c)(1) In apportioning or reapportioning an appropriation, a reserve may be established only—

(A) to provide for contingencies;

(B) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(C) as specifically provided by law.

(2) A reserve established under this subsection may be changed as necessary to carry out the scope and objectives of the appropriation concerned. When an official designated in section 1513 of this title to make apportionments decides that an amount reserved will not be required to carry out the objectives and scope of the appropriation concerned, the official shall recommend the rescission of the amount in the way provided in chapter 11 of this title for appropriation requests. Reserves established under this section shall be reported to Congress as provided in the Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.).

(d) An apportionment or a reapportionment shall be reviewed at least 4 times a year by the official designated in section 1513 of this title to make apportionments.

Officials Controlling Apportionments

Sec. 1513. (a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government that is required to be apportioned under section 1512 of this title shall apportion the appropriation in writing. An appropriation shall be apportioned not later than the later of the following:

(1) 30 days before the beginning of the fiscal year for which the appropriation is available; or

(2) 30 days after the date of enactment of the law by which the appropriation is made available.

(b)(1) The President shall apportion in writing an appropriation available to an executive agency (except the commission) that is required to be apportioned under section 1512 of this title. The head of each executive agency to which the appropriation is available shall submit to the President information required for the apportionment in the form and the way and at the time specified by the President. The information shall be submitted not later than the later of the following:

(A) 40 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 15 days after the date of enactment of the law by which the appropriation is made available.

(2) The President shall notify the head of the executive agency of the action taken in apportioning the appropriation under paragraph (1) of this subsection not later than the later of the following:

(A) 20 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 30 days after the date of enactment of the law by which the appropriation is made available.

(c) By the first day of each fiscal year, the head of each executive department of the United States Government shall apportion among the major organizational units of the department the maximum amount to be expended by each unit during the fiscal year out of each contingent fund appropriated for the entire

year for the department. Each amount may be changed during the fiscal year only by written direction of the head of the department. The direction shall state the reasons for the change.

(d) An appropriation apportioned under this subchapter may be divided and subdivided administratively within the limits of the apportionment.

(e) This section does not affect the initiation and operation of agricultural price support programs.

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Authorized Apportionments Necessitating Deficiency or Supplemental Appropriations

Sec. 1515. (a) An appropriation required to be apportioned under section 1512 of this title may be apportioned on a basis that indicates the need for a deficiency or supplemental appropriation to the extent necessary to permit payment of such pay increases as may be granted pursuant to law to civilian officers and employees (including prevailing rate employees whose pay is fixed and adjusted under subchapter IV of chapter 53 of title 5) and to retired and active military personnel.

(b)(1) Except as provided in subsection (a) of this section, an official may make, and the head of an executive agency may request, an apportionment under section 1512 of this title that would indicate a necessity for a deficiency or supplemental appropriation only when the official or agency head decides that the action is required because of—

(A) a law enacted after submission to Congress of the estimates for an appropriation that requires an expenditure beyond administrative control; or

(B) an emergency involving the safety of human life, the protection of property, or the immediate welfare of individuals when an appropriation that would allow the United States Government to pay, or contribute to, amounts required to be paid to individuals in specific amounts fixed by law or under formulas prescribed by law, is insufficient.

(2) If an official making an apportionment decides that an apportionment would indicate a necessity for a deficiency or supplemental appropriation, the official shall submit immediately a detailed report of the facts to Congress. The report shall be referred to in submitting a proposed deficiency or supplemental appropriation.

Exemptions

Sec. 1516. An official designated in section 1513 of this title to make apportionments may exempt from apportionment—

(1) a trust fund or working fund if an expenditure from the fund has no significant effect on the financial operations of the United States Government;

(2) a working capital fund or a revolving fund established for intragovernmental operations;

(3) receipts from industrial and power operations available under law; and

(4) appropriations made specifically for—

(A) interest on, or retirement of, the public debt;

(B) payment of claims, judgements, refunds, and drawbacks;

(C) items the President decides are of a confidential nature;

(D) payment under a law requiring payment of the total amount of the appropriation to a designated payee; and

(E) grants to the States under the Social Security Act (42 U.S.C. 301 et seq.).

Prohibited Obligations and Expenditures

Sec. 1517. (a) An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding—

(1) an apportionment; or

(2) the amount permitted by regulations prescribed under section 1514(a) of this title.

(b) If an officer or employee of an executive agency or of the District of Columbia government violates subsection (a) of this section, the head of the executive agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

Adverse Personnel Actions

Sec. 1518. An officer or employee of the United States Government or of the District of Columbia government violating section 1517(a) of this title shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.

Criminal Penalty

Sec. 1519. An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1517(a) of this title shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

Money and Finance
Chapter 37—Claims

- **Act of September 13, 1982 (P.L. 97-258, 96 Stat. 971; 31 U.S.C. 3711-3720, 3720A)**

An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance".

Note—Because this law codified existing laws into this code, the section numbers below refer to U.S.C.

Subchapter II—Claims of the United States Government

Collection and Compromise

Sec. 3711. (a) The head of an executive or legislative agency—

(1) shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency;

(2) may compromise a claim of the Government of no more than $100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe that has not been referred to another executive or legislative agency for further collection action; and

(3) may suspend or end collection action on a claim referred to in clause (2) of this subsection when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered.

(b) The Comptroller General has the same authority that the head of the agency has under subsection (a) of this section when the claim is referred to the Comptroller General for further collection action. Only the Comptroller General may compromise a claim arising out of an exception the Comptroller General makes in the account of an accountable official.

(c)(1) The head of an executive or legislative agency may not act under subsection (a)(2) or (3) of this section on a claim that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim, or that is based on conduct in violation of the antitrust laws.

(2) The Secretary of Transportation may not compromise for less than $500 a penalty under section 6 of the Act of March 2, 1893 (45 U.S.C. 6), section 4 of the Act of April 14, 1910 (45 U.S.C. 13), section 9 of the Act of February 17, 1911 (45 U.S.C. 34), and section 25(h) of the Interstate Commerce Act (49 U.S.C. 26(h)).

(d) A compromise under this section is final and conclusive unless gotten by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact. An accountable official is not liable for an amount paid, or for the value of property lost or damaged if the amount or value is not recovered because of a compromise under this section.

(e) The head of an executive or legislative agency acts under—

(1) regulations prescribed by the head of the agency; and

(2) standards that the Attorney General and the Comptroller General may prescribe jointly.

(f)(1) When trying to collect a claim of the Government under a law except of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), the head of an executive or legislative agency may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if—

(A) notice required by section 552a(e)(4) of title 5 indicates that information in the system may be disclosed to a consumer reporting agency;

(B) the head of the agency has reviewed the claim and decided that the claim is valid and overdue;

(C) the head of the agency has notified the individual in writing—

(i) that payment of the claim is overdue;

(ii) that, within not less than 60 days after sending the notice, the head of the agency intends to disclose to a consumer reporting agency that the individual is responsible for the claim;

(iii) of the specific information to be disclosed to the consumer reporting agency; and

(iv) of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative repeal or review of the claim;

(D) the individual has not—

(i) repaid or agreed to repay the claim under a written repayment plan that the individual has signed and the head of the agency has agreed to; or

(ii) filed for review of the claim under paragraph (2) of this subsection;

(E) the head of the agency has established procedures to—

(i) disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(ii) verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed; and

(iii) get satisfactory assurances from each consumer reporting agency that the agency is complying with all laws of the United States related to providing consumer credit information; and

(F) the information disclosed to the consumer reporting agency is limited to—

(i) information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(ii) the amount, status, and history of the claim; and

(iii) the agency or program under which the claim arose.

(2) Before disclosing inform ation to a consumer reporting agency under paragraph (1) of this subsection and at other times allowed by law, the head of an executive or legislative agency shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(3) Before disclosing information to a consumer reporting agency under paragraph (1) of this subsection, the head of an executive or legislative agency shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice under paragraph (1)(C).

Time Limitations for Presenting Certain Claims of the Government

Sec. 3712. (a) Claims over forged or unauthorized endorsements.—

(1) Period for claims.—If the Secretary of the Treasury determines that a Treasury check has been paid over a forged or unauthorized endorsement, the Secretary may reclaim the amount of such check from the presenting bank or any other endorser that has breached its guarantee of endorsements prior to—

(A) the end of the 1-year period beginning on the date of payment; or

(B) the expiration of the 180-day period beginning on the close of the period described in subparagraph (A) if a timely claim is received under section 3702.

(2) Civil actions.—(A) Except as provided in subparagraph (B), the United States may bring a civil action to enforce the liability of an endorser, transferor, depository, or fiscal agent on a forged or unauthorized signature or endorsement on, or a change in, a check or warrant issued by the Secretary of the Treasury, the United States Postal Service, or any disbursing official or agent not later than 1 year after a check or warrant is presented to the drawee for payment.

(B) If the United States has given an endorser written notice of a claim against the endorser within the time allowed by subparagraph (A), the 1-year period for bringing a civil action on that claim under subparagraph (A) shall be extended by 3 years.

(3) Effect on agency authority.—Nothing in this subsection shall be construed to limited the authority of any agency under subchapter II of chapter 37 of this title. (b) Notwithstanding subsection (a) of this section, a civil action may be brought within 2 years after the claim is discovered when an endorser, transferor, depository, or fiscal agent fraudulently conceals the claim from an officer or employee of the Government entitled to bring the civil action.

(c) The Comptroller General shall credit the appropriate account of the Treasury for the amount of a check or warrant for which a civil action cannot be brought because notice was not given within the time required under subsection (a) of this section if the failure to give notice was not the result of negligence of the Secretary.

(d) The Government waives all claims against a person arising from dual pay from the Government if the dual pay is not reported to the Comptroller General for collection within 6 years from the last date of a period of dual pay.

Priority of Government Claims

Sec. 3713. (a)(1) A claim of the United States Government shall be paid first when—

(A) a person indebted to the Government is insolvent and—

(i) the debtor without enough property to pay all debts makes a voluntary assignment of property;

(ii) property of the debtor, if absent, is attached; or

(iii) an act of bankruptcy is committed; or

(B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay all debts of the debtor.

(2) This subsection does not apply to a case under title 11.

(b) A representative of a person or an estate (except a trustee acting under title 11) paying any part of a debt of the person or estate before paying a claim of the Government is

liable to the extent of the payment for unpaid claims of the Government.

Keeping Money Due States in Default

Sec. 3714. The Secretary of the Treasury shall keep the necessary amount of money the United States Government owes a State when the State defaults in paying principal or interest on investments in stocks or bonds the State issues or guarantees and that the Government holds in trust. The money shall be used to pay the principal or interest or reimburse, with interest, money the Government advanced for interest due on the stocks or bonds.

Buying Real Property of a Debtor

Sec. 3715. The head of an agency for whom a civil action is brought against a debtor of the United States Government may buy real property of the debtor at a sale on execution of the real property of the debtor resulting from the action. The head of the agency may not bid more for the property than the amount of the judgment for which the property is being sold, and costs. The marshal of the district in which the sale is held shall transfer the property to the Government.

Administrative Offset

Sec. 3716. (a) After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive or legislative agency may collect the claim by administrative offset. The head of the agency may collect by administrative offset only after giving the debtor—

(1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, an explanation of the rights of the debtor under this section;

(2) an opportunity to inspect and copy the records of the agency related to the claim;

(3) an opportunity for a review within the agency of the decision of the agency related to the claim; and

(4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

(b) Before collecting a claim by administrative offset under subsection (a) of this section, the head of an executive or legislative agency must prescribe regulations on collecting by administrative offset based on—

(1) the best interests of the United States Government;

(2) the likelihood of collecting a claim by administrative offset; and

(3) for collecting a claim by administrative offset after the 6-year period for bringing a civil action on a claim under section 2415 of title 28 has expired, the cost effectiveness of leaving a claim unresolved for more than 6 years.

(c) This section does not apply—

(1) to a claim under this subchapter that has been outstanding for more than 10 years; or

(2) when a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.

Interest and Penalty on Claims

Sec. 3717. (a)(1) The head of an executive or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage

point. The Secretary of the Treasury shall publish the rate before November 1 of that year. The rate is effective on the first day of the next calendar quarter.

(2) The Secretary may change the rate of interest for a calendar quarter if the average investment rate for the 12-month period ending at the close of the prior calendar quarter, rounded to the nearest whole percentage point, is more or less than the existing published rate by 2 percentage points.

(b) Interest under subsection (a) of this section accrues from the date—

(1) on which notice is mailed after October 25, 1982, if notice was first mailed before October 25, 1982; or

(2) notice of the amount due is first mailed to the debtor at the most current address of the debtor available to the head of the executive or legislative agency, if notice is first mailed after October 24, 1982.

(c) The rate of interest charged under subsection (a) of this section—

(1) is the rate in effect on the date from which interest begins to accrue under subsection (b) of this section; and

(2) remains fixed at that rate for the duration of the indebtedness.

(d) Interest under subsection (a) of this section may not be charged if the amount due on the claim is paid within 30 days after the date from which interest accrues under subsection (b) of this section. The head of an executive or legislative agency may extend the 30-day period.

(e) The head of an executive or legislative agency shall assess on a claim owed by a person—

(1) a charge to cover the cost of processing and handling a delinquent claim; and

(2) a penalty charge of not more than 6 percent a year for failure to pay a part of a debt more than 90 days past due.

(f) Interest under subsection (a) of this section does not accrue on a charge assessed under subsection (e) of this section.

(g) This section does not apply—

(1) if a statute, regulation required by statute, loan agreement, or contract prohibits charging interest or assessing charges or explicitly fixes the interest or charges; and

(2) to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982.

(h) In conformity with standards prescribed jointly by the Attorney General and the Comptroller General, the head of an executive or legislative agency may prescribe regulations identifying circumstances appropriate to waiving collection of interest and charges under subsections (a) and (e) of this section. A waiver under the regulations is deemed to be compliance with this section.

Contracts for Collection Services

Sec. 3718. (a) Under conditions the head of an executive or legislative agency considers appropriate, the head of the agency may make a contract with a person for collection services to recover indebtedness owed the United States Government. The contract shall provide that—

(1) the head of the agency retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to—

(A) section 552a of title 5, to the extent provided in section 552a(m); and

(B) laws and regulations of the United States Government and

State governments related to debt collection practices.

(b)(1)(A) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity. If the Attorney General makes a contract for legal services to be furnished in any judicial district of the United States under the first sentence of this paragraph, the Attorney General shall use his best efforts to obtain, from among attorneys regularly engaged in the private practice of law in such district, at least four such contracts for legal services with private individuals or firms in such district. Nothing in this subparagraph shall relieve the Attorney General of the competition requirements set forth in title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following).

(B) The Attorney General shall use his best efforts to enter into contracts under this paragraph with law firms owned and controlled by socially and economically disadvantaged individuals, so as to enable each agency to comply with paragraph (3).

(2) The head of an executive or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

(3) Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency under paragraph (2) are referred to law firms owned and controlled by socially and economically disadvantaged individuals. For purposes of this paragraph—

(A) the term "law firm owned and controlled by socially and economically disadvantaged individuals" means a law firm that meets the requirements set forth in clauses (i) and (ii) of section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 6376(d)(3)(C)(i) and (ii)) and regulations issued under those clauses; and

(B) "socially and economically disadvantaged individuals" shall be presumed to include these groups and individuals described in the last paragraph of section 8(d)(3)(C) of the Small Business Act.

(4) Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection.

(5) A contract made with a private counsel under paragraph (1) of this subsection shall include—

(A) a provision permitting the Attorney General to terminate

either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is for the convenience of the Government;

(B) a provision stating that the head of the executive or legislative agency which refers a claim under the contract retains the authority to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

(C) a provision requiring the private counsel to transmit monthly to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the month and the progress made during the month in collecting the claim under the contract.

(6) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered to be a debt collector for the purposes of such Act.

(7) Any counterclaim filed in any action to recover indebtedness owed the United States which is brought on behalf of the United States by private counsel retained under this subsection may not be asserted unless the counterclaim is served directly on the Attorney General or the United States Attorney for the judicial district in which, or embracing the place in which, the action is brought. Such service shall be made in accordance with the rules of procedure of the court in which the action is brought.

(c) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice for collection. Each such report shall include a list, by agency, of—

(1) the total number and amounts of claims which were referred for legal services to the Department of Justice and to private counsel under subsection (b) during the 1-year period covered by the report;

(2) the total number and amount of those claims referred for legal services to the Department of Justice which were collected or were not collected or otherwise resolved during the 1-year period covered by the report; and

(3) the total number and amount of those claims referred for legal services to private counsel under subsection (b)—

(A) which were collected or were not collected or otherwise resolved during the 1-year period covered by the report;

(B) which were not collected or otherwise resolved under a contract terminated by the Attorney General during the 1-year period covered by the report; and

(C) on which the Attorney General terminated the private counsel's representation during the 1-year period covered by the report without terminating the contract with the private counsel under which the claims were referred.

(d) Notwithstanding section 3302(b) of this title, a contract under subsection (a) or (b) of this section may provide that a fee a person charges to recover indebtedness owed the United States Government is payable from the amount recovered.

(e) A contract under subsection (a) or (b) of this section is effective only to the extent and in the amount

provided in an appropriation law. This limitation does not apply in the case of a contract that authorizes a person to collect a fee as provided in subsection (d) of this section.

(f) This section does not apply to the collection of debts under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.).

(g) In order to assist Congress in determining whether use of private counsel is a cost-effective method of collecting Government debts, the Attorney General shall, following consultation with the General Accounting Office, maintain and make available to the Inspector General of the Department of Justice, statistical data relating to the comparative costs of debt collection by participating United States Attorney's Offices and by private counsel.

Reports on Debt Collection Activities

Sec. 3719. (a) In consultation with the Secretary of the Treasury and the Comptroller General, the Director of the Office of Management and Budget shall prescribe regulations requiring the head of each agency with outstanding debts to prepare and submit to the Director and the Secretary at least once each year a report summarizing the status of loans and accounts receivable managed by the head of the agency. The report shall contain—

(1) information on—

(A) the total amount of loans and accounts receivable owed the agency and when amounts owed the agency are due to be repaid;

(B) the total amount of receivables and number of claims at least 30 days past due;

(C) the total amount written off as actually uncollectible and the total amount allowed for uncollectible loans and accounts receivable;

(D) the rate of interest charged for overdue debts and the amount of interest charged and collected on debts;

(E) the total number of claims and the total amount collected; and

(F) the number and total amount of claims referred to the Attorney General for settlement and the number and total amount of claims the Attorney General settles;

(2) the information described in clause (1) of this subsection for each program or activity the head of the agency carries out; and

(3) other information the Director considers necessary to decide whether the head of the agency is acting aggressively to collect the claims of the agency.

(b) The Director shall analyze the reports submitted under subsection (a) of this section and shall report annually to Congress on the management of debt collection activities by the head of each agency, including the information provided the Director under subsection (a).

Collection of Payments

Sec. 3720. (a) Each head of an executive agency (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely deposit of money by officials and agents of such agency in accordance with section 3302, and for the collection and timely deposit of sums owed to such agency the use of such procedures as withdrawals and deposits by electronic transfer of funds, automatic withdrawals from accounts at financial institutions, and a system under which financial institutions receive and deposit, on

behalf of the executive agency, payments transmitted to post office lockboxes. The Secretary is authorized to collect from any agency not complying with the requirements imposed pursuant to the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund caused by such noncompliance.

(b) The head of an executive agency shall pay to the Secretary of the Treasury charges imposed pursuant to subsection (a). Payments shall be made out of amounts appropriated or otherwise made available to carry out the program to which the collections relate. The amounts of the charges paid under this subsection shall be deposited in the Cash Management Improvements Fund established by subsection (c).

(c) There is established in the Treasury of the United States a revolving fund to be known as the "Cash Management Improvements Fund". Sums in the fund shall be available without fiscal year limitation for the payment of expenses incurred in developing the methods of collection and deposit described in subsection (a) of this section and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

Reduction of Tax Refund by Amount of Debt

Sec. 3720A. (a) Any Federal agency that is owed a past-due legally enforceable debt (other than any past-due support), including debt administered by a third party acting as an agent for the Federal Government, by a named person shall, in accordance with regulations issued pursuant to subsections (b) and (d), notify the Secretary of the Treasury at least once a year of the amount of all such debt.

(b) No Federal agency may take action pursuant to subsection (a) with respect to any debt until such agency—

(1) notifies the person incurring such debt that such agency proposes to take action pursuant to such paragraph with respect to such debt;

(2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;

(3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable;

(4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts (determined on a government-wide basis) to obtain payment of such debt; and

(5) certifies that reasonable efforts have been made by the agency (pursuant to regulations) to obtain payment of such debt.

(c) Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such person. If the Secretary of the Treasury finds that any such amount is payable, he shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency, and notify such agency of the individual's home address.

(d) The Secretary of the Treasury shall issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts, the

manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of debt to which the reduction procedure established by subsection (c) may be applied and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(e) Any Federal agency receiving notice from the Secretary of the Treasury that an erroneous payment has been made to such agency under subsection (c) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such agency under such subsection have been paid to such agency).

(f)(1) Subsection (a) shall apply with respect to an OASDI overpayment made to any individual only if such individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act.

(2)(A) The requirements of subsection (b) shall not be treated as met in the case of the recovery of OASDI overpayment from any individual under this section unless the notification under subsection (b)(1) describes the conditions under which the Secretary of Health and Human Services is required to waive recovery of an overpayment, as provided under section 204(b) of the Social Security Act.

(B) In any case in which an individual files for a waiver under section 204(b) of the Social Security Act within the 60-day period referred to in subsection (b)(2), the Secretary of Health and Human Services shall not certify to the Secretary of the Treasury that the debt is valid under subsection (b)(4) before rendering a decision on the waiver request under such section 204(b). In lieu of payment, pursuant to subsection (c), to the Secretary of Health and Human Services of the amount of any reduction under this subsection based on an OASDI overpayment, the Secretary of the Treasury shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary of the Treasury as appropriate by the Secretary of Health and Human Services.

(g) In the case of refunds of business associations, this section shall apply only to refunds payable on or after January 1, 1995. In the case of refunds of individuals who owe debts to Federal agencies that have not participated in the Federal tax refund offset program prior to the date of enactment of this subsection, this section shall apply only to refunds payable on or after January 1, 1994.

(h) For purposes of this section—

(1) the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code);

(2) the term "past-due support" means any delinquency subject to section 464 of the Social Security Act;

(3) the term "OASDI overpayment" means any overpayment of benefits made to an individual under

title II of the Social Security Act; and

(4) the term "person" means an individual; or a sole proprietorship, partnership, corporation, nonprofit organization, or any other form of business association.

Money and Finance
Chapter 63—Using Procurement Contracts and Grant and Cooperative Agreements

- **Act of September 13, 1982 (P.L. 97-258, 96 Stat. 1003; 31 U.S.C. 6301-6308)**

Note—Because this law codified existing laws into this code, the section numbers below refer to U.S.C. sections

Purposes

Sec. 6301. The purposes of this chapter are to—

(1) promote a better understanding of United States Government expenditures and help eliminate unnecessary administrative requirements on recipients of Government awards by characterizing the relationship between executive agencies and contractors, States, local governments, and other recipients in acquiring property and services and in providing United States Government assistance;

(2) prescribe criteria for executive agencies in selecting appropriate legal instruments to achieve—

(A) uniformity in their use by executive agencies;

(B) a clear definition of the relationships they reflect; and

(C) a better understanding of the responsibilities of the parties to them; and

(3) promote increased discipline in selecting and using procurement contracts, grant agreements, and cooperative agreements, maximize competition in making procurement contracts, and encourage competition in making grants and cooperative agreements.

Definitions

Sec. 6302. In this chapter—

(1) "executive agency" does not include a mixed–ownership Government corporation.

(2) "grant agreement" and "cooperative agreement" do not include an agreement under which is provided only—

(A) direct United States Government cash assistance to an individual;

(B) a subsidy;

(C) a loan;

(D) a loan guarantee; or

(E) insurance.

(3) "local government" means a unit of government in a State, a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.

(4) "other recipient" means a person or recipient (except a State or local government) authorized to receive United States Government assistance or procurement contracts and includes a charitable or educational institution.

(5) "State" means a State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi–State, regional, or interstate entity having governmental duties and powers.

Using Procurement Contracts

Sec. 6303. An executive agency shall use a procurement contract as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

(1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or

(2) the agency decides in a specific instance that the use of a procurement contract is appropriate.

Using Grant Agreements

Sec. 6304. An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

(1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and

(2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

Using Cooperative Agreements

Sec. 6305. An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

(1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and

(2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated int he agreement.

Authority to Vest Title in Tangible Personal Property for Research

Sec. 6306. The head of an executive agency may vest title in tangible personal property in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research—

(1) when the property is bought with amounts provided under a procurement contract, grant agreement, or cooperative agreement with the institution or organizational to conduct basic or applied scientific research;

(2) when the head of the agency decides the vesting furthers the objectives of the agency;

(3) without further obligation to the United States Government; and

(4) under conditions the head of the agency considers appropriate.

Interpretative Guidelines and Exemptions

Sec. 6307. The Director of the Office of Management and Budget may—

(1) issue supplementary interpretative guidelines to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements; and

(2) exempt a transaction or program of an executive agency from this chapter.

Use of Multiple Relationships for Different Parts of Jointly Financed Projects

Sec. 6308. This chapter does not require an executive agency to establish only one relationship between the United States Government and a State, a local government, or other recipient on a jointly financed project involving amounts from more than one program or appropriation when different relationships would otherwise be appropriate for different parts of the project.

Money and Finance
Chapter 65—Intergovernmental Cooperation

- **Act of September 13, 1982 (P.L. 97-258, 96 Stat. 1005, as amended; 31 U.S.C. 6501-6508)**

An Act to revise, codify, and enact without substantive change certain general and permanent laws, related to money and finance, as title 31, United States Code, "Money and Finance".

Note—Because this law codified existing laws into this code, the section numbers below refer to U.S.C..

CHAPTER 65—INTERGOVERNMENTAL COOPERATION

Note—The source of this Chapter is the Intergovernmental Cooperation Act of 1968, Act of October 16, 1968, P.L. 90-577, 82 Stat. 1098, formerly found at 42 U.S.C. 4201-4244. Except for Section 501, P.L. 90-577 was repealed by P.L. 97-258, Section 5(b). Section 501 of the Intergovernmental Cooperation Act, which relates to urban lands, is found in P.L. 81-152, Title VIII.

Definitions

Sec. 6501. In this chapter—

(1) "assistance" means the transfer of anything of value for a public purpose of support or stimulation that is—

(A) authorized by a law of the United States;

(B) provided by the United States Government through grant or contractual arrangements (including technical assistance programs providing assistance by loan, loan guarantee, or insurance); and

(C) not an annual payment by the United States Government to the District of Columbia government under section 502 of the District of Columbia Self-Government and Government Reorganization Act (Public Law 93-198, 87 Stat. 813, D.C. Code, Section 47-3406).

(2) "comprehensive planning" includes, to the extent directly related to area needs or needs of a unit of general local government—

(A) preparation, as a guide for governmental policies and action, of general plans on—

(i) the pattern and intensity of land use;

(ii) the provision of public facilities (including transportation facilities) and other government services; and

(iii) the effective development and utilization of human and natural resources;

(B) long-range physical and fiscal plans for an action referred to in subparagraph (a);

(C) a program for capital improvements and other major expenditures, based on their relative urgency, and definitive financing plans for the expenditures in the earlier years of the program;

(D) coordination of all related plans and activities of States and local governments and agencies concerned; and

(E) preparation of regulatory and administrative measures to

support the items referred to in subparagraphs (A), (B), (C), and (D).

(3) "executive agency" does not include a mixed-ownership Government corporation.

(4)(A) "grant" (except as provided in subparagraph (C) means money, or property provided instead of money, that is paid or provided by the United States Government under a fixed annual or total authorization, to a State, to a local government, or to a beneficiary under a plan or program administered by a State or a local government that is subject to approval by an executive agency, if the authorization—

(i) requires the State or local government to expend non-Government money as a condition of receiving money or property from the United States Government; or

(ii) specifies directly, or establishes by means of a formula, the amount that may be provided to the State or local government, or the amount to be allotted for use in each State by the State, local government, and beneficiaries.

(B) "grant" (except as provided in subparagraph (C) also means money, or property provided instead of money, that is paid or provided by the United States Government to a private, nonprofit community organization eligible to receive amounts under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.)

(C) "grant" does not include—

(i) shared revenue;

(ii) payment of taxes;

(iii) payment instead of taxes;

(iv) a loan or repayable advance;

(v) surplus property or surplus agricultural commodities provided as surplus property;

(vi) a payment under a research and development procurement contract or grant awarded directly and on similar terms to all qualifying organizations; or

(vii) a payment to a State or local government as complete reimbursement for costs incurred in paying benefits or providing services to persons entitled to them under a law of the United States.

(5) "head of a State agency" includes the designated delegate of the head of the agency.

(6) "local government" means a unit of general local government, a school district, or other special district established under State law.

(7) "Secretary" means the Secretary of the Treasury.

(8) "special-purpose unit of local government" means a special district, public-purpose local government of a State except a school district.

(9) "State" means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, instrumentality, or fiscal agent of a State but does not mean a local government of a State.

(10) "unit of general local government" means a county, city, town, village, or other general purpose political subdivision of a State.

Information on Grants Received

Sec. 6502. On request of a chief executive officer of a State, a State legislature, or an official designated by either of them, an executive agency carrying out a grant program to States and local governments shall provide the requesting officer or legislature with written information on the purpose and amounts of grants provided to the State or local government.

Intergovernmental Financing

Sec. 6503. (a) Consistent with program purposes and with regulations of the Secretary, and in accordance with an agreement under subsection (b) entered into by the Secretary and a State—

(1) the head of an executive agency (other than the Tennessee Valley Authority) carrying out a program shall schedule transfers of funds to the State under the program so as to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a State; and

(2) the State shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes.

(b)(1) The Secretary shall enter into an agreement with each State to which transfers of funds are made, which establishes procedures and requirements for implementing this section.

(2) An agreement under this subsection shall—

(A) specify procedures chosen by the State for carrying out transfers of funds under the agreement;

(B) describe the process by which the Federal Government shall review and approve the implementation of the procedures specified under subparagraph (A);

(C) establish the methods to be used for calculating and documenting payments of interest pursuant to this section; and

(D) specify those types of costs directly incurred by the State for interest calculations required under this section, and require the Secretary to consider those costs in computing payments under this section.

(3) The Secretary shall issue regulations establishing procedures and requirements for implementing this section with respect to a State with which no agreement is entered into by the Secretary under paragraph (1). Such regulations shall apply to a State until such time as the Secretary enters into an agreement with the State under paragraph (1).

(c)(1) The Secretary shall issue regulations that shall require a State, when not inconsistent with program purposes, to pay interest to the United States on funds from the time funds are deposited by the United States to the State's account until the time that funds are paid out by the State in order to redeem checks or warrants or make payments by other means for program purposes. Except as provided under paragraph (3)(B) (relating to the Unemployment Trust Fund), the interest payable under this subsection shall be calculated at a rate equal to the average of the bond equivalent rates of 13–week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(2) Except as provided in paragraph (3), amounts received by the United States as payment of interest under this subsection shall be deposited in the Treasury and credited as miscellaneous receipts.

(3)(A) Amounts paid by a State under paragraph (1) as interest on funds paid to a State from a trust fund for which the Secretary is the trustee shall be credited to such trust fund.

(B) Notwithstanding any other provision of this section, amounts of interest paid by a State, on funds drawn from its account in the Unemployment Trust Fund, shall be deposited into that account and shall consist of actual interest earnings by the State, less related

banking costs incurred by the State, for the period for which interest is calculated.

(d)(1) If a State disburses its own funds for program purposes in accordance with Federal law, Federal regulation, or Federal–State agreement, the State shall be entitled to interest from the time the State's funds are paid out to redeem checks or warrants, or make payments by other means, until the Federal funds are deposited to the State's bank account. The Secretary shall pay, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary for interest owed to a State under this subsection. Such interest shall be calculated, at a rate equal to the average of the bond equivalent rates of 13–week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(2) If interest is paid under this subsection as a result of State disbursing its own funds before receiving payment from a trust fund for which the Secretary of the Treasury is the trustee, such interest shall be charged against such trust fund.

(e) The budget submitted by the President under section 1105 of this title for a fiscal year shall include a statement specifying, for the most recently completed fiscal year, amounts of interest accrued to the Federal Government under subsection (c) and amounts of interest paid to States under subsection (d).

(f) if a State receives refunds of funds disbursed by the State under a Federal program, the State shall return those refunds to the Federal executive agency administering the program or apply those refunds to reduce the amount of funds owed by the Federal Government to the State under such program. Interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this section.

(g) If the Federal Government makes a payment to a recipient under a Federal program, and a portion of the payment is an amount which the Federal Government is paying to such recipient on behalf of a State, such amount shall be considered to be a transfer of funds between the Federal Government and the State for purposes of this section.

(h) A State may not be required by a law or regulation of the United States to deposit funds received by it in a separate bank account. However, a State shall account for funds made available to the State as United States Government funds in the account of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate Federal executive agency on the status and the application of the funds, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the funds received by the State shall be made available to the head of the executive agency, the Inspector General of the executive agency, and the Comptroller General for necessary audits.

(i) The Secretary shall prescribe methods for the payment of interest under this section between the Federal Government and the States, including provisions for offsetting amounts owed by the respective parties. Such methods of payment shall require payment of interest on an annual basis and shall provide for comparable treatment in manner, technique, and timing for both the States and the Federal Government.

(j) Consistent with Federal program purposes and regulations of the Director of the Office of

Management and Budget, the head of a Federal executive agency carrying out a program shall executive grant awards to States on a timely basis to assure the availability of funds to accomplish transfers in compliance with subsection (a) of this section.

Use of Existing State or Multimember Agency to Administer Grant Programs

Sec. 6504. Notwithstanding a law of the United States providing that one State agency or multimember agency must be established or designated to carry out or supervise the administration of a grant program, the head of the executive agency carrying out the program may, when requested by the executive or legislative authority of the State responsible for the organizational structure of a State government—

(1) waive the one State agency or multimember agency provision on an adequate showing that the provision prevents the establishment of the most effective and efficient organizational arrangement within the State government; and

(2) approve another State administrative structure or arrangement after deciding that the objectives of the law authorizing the grant program will not be endangered by using another State structure or arrangement.

Authority to Provide Specialized or Technical Services

Sec. 6505. (a) The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.

(b) The head of an executive agency may provide services prescribed by the President under this section to a State or local government when—

(1) written request is made by the State or local government; and

(2) payment of pay and all other identifiable costs of providing the services is made to the executive agency by the State or local government making the request.

(c) Payment received by an executive agency for providing services under this section shall be deposited to the credit of the principal appropriation charged.

(d) The authority under this section is in addition to authority under another law in effect on October 16, 1968.

Development Assistance

Sec. 6506. (a) The economic and social development of the United States and the achievement of satisfactory levels of living depend on the sound and orderly development of urban and rural areas. When urbanization proceeds rapidly, the sound and orderly development of urban communities depends to a large degree on the social and economic health and the sound development of smaller communities and rural areas.

(b) The President shall prescribe regulations governing the formulation, evaluation, and review of United States Government programs and projects having a significant impact on area and community

development (including programs and projects providing assistance to States and localities) to serve most effectively the basic objectives of subsection (a) of this section. The regulations shall provide for the consideration of concurrently achieving the following specific objectives and, to the extent authorized by law, reasoned choices shall be made between the objectives when they conflict:

(1) appropriate land uses for housing, commercial, industrial, governmental, institutional, and other purposes.

(2) wise development and conservation of all natural resources.

(3) balanced transportation systems, including highway, air, water, pedestrian, mass transit, and other means to move people and goods.

(4) adequate outdoor recreation and open space.

(5) protection of areas of unique natural beauty and historic and scientific interest.

(6) properly planned community facilities (including utilities for supplying power, water, and communications) for safely disposing of wastes, and for other purposes.

(7) concern for high standards of design.

(c) To the extent possible, all national, regional, State, and local viewpoints shall be considered in planning development programs and projects of the United States Government or assisted by the Government. State and local government objectives and the objectives of regional organizations shall be considered within a framework of national public objectives expressed in laws of the United States. Available projections of future conditions in the United States and needs of regions, States, and localities shall be considered in plan formulation, evaluation, and review.

(d) To the maximum extent possible and consistent with national objectives, assistance for development purposes shall be consistent with and further the objectives of State, regional, and local comprehensive planning. Consideration shall be given to all developmental aspects of our total national community, including housing, transportation, economic development, natural and human resources development, community facilities, and the general improvement of living environments.

(e) To the maximum extent practicable, each executive agency carrying out a development assistance program shall consult with and seek advice from all other significantly affected executive agencies in an effort to ensure completely coordinated programs. To the extent possible, systematic planning required by individual United States Government programs (such as highway construction, urban renewal, and open space) shall be coordinated with and, to the extent authorized by law, made part of comprehensive local and area-wide development planning.

(f) When a law of the United States provides that both a special-purpose unit of local government and a unit of general local government are eligible to receive a loan or grant, the head of an executive agency shall make the loan or grant to the unit of general local government instead of the special-purpose unite of local government in the absence of substantial reasons to the contrary.

(g) The President may designate an executive agency to prescribe regulations to carry out this section.

Congressional Review of Grant Programs

Sec. 6507. (a) The committees of Congress having jurisdiction over a grant program authorized by a law of the United States without a specified expiration date for the program shall study the program. The committees may conduct studies separately or jointly and shall report the results of their findings to their respective houses of Congress not later than the end of each period specified in subsection (b) of this section. The committees shall give special attention to—

(1) the extent to which the purposes of the grants have been met;

(2) the extent to which the objective of the program can be carried on without further assistance;

(3) whether a change in the purpose, direction, or administration of the original program, or in procedures and requirements applicable to the program, should be made; and

(4) the extent to which the program is adequate to meet the growing and changing needs that it was designed to support.

(b)(1) A study under subsection (a) of this section of a grant program authorized by a law of the United States enacted before October 16, 1968, shall be conducted before the end of each 4th calendar year after the year during which a study of the program was last conducted under this section.

(2) A study under subsection (a) of this section of a grant program authorized by a law of the United States enacted after October 16, 1968, shall be conducted before the end of the 4th calendar year after the year of enactment of the law and before the end of each 4th calendar year thereafter.

Studies and Reports

Sec. 6508. (a)(1) When requested by a committee of Congress having jurisdiction over a grant program, the Comptroller General shall study the program. The study shall include a review of—

(A) the extent to which—

(i) the program conflicts with or duplicates other grant programs; and

(ii) more effective, efficient, economical, and uniform administration of the program may be achieved by changing the requirements and procedures applicable to it; and

(B) budgetary, accounting, reporting, and administrative procedures of the program.

(2) The Comptroller General shall submit to Congress a report on a study made under this subsection and any recommendations. To the extent practicable, a report on an expiring program shall be submitted in the year before the year in which a program ends.

(b)(1) When requested by a committee of Congress having jurisdiction over a grant program, the Advisory Commission on Intergovernmental Relations shall study the intergovernmental relations aspects of the program, including—

(A) the impact of the program on the structural organization of States and local governments and on Federal-State-local fiscal relations; and

(B) the coordination of administration of the program by the United States Government and State and local governments.

(2) The Commission shall submit to the committee requesting the study and to Congress a report and any recommendations.

Money and Finance
Chapter 69—Payment for Entitlement Land

- **Act of September 13, 1982 (P.L. 97-258, 96 Stat. 1031; 31 U.S.C. 6901-6904)**

Note—The source of this chapter is the Payment in Lieu of Taxes Act, P.L. 94–565

Note—Because this law codified existing laws into this code, the section numbers below refer to U.S.C.

CHAPTER 69—PAYMENT FOR ENTITLEMENT LAND

Definitions

Sec. 6901. In this chapter—

(1) "entitlement land" means land owned by the United States Government—

(A) that is in the National Park System or the National Forest System, including wilderness areas and lands described in section 2 of the Act of June 22, 1948 (16 U.S.C. 577d), and section 1 of the Act of June 22, 1956 (16 (U.S.C. 577d-1);

(B) the Secretary of the Interior administers through the Bureau of Land Management;

(C) dedicated to the use of the Government for water resource development projects;

* * * *

(2) "unit of general local government" means—

(A) a county (or parish), township, borough existing in Alaska on October 20, 1976, or city where the city is independent of any other unit of general local government, that: (i) is within the class or classes of such political subdivisions in a State that the Secretary of the Interior, in his discretion, determines to be the principal provider or providers of governmental services within the State; and (ii) is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used on January 1, 983, by the Secretary of Commerce for general statistical purposes. The term "governmental services" includes, but is not limited to, those services that relate to public safety, environment, housing, social services, transportation, and governmental administration;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

(D) Guam; and

(E) the Virgin Islands.

* * * *

Authority and Eligibility

Sec. 6902. (a) The Secretary of the Interior shall make a payment for each fiscal year to each unit of general local government in which entitlement land is located. A unit may use the payment for any governmental purpose.

(b) A unit of general local government may not receive a payment for land for which payment under this chapter otherwise may be received if the land was owned or administered by a State or unit and was exempt from real estate taxes when the land was conveyed to the United States Government. This subsection does not apply to

payments for land a State or unit acquires from a private party to donate to the Government within 8 years of acquisition.

(c) A unit of general local government receiving payment for a fiscal year for land under the Act of August 28, 1937 (43 U.S.C. 1181a et seq.), or the Act of May 24, 1939 (ch. 144, 53 Stat. 753), may not receive a payment under this chapter for the land for that fiscal year. This chapter does not apply to either Act.

(d) If the total payment to a unit of general local government for a fiscal year would be less than $100, the Secretary may not make the payment.

Payments

Sec. 6903. (a) In this section—

(1) "payment law" means—

(A) the Act of June 20, 1910 (ch. 310, 36 Stat. 557);

(B) section 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012);

(C) the Act of May 23, 1908 (16 U.S.C. 500);

(D) section 5 of the Act of June 22, 1948 (16 U.S.C. 577g, 577g-1);

(E) section 401(c)(2) of the Act of June 15, 1935 (16 U.S.C. 715s(c)(2));

(F) section 17 of the Federal Power Act (16 U.S.C. 810);

(G) section 35 of the Act of February 25, 1920 (30 U.S.C. 191);

(H) section 6 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355);

(I) section 3 of the Act of July 31, 1947 (30 U.S.C. 603); and

(J) section 10 of the Act of June 28, 1934 (known as the Taylor Grazing Act) (43 U.S.C. 315i).

(2) population shall be determined on the same basis that the Secretary of Commerce determines resident population for general statistical purposes.

(3) a unit of general local government may not be credited with a population of more than 50,000.

(4) Repealed. P.L. 98–63, Title I, Sec. 101(2), July 30, 1983, 97 Stat. 324.

(b)(1) A payment under section 6902 of this title is equal to the greater of—

(A) 75 cents for each acre of entitlement land located within a unit of general local government (but not more than the limitation determined under subsection (c) of this section) reduced (but not below 0) by amounts the unit received in the prior fiscal year under a payment law; or

(B) 10 cents for each acre of entitlement land located in the unit (but not more than the limitation determined under subsection (c) of this section).

(2) The chief executive officer of a State shall submit to the Secretary of the Interior a statement on the amounts of payments the State transfers to each unit of general local government in the State out of amounts received under a payment law.

(c)(1) The limitation for a unit of general local government with a population of not more than 4,999 is $50 time the population.

(2) The limitation for a unit of general local government with a population of at least 5,000 is the following amount (rounding the population off to the nearest thousand):

If population equals—	the limitation is equal to the population times—
5,000	$50.00
6,000	47.00
7,000	44.00
8,000	41.00
9,000	38.00
10,000	35.00
11,000	34.00
12,000	33.00
13,000	32.00
14,000	31.00
15,000	30.00
16,000	29.50
17,000	29.00
18,000	28.50
19,000	28.00
20,000	27.50
21,000	27.20
22,000	26.90
23,000	26.60
24,000	26.30
25,000	26.00
26,000	25.80
27,000	25.60
28,000	25.40
29,000	25.20
30,000	25.00
31,000	24.75
32,000	24.50
33,000	24.25
34,000	24.00
35,000	23.75
36,000	23.50
37,000	23.25
38,000	23.00
39,000	22.75
40,000	22.50
41,000	22.25
42,000	22.00
43,000	21.75
44,000	21.50
45,000	21.25
46,000	21.00
47,000	20.75
48,000	20.50
49,000	20.25
50,000	20.00

Additional Payments

Sec. 6904. (a) In addition to payments the Secretary of the Interior makes under section 6902 of this title, the Secretary shall make a payment for each fiscal year to a unit of general local government collecting and distributing real property taxes (including a unit in Alaska outside the boundaries of an organized borough) in which is located an interest in land that—

(1) the United States Government acquires for—

(A) the National Park System; or

(B) the National Forest Wilderness Areas; and

(2) was subject to local real property taxes within the 5-year period before the interest is acquired.

(b) The Secretary shall make payments only for the 5 fiscal years after the fiscal year in which the interest in land is acquired. Under guidelines the Secretary prescribes, the unit of general local government receiving the payment from the Secretary shall distribute payments proportionally to units and school districts that lost real property taxes because of the acquisition of the interest. A unit receiving a distribution may use a payment for any governmental purpose.

(c) Each yearly payment by the Secretary under this section is equal to one percent of the fair market value of the interest in land on the date the Government acquires the interest. However, a payment may not be more than the amount of real property taxes levied on the property during the last fiscal year before the fiscal year in which the interest is acquired. A decision on fair market value under this section may not include an increase in the value of an interest because the land is rezoned when the rezoning causes the increase after the date of enactment of a law authorizing the acquisition of an interest under subsection (a) of this section.

(d) The Secretary may prescribe regulations under which payments may be made to units of general local government when subsections (a) and (b) of this section will not carry out the purpose of subsections (a) and (b).

Prompt Payment Act

- **Act of June 12, 1983 (P.L. 97-452, 96 Stat. 2476, as amended; 31 U.S.C. 3901(note), 3901-3907)**

Note—Section number as U.S. Code numbers.

Definitions and application.

Sec. 3901. (a) In this chapter—

(1) "agency" has the same meaning given that term in section 551(1) of title 5 and includes an entity being operated, and the head of the agency identifies the entity as being operated, only as an instrumentality of the agency to carry out a program of the agency.

(2) "business concern" means—

(A) a person carrying on a trade or business; and

(B) a nonprofit entity operating as a contractor.

(3) "proper invoice" is an invoice containing or accompanied by substantiating documentation the Director of the Office of Management and Budget may require by regulation and the head of the appropriate agency may require by regulation or contract.

(4) for the purposes of determining a payment due date and the date upon which any late payment interest penalty shall begin to accrue, the head of the agency is deemed to receive an invoice—

(A) on the later of—

(i) the date on which the place or person designated by the agency to first receive such invoice actually receives a proper invoice; or

(ii) on the 7th day after the date on which, in accordance with the terms and conditions of the contract, the property is actually delivered or performance of the services is actually completed, as the case may be, unless—

(I) the agency has actually accepted such property or services before such 7th day; or

(II) the contract (except in the case of a contract for the procurement of a brand-name commercial item for authorized resale) specifies a longer acceptance period, as determined by the contracting officer to be required to afford the agency a practicable opportunity to inspect and test the property furnished or evaluate the services performed; or

(B) on the date of the invoice, if the agency has failed to annotate the invoice with the date of receipt at the time of actual receipt by the place or person designated by the agency to first receive such invoice.

(5) a payment is deemed to be made on the date a check for payment is dated or an electronic fund transfer is made.

(6) contract to rent property is deemed to be a contract to acquire the property.

(b) This chapter applies to the Tennessee Valley Authority. However, regulations prescribed under this chapter do not apply to the Authority, and the Authority alone is responsible for carrying out this chapter as it applies to contracts of the Authority.

(c) This chapter, except section 3906 of this title, applies to the United States Postal Service. However, the Postmaster General shall be responsible for issuing the

implementing procurement regulations, solicitation provisions, and contract clauses for the United States Postal Service.

Interest Penalties

Sec. 3902. (a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty.

(b) Except as provided in section 3906 of this title, the interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(c)(1) A business concern shall be entitled to an interest penalty of $1.00 or more which is owed such business concern under this section, and such penalty shall be paid without regard to whether the business concern has requested payment of such penalty.

(2) Each payment subject to this chapter for which a late payment interest penalty is required to be paid shall be accompanied by a notice stating the amount of the interest penalty included in such payment and the rate by which, and period for which, such penalty was computed.

(3) If a business concern—

(A) is owed an interest penalty by an agency;

(B) is not paid the interest penalty in a payment made to the business concern by the agency on or after the date on which the interest penalty becomes due;

(C) is not paid the interest penalty by the agency within 10 days after the date on which such payment is made; and

(D) makes a written demand, not later than 40 days after the date on which such payment is made, that the agency pay such a penalty, such business concern shall be entitled to an amount equal to the sum of the late payment interest penalty to which the contractor is entitled and an additional penalty equal to a percentage of such late payment interest penalty specified by regulation by the Director of the Office of Management and Budget, subject to such maximum as may be specified in such regulations.

(d) The temporary unavailability of funds to make a timely payment due for property or services does not relieve the head of an agency from the obligation to pay interest penalties under this section.

(e) An amount of an interest penalty unpaid after any 30-day period shall be added to the principal amount of the debt, and a penalty accrues thereafter on the added amount.

(f) This section does not authorize the appropriation of additional amounts to pay an interest penalty. The head of an agency shall pay a penalty under this section out of amounts made available to carry out the program for which the penalty is incurred.

(g) A recipient of a grant from the head of an agency may provide in a contract for the acquisition of property or service from a business concern that, consistent with the

usual business practices of the recipient and applicable State and local law, the recipient will pay an interest penalty on amounts overdue under the contract under conditions agreed to by the recipient and the concern. The recipient may not pay the penalty from amounts received from an agency. Amounts expended for the penalty may not be counted toward a matching requirement applicable to the grant. An obligation to pay the penalty is not an obligation of the United States Government.

(h)(1) This section shall apply to contracts for the procurement of property or services entered into pursuant to section 4(h) of the Act of June 29, 1948 (15 U.S.C. 714b(h)).

(2)(A) In the case of a payment to which producers on a farm are entitled under the terms of an agreement entered into under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), an interest penalty shall be paid to the producers if the payment has not been made by the required payment or loan closing date. The interest penalty shall be paid—

(i) on the amount of payment or loan due; and

(ii) for the period beginning on the first day beginning after the required payment or loan closing date and ending on the date the amount is paid or loaned.

(B) As used in this subsection, the "required payment or loan closing date" means—

(i) for a purchase agreement, the 30th day after delivery of the warehouse receipt for the commodity subject to the purchase agreement;

(ii) for a loan agreement, the 30th day beginning after the date of receipt of an application with all requisite documentation and signatures, unless the applicant requests that the disbursement be deferred;

(iii) for refund of amounts received greater than the amount required to repay a commodity loan, the first business day after the Commodity Credit Corporation receives payment for such loan;

(iv) for land diversion payments (other than advance payments), the 30th day beginning after the date of completion of the production adjustment contract by the producer;

(v) for an advance land diversion payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer;

(vi) for a deficiency payment (other than advance payments) based upon a 12-month or 5-month period, 91 days after the end of such period; or

(vii) for an advance deficiency payment, 30 days after the date the Commodity Credit Corporation executes the contract with the producer.

(3) Payment of the interest penalty under this subsection shall be made out of funds available under section 8 of the Act of June 29, 1948 (15 U.S.C. 714f).

(4) Section 3907 of this title shall not apply to interest penalty payments made under this subsection.

(As amended P.L. 98-216, Sec. 1(6), Feb. 14, 1984, 98 Stat. 4; P.L. 100-496, Sec. 3, Oct. 17, 1988, 102 Stat. 2456, 2457.)

Note—Enactment of Subsec. (c)(2)—P.L. 100-496, Sec. 3(b), 14(b), Oct. 17, 1988, 102 Stat. 2456, 2465, providing that the requirements of the enacted provisions shall apply to payments under contracts awarded on or after Oct. 1,

1989, enacted subsec. (c), par. (2), to read as set out below:

Each payment subject to this chapter for which a late payment interest penalty is required to be paid shall be accompanied by a notice stating the amount of the interest penalty included in such payment and the rate by which, and period for which, such penalty was computed.

Regulations

Sec. 3903. (a) The Director of the Office of Management and Budget shall prescribe regulations to carry out section 3902 of this title. The regulations shall—

(1) provide that the required payment date is—

(A) the date payment is due under the contract for the item of property or service provided; or

(B) 30 days after a proper invoice for the amount due is received if a specific payment date is not established by contract;

(2) for the acquisition of meat or a meat food product (as defined in section 2(a)(3) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182(3)), including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, or of fresh or frozen fish (as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), provide a required payment date of not later than 7 days after the meat, meat food product, or fish is delivered; and

(3) for the acquisition of a perishable agricultural commodity (as defined in section 1(4) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(4)), provide a required payment date consistent with that Act;

(4) for the acquisition of dairy products (as defined in section 111(e)) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), the acquisition of edible fats or oils, and the acquisition of food products prepared from edible fats or oils, provide a required payment date of not later than 10 days after the date on which a proper invoice for the amount due has been received by the agency acquiring such dairy products, fats, oils, or food products;

(5) require periodic payments, in the case of a property or service contract which does not prohibit periodic payments for partial deliveries or other contract performance during the contract period, upon—

(A) submission of an invoice for property delivered or services performed during the contract period, if an invoice is required by the contract; and

(B) either—

(i) acceptance of the property or services by an employee of an agency authorized to accept the property or services; or

(ii) the making of a determination by such an employee, that the performance covered by the payment conforms to the terms and conditions of the contract;

(6) in the case of a construction contract, provide for the payment of interest on—

(A) a progress payment (including a monthly percentage-of-completion progress payment or milestone payments for completed phases, increments, or segments of any project) that is approved as payable by the agency pursuant to subsection (b) of this section and remains unpaid for—

(i) a period of more than 14 days after receipt of the payment request by the place or person designated by the agency to first receive such requests; or

(ii) a longer period, specified in the solicitation, if required to afford the Government a practicable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract; and

(B) any amounts which the agency has retained pursuant to a prime contract clause providing for retaining a percentage of progress payments otherwise due to a contractor and that are approved for release to the contractors, if such retained amounts are not paid to the contractor by a date specified in the contract or, in the absence of such a specified date, by the 30th day after final acceptance;

(7) require that—

(A) each invoice be reviewed as soon as practicable after receipt for the purpose of determining that such an invoice is a proper invoice within the meaning of section 3901(a)(3) of this title;

(B) any invoice determined not to be such a proper invoice suitable for payment shall be returned as soon as practicable, but not later than 7 days after receipt, specifying the reasons that the invoice is not a proper invoice; and

(C) the number of days available to an agency to make a timely payment of an invoice without incurring an interest penalty shall be reduced by the number of days by which an agency exceeds the requirements of subparagraph (B) of this paragraph;

(8) permit an agency to make payment up to 7 days prior to the required payment date, or earlier as determined by the agency to be necessary on a case-by-case basis; and

(9) prescribe the methods for computing interest under section 3903(c) of this title.

(b)(1) A payment request may not be approved under subsection (a)(6)(A) of this section unless the application for such payment includes—

(A) substantiation of the amounts requested; and

(B) a certification by the prime contractor, to the best of the contractor's knowledge and belief, that—

(i) the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(ii) payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this chapter; and

(iii) the application does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(2) The agency shall return any such payment request which is defective to the contractor within 7 days after receipt, with a statement identifying the defect.

(c)(1) The contracting officer shall—

(A) compute the interest which a contractor shall be obligated to pay under sections 3905(a)(2) and 3905(e)(6) of this title on the basis of the average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the contractor received the unearned amount; and

(B) deduct the interest amount determined under subparagraph (A) of this paragraph from the next available payment to the contractor.

(2) Amounts deducted from payments to contractors under

paragraph (1)(B) shall revert to the Treasury.

Limitations on Discount Payments

Sec. 3904. The head of an agency offered a discount by a business concern from an amount due under a contractor for property or service in exchange for payment within a specified time may pay the discounted amount only if payment is made within the specified time. For the purpose of the preceding sentence, the specified time shall be determined from the date of the invoice. The head of the agency shall pay an interest penalty on an amount remaining unpaid in violation of this section. The penalty accrues as provided under sections 3902 and 3903 of this title, except that the required payment date for the unpaid amount is the last day specified in the contract that the discounted amount may be paid.

Payment Provisions Relating to Construction Contracts

Sec. 3905. (a) In the event that a contractor, after making a certified payment request to an agency pursuant to section 3903(b) of this title, discovers that a portion or all of such payment request constitutes a payment for performance by such contractor that fails to conform to the specifications, terms, and conditions of its contract (hereafter in this subsection referred to as the "unearned amount"), then the contractor shall—

(1) notify the agency of such performance deficiency; and

(2) be obligated to pay the Government an amount equal to interest on the unearned amount (computed in the manner provided in section 3903(c) of this title), from the date of the contractor's receipt of such unearned amount until—

(A) the date the contractor notifies the agency that the performance deficiency has been corrected; or

(B) the date the contractor reduces the amount of any subsequent certified application for payment to such agency by an amount equal to the unearned amount.

(b) Each construction contract awarded by an agency shall include a clause that requires the prime contractor to include in each subcontract for property or services entered into the prime contractor and a subcontractor (including a material supplier) for the purpose of performing such construction contract—

(1) a payment clause which obligates the prime contractor to pay the subcontractor for satisfactory performance under its subcontract within 7 days out of such amounts as are paid to the prime contractor by the agency under such contract; and

(2) an interest penalty clause which obligates the prime contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (1) of this subsection—

(A) for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) computed at the rate specified by section 3902(a) of this title.

(c) The construction contract awarded by the agency shall further require the prime contractor to include in each of its subcontracts (for the purpose of performance of such construction contract) a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming

to the standards of subsection (b) of this section in each of its subcontracts and to require each of its subcontractor to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) The clauses required by subsections (b) and (c) of this section shall not be construed to impair the right of a prime contractor or a subcontractor at any tier to negotiate, and to conclude in their subcontract, provisions which—

(1) permit the prime contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract, without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) permit such withholding without incurring any obligation to pay a late payment penalty if—

(A) a notice conforming to the standards of subsection (g) of this section has been previously furnished to the subcontractor; and

(B) a copy of any notice issued by a prime contractor pursuant to subparagraph (A) of this paragraph has been furnished to the Government.

(e) If a prime contractor, after making application to an agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the prime contractor shall—

(1) furnish to the subcontractor a notice conforming to the standards of subsection (g) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) furnish to the Government, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (1) of this subsection;

(3) reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (1) of this subsection;

(4) pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(A) make such payment within—

(i) 7 days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (5)(A)); or

(ii) 7 days after the contractor recovers such funds from the Government; or

(B) incur an obligation to pay a late payment interest penalty computed at the rate specified by section 3902(A) of this title;

(5) notify the Government, upon—

(A) reduction of the amount of any subsequent certified application for payment; or

(B) payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(i) the amounts of the progress payments withheld under paragraph (1) of this subsection; and

(ii) the dates that such withholding began and ended; and

(6) be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in section 3903(c) of this title), from the 8th day after receipt of the withheld amounts from the Government until—

(A) the day the identified subcontractor performance deficiency is corrected; or

(B) the date that any subsequent payment is reduced under paragraph (5)(A).

(f)(1) If a prime contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the prime contractor may be ultimately liable, and the prime contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, then the prime contractor may, without incurring an obligation to pay an interest penalty under subsection (e)(6) of this section—

(A) furnish to the first-tier subcontractor a notice conforming to the standards of subsection (g) of this section as soon as practicable upon making such determination; and

(B) withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(2) As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the prime contractor shall pay the amount withheld under paragraph (1)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified by section 3902(A) of this title.

(g) A written notice of any withholding shall be issued to a subcontractor (with a copy to the Government of any such notice issued by a prime contractor), specifying—

(1) the amount to be withheld;

(2) the specific causes for the withholding under the terms of the subcontract; and

(3) the remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) A prime contractor may not request payment from the agency of any amount withheld or retained in accordance with subsection (d) of this section until such time as the prime contractor has determined and certified to the agency that the subcontractor is entitled to the payment of such amount.

(i) A dispute between a contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsection (b) or (c) of this section does not constitute a dispute to which the United States is a party. The United States may not

be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Except as provided in subsection (i) of this section, this section shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) A contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under subsection (b) or (c) of this section may not be construed to be an obligation of the United States for such interest penalty. A contract modification may not be made for the purpose of providing reimbursement of such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

Reports

Sec. 3906. (a)(1) By the 60th day after the end of the fiscal year, the head of each agency shall submit to the Director of the Office of Management and Budget a report on the agency's payment practices during that fiscal year, including a description of the extent to which those practices satisfy the requirements of this chapter.

(2) In addition to such other information as may be required by the Director, the report required by paragraph (1) shall include—

(A) the number, dollar value, and percentage of invoices for which interest or other late payment penalties were paid, the amount of such late payment interest and other penalties, and the reasons the interest penalties were not avoided by prompt payment; and

(B) the number, dollar value, and percentage of invoices paid after the required payment date without payment of an interest penalty or other late payment penalty, and the reasons no obligation to pay such penalties was incurred with respect to such invoices or no amount for such penalties were included in the payments of such invoices.

(b) By the 120th day after the end of each fiscal year, the Director shall submit to the Committees on Governmental Affairs, Appropriations, and Small Business of the Senate and the Committees on Government Operations, Appropriations, and Small Business of the House of Representatives a report on agency compliance with this chapter. The report shall include a summary of the report of each agency submitted under subsection (a) of this section and an analysis of progress made in reducing interest penalty payments by that agency from prior years.

Relationship to Other Laws

Sec. 3907. (a) A claim for an interest penalty not paid under this chapter maybe filed under section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605).

(b)(1) An interest penalty under this chapter does not continue to accrue—

(A) after a claim for a penalty is filed under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.); or

(B) for more than one year.

(2) Paragraph (1) of this subsection does not prevent an interest penalty from accruing under section 12 of the Contracts Disputes Act of 1978 (41 U.SC. 611) after a penalty stops accruing under this chapter.

A penalty accruing under section 12 may accrue on an unpaid contract payment and on the unpaid penalty under this chapter.

(c) Except as provided in section 3904 of this title, this chapter does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a business concern over the amount of payment or compliance with the contract. A claim related to the dispute, and interest payable for the period during which the dispute is being resolved, is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

Small Tracts Act

- **Act of January 12, 1983 (P.L. 97-465, 96 Stat. 2535; 16 U.S.C. 521c-521i)**

Definitions

Sec. 1. For purposes of this Act—

(1) the term "person" includes any State or any political subdivision or entity thereof;

(2) the term "interchange" means a land transfer in which the Secretary and another person exchange titles to lands or interests in lands of approximately equal value where the Secretary finds that such a value determination can be made without a formal appraisal and under such regulations as the Secretary may prescribe; and

(3) the term "Secretary" means the Secretary of Agriculture of the United States. (16 U.S.C. 521c)

Conveyance Authority

Sec. 2. The Secretary is authorized, when the Secretary determines it to be in the public interest—

(1) to sell, exchange, or interchange by quitclaim deed, all right, title, and interest, including the mineral estate, of the United States in and to National Forest System lands described in section 3; and

(2) to accept as consideration for the lands sold, exchanged, or interchanged other lands,, interests in lands, or cash payment, or any combination of such forms of consideration, which, in the case of conveyance by sale or exchange, is at least equal in value, including the mineral estate, or, in the case of conveyance by interchange, is of approximately equal value, including the mineral estate, to the lands being conveyed by the Secretary. The Secretary shall insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife, and recreation values of the National Forest System and provision for appropriate public access to and use of lands within the System. The preceding sentence shall not be applicable to deeds issued by the Secretary to lands outside the boundary of units of the National Forest System. (16 U.S.C. 521d)

Tract Size and Value Limitations

Sec. 3. The National Forest System lands which may be sold, exchanged, or interchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary, which have a value as determined by the Secretary of not more that $150,000 and which are—

(1) parcels of forty acres or less which are interspersed with or adjacent to lands which have been transferred out of federal ownership under the mining laws and which are determined by the Secretary, because of location or size, not to be subject to efficient administration;

(2) parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached

or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title search, or other land description indicating that there was not such encroachment; or

(3) road rights-of-way, reserved or acquired which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States, subject to the first right of abutting landowners to acquire such rights-of-way. (16 U.S.C. 521e)

Determination of Tract Value

Sec. 4. Any person to whom lands are conveyed under this Act shall bear all reasonable costs of administration, survey, and appraisal incidental to such conveyance, as determined by the Secretary. In determining the value of any lands or interest in lands to be conveyed under this Act, the Secretary may, in those cases in which the Secretary determines it would be in the public interest, exclude from such determination the value of any improvements to the lands made by any person other than the government. In the case of road rights-of-way conveyed under this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States. The Secretary may, in those cases in which the Secretary determines that it would be in the public interest, waive payment by any person of costs incidental to any conveyance authorized by this Act or reimbursement by any person for the value of improvements to rights-of-way otherwise required by this section. (16 U.S.C. 521f)

Conveyance of Road Rights-of-Way

Sec. 5. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance, or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law. (16 U.S.C. 521g)

Regulations

Sec. 6. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of—

(1) criteria which shall be used in making the determination as to what constitutes the public interest;

(2) the definition of and the procedure for determining "approximately equal value"; and

(3) factors relating to location or size which shall be considered in connection with determining the lands to be sold, exchanged, or interchanged under clause (1) of section 3. (16 U.S.C. 521h)

Conveyance Restrictions

Sec. 7. Nothing in this Act shall authorize conveyance of federal lands within the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, or National Monuments. Nothing in this Act shall authorize sale of federal lands, within National Recreation Areas. (16 U.S.C. 521i)

Amendments to the Sisk Act

Sec. 8. (a) The Act of December 4, 1967 (81 Stat. 531), is amended by inserting before the phrase "public school district" wherever it

appears, and before the phrase "public school authority" the second time it appears, the words "State, county, or municipal government or".

(b) The Act of December 4, 1967 (81 Stat. 531), is further amended by adding the following at the end thereof: "Lands may be conveyed to any State, county, or municipal government pursuant to this Act only if the lands were being utilized by such entities on the date of enactment of this sentence. Lands so conveyed may be used only for the purposes for which they were being used prior to conveyance."

Federal Timber Contract Payment Modification Act

- **Act of October 16, 1984 (P.L. 98-478, 98 Stat. 2213; 16 U.S.C. 618)**

Sec. 2. (a)(1) Notwithstanding any other provisions of law, in order to retain jobs, to preserve free competition, to utilize the potential productive capacity of plans, to preserve small communities dependent on a single economic sector to assure an open and competitive market for future sales of government timber, and to lessen the impact of unemployment, the Secretary of Agriculture for National Forest lands and the Secretary of the Interior for public lands under their respective jurisdictions are authorized and directed to permit a requesting purchaser to return to the government a volume of the purchaser's timber contracts as determined under paragraph (2) upon payment of a buy-out charge from such purchaser in an amount as determined under paragraph (3). The purchaser shall be released from further obligation to cut, remove, and pay for timber under such contract upon payment, or arrangement for payment as provided under paragraph (3)(E), of such buy-out charge and completion of any obligation required pursuant to subsection (4)(B). The government does not hereby surrender any other claim against a purchaser which arose under a contract prior to effectuation of this release and not in connection with this release from obligation to cut, harvest and pay for timber.

(2)(A) To qualify for buy-out under this section, a timber sales contract must have been bid prior to January 1, 1982, for an original contract period of 10 years or less, and be held as of June 1, 1984: *Provided,* That any such contract that was defaulted after January 1, 1981, may qualify for buy-out under this section so long as (i) settlement for damages has not been reached between the purchaser and the United States; and (ii) the purchaser's loss on all of its qualifying timber sales contracts, as determined in section 2(a)(3)(A) of this Act, is in excess of 50 per centum of the net book worth of the purchaser. A contract is qualified for buy-out notwithstanding the fact that it was reformed after October 1, 1983, pursuant to Bureau of Land Management Instructional Memorandum 83-743 or is included in a Forest Service multi-sale plan pursuant to the President's program of July 28, 1983.

(B) A purchaser holding more than twenty-seven million three hundred thousand board feet of net merchantable sawtimber as of January 1, 1982, in qualifying contracts as provided in (A) shall be entitled to buy out up to 55 per centum of such timber volume up to a maximum of two hundred million board feet.

(C) A purchaser holding twenty-seven million three hundred thousand or less board feet of net merchantable sawtimber as of January 1, 1982, in qualifying contracts as provided in (A) shall be entitled to buy out up to fifteen million board feet of such timber volume or one contract, whichever is greater in volume.

(D) So long as the volume limitation of two hundred million board feet is not exceeded, the percentage limitation of paragraph (B) or the volume limitation of

paragraph (C) may be exceeded by a volume amount not to exceed the volume of the smallest volume contract bought out by the purchaser if the purchaser could not otherwise attain his percentage or volume entitlement.

(E) Timber returned to the government pursuant to this subsection shall be available for resale by the government upon payment, or arrangement for payment, of the buy-out charge and completion of obligations, if any, under paragraph 4(B).

(3)(A) Sums collected by the appropriate Secretary in connection with the buy-out of contracts pursuant to this subsection shall be deposited in and paid from the Treasury in the same manner as moneys received from timber sales from such lands and shall be determined as follows: The purchaser's loss on any qualifying timber sales contracts shall be determined by the Forest Service or the Bureau of Land Management by subtracting the current delivered log value (as determined by such agency) from the delivered log cost based on the current contract return (as determined by such agency) of any such contracts. If such loss is—

(i) in excess of 100 per centum of the net book worth of the purchaser, the buy-out cost shall be $10 per one thousand board feet of currently held volume bought out;

(ii) in excess of 50 per centum up to 100 per centum of the net book worth of the purchaser, the buy-out cost shall be 10 per centum of the contract overbid but at lease $10 per one thousand board feet of currently held volume bought out; or

(iii) up to 50 per centum or less of the net book worth of the purchaser, the buy-out cost shall be 15 per centum for the purchaser's first one hundred twenty-five million board feet, 20 per centum for additional board feet above one hundred twenty-five million up to one hundred fifty million, 25 per centum for additional board feet above one hundred fifty million up to one hundred seventy-five million, and 30 per centum for additional board feet above one hundred seventy-five million, and 30 per centum for additional board feet above one hundred seventy-five million up to two hundred million, of the contract overbid but at least $10 per one thousand board feet of currently held volume bought out.

(B) For purposes of this paragraph, the term "net book worth" does not include the value of any outstanding uncut Federal timber sales contracts.

(C) Net book worth shall be, subject to agency verification, as determined by an independent certified public accountant in accordance with generally accepted accounting standards for the timber industry.

(D) A purchaser may elect to pay the buy-out cost imposed by paragraph

(iii) in lieu of utilizing loss and net book worth determinations.

(E) Where a purchaser is not able to obtain sufficient credit elsewhere to finance the buy-out charge at reasonable rates and terms, purchaser may, upon payment of 5 per centum of the buy-out charge, pay the remainder of the buy-out charge in equal quarterly payments over a period not to exceed 5 years at an interest rate adjusted with each payment equal to the average market yield of outstanding Treasury obligations with remaining years to maturity of five years payment must be secured by bond, deposited securities or other forms of security

acceptable to the appropriate Secretary in an amount sufficient to cover the entire buy-out payment.

(F) For purposes of this paragraph, the term "contract overbid" is the difference between the advertised contract rate and the rate the purchaser bid.

(4)(A) Contracts returned pursuant to this subsection under which no harvest has begun shall be returned in full.

(B) Contracts returned to the appropriate Secretary pursuant to this subsection under which harvest has begun, shall be returned conditionally and shall not be considered as part of the outstanding volume of timber under contract for the purposes of this Act. The return shall become final after the purchaser has completed stages of contractual obligations for the units on which the harvest has begun, including work on roads, to logical stopping points as determined by the Secretary after consultation with the purchaser. All remaining unharvested units must be returned.

(C) The appropriate Secretary may reject return of a contract on which harvest has begun if he determines, in his discretion, that the remaining unharvested portion is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would seriously disadvantage the government.

(5)(A) Timber from returned or defaulted contracts shall be offered for resale in an orderly fashion as part of, and not in addition to, the normal congressionally authorized timber sales program, and in a manner which does not disrupt regional markets or artificially depress domestic timber prices. Timber from returned or defaulted contracts shall be given preference for resale in the Forest Service timber sales programs.

(B) Timber sales in Forest Service region 6 shall not exceed four billion three hundred million board feet of net merchantable sawtimber in fiscal year 1984.

(C) Beginning in fiscal year 1985 and continuing through fiscal year 1991 or the fiscal year in which timber contract extensions in region 6 granted under the President's program of July 28, 1983 (as constituted at the date of enactment of this Act), are completed, whichever is later, the Secretary of Agriculture shall set, and periodically adjust as necessary, the maximum annual timber sale volume in region 6. Such maximum sale volume shall be set so as to achieve a volume of region 6 net merchantable sawtimber under contract at the end of each fiscal year which does not exceed twelve billion three hundred million board feet: *Provided, however,* That such maximum annual sale volume shall not exceed five billion two hundred million board feet of net merchantable sawtimber. The sale of timber within region 6 shall be made in such a manner as not to result in discriminatory treatment as between different forests in the region.

(6)(A) The Secretary of the Interior and the Secretary of Agriculture shall publish final rules for the implementation of this subsection in the Federal Register within ninety days after the date of enactment of this Act.

(B) Such final rules shall require purchasers to submit buy-out requests to the appropriate Secretary within ninety days after the publication of such rules.

(7)(A) For purposes only of determining a purchaser's buy-out limitation under subsection (2) and net worth in connection with buy-out cost under subsection (3),

concerns which are affiliates as defined under paragraph (B) of this subsection shall be treated as a single entity.

(B) Definition of affiliates.—Concerns are affiliates of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(C) Definition of purchaser.—For the purposes of this Act, a purchaser is the holder of a contract to purchase timber from the Secretary of Agriculture or the Secretary of the Interior.

(b)(1) Timber contracts bid prior to January 1, 1982, not bought out pursuant to subsection (a) and included in the President's program of July 28, 1983, as implemented by the Secretary of Agriculture and the Secretary of the Interior, providing for the extension of certain timber sale contracts and requiring the phased harvesting of such extended contracts, which program is hereby ratified except as modified by paragraph (2).

(2) Notwithstanding any other provision of law, timber contracts extended pursuant to the President's program of July 28, 1983, as implemented by the Secretary of Agriculture shall not be subject to inclusion of additional provisions for calculating damages for default.

(c) The Secretary of Agriculture and the Secretary of the Interior shall monitor bidding patterns on timber sale contracts and take action to discourage bidding at such a rate as would indicate that the bidder, if awarded the contract, would be unable to perform the obligations as required, or that the bid is other wise for the purpose of speculation. Each Secretary shall include in the annual report to Congress information concerning actions taken under this paragraph.

(d) Effective January 1, 1985, in any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash down-payment at the time the contract is executed and periodic payments to be made over the remaining period of the contract.

Sec. 3. (a) Notwithstanding any other provision of law, the Secretary of Agriculture is directed to waive annually without charge all or a portion of payment or rental fees required under terms of a permit for use of certain lands of the National Forest System as organization camps by local units of the Boy Scouts of American or such other nonprofit organization when such local units of the Boy Scouts of American or such nonprofit organization are willing to perform services, as the Secretary prescribes and determines will yield a valuable benefit to the public and to the program of the Secretary of such lands. If the Secretary determines that a local unit of the Boy Scouts of America or such other nonprofit organization has not fully performed such services, such organization shall not be entitled in the subsequent year to waiver under the provisions of this section.

(b) The term "other nonprofit organization" shall mean (1) a nonprofit organization holding an exemption under section 501(c) of the Internal Revenue Code, as amended; and (2) a nonprofit association or nonprofit corporation, which is not controlled or owned by profitmaking corporations or business enterprises,

and which is engaged in public or semipublic activity to further public health, safety, or welfare.

Sec. 4. (a) Emergency stumpage rate redetermination shall be made upon the written application of the purchaser of National Forest timber in Alaska, bid after January 1, 1974, and rates established as a result thereof shall be effective for timber scaled during a period between January 1, 1981, and five years from the effective date of this legislation.

(b) In making the emergency rate redeterminations the Secretary may modify existing contract terms, including the amount of the bid premium, in order to provide rates which will permit the holders of contracts bid after January 1, 1974, to be competitive with other purchasers of National Forest timber.

(c) The provisions of this section shall not apply to contracts held by the holders of 50-year timber sale contracts in Alaska.

1985 Farm Bill
(Food Security Act of 1985)

- **Act of December 23, 1985 (P.L. 99-198, 99 Stat. 1354, as amended; 7 U.S.C. 148f, 16 U.S.C. 580q, 2005a, 3801, 3831, 3842)**

TITLE XII—CONSERVATION RESERVE PROGRAM

Subtitle A — Definitions

Sec. 1201. (a) For purposes of subtitles A through E:

* * * *

(16) The term "wetland", except when such term is part of the term "converted wetland", means land that—

(A) has a predominance of hydric soils;

(B) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(C) under normal circumstances does support a prevalence of such vegetation.

For purposes of this Act, and any other Act, this term shall not include lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils.

(b) The Secretary shall develop—

(1) criteria for the identification of hydric soils and hydrophytic vegetation; and

(2) lists of such soils and such vegetation. (16 U.S.C. 3801)

* * * *

Subtitle D — Conservation Reserve

Sec. 1231. (a) Through the 1995 calendar year, the Secretary shall formulate and carry out enrollment of lands in a conservation reserve program through the use of contracts to assist owners and operators of lands specified in subsection (b) of this section to conserve and improve the soil and water resources of such lands . . . . (16 U.S.C. 3831)

* * * *

Subtitle E — Administration

* * * *

Use of Other Agencies

Sec. 1242. (a) In carrying out subtitle B, C, and D, the Secretary shall use the services of local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

(b)(1) In carrying out subtitle D, the Secretary may utilize the services of the Soil Conservation Service and the Forest Service, the Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic

Allotment Act (16 U.S.C. 590h), soil water conservation districts, and other appropriate agencies.

(2) In carrying out Subtitle D at the State and county levels, the Secretary shall consult with, to the extent practicable, the Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, soil-conservation districts, and other appropriate agencies. (16 U.S.C. 3842)

* * * *

Subtitle F — Other Conservation Provisions

Technical Assistance for Water Resources

Sec. 1251. (a) Notwithstanding any other provision of law, the Secretary of Agriculture may formulate plans and provide technical assistance to property owners and agencies of State and local governments and interstate river basin commissions, at their request, to—

(1) protect the quality and quantity of subsurface water, including water in the Nation's aquifers;

(2) enable property owners to reduce their vulnerability to flood hazards that also may affect water resources; and

(3) control the salinity in the Nation's agricultural water resources.

(b) The Secretary shall submit by February 15, 1987, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report evaluating the plans and technical assistance authorized in subsection (a). Such report shall include any recommendations as to whether the plan and assistance should be extended, how any plan and assistance could be improved, and any other relevant information and data relating to costs and other elements of the plan or assistance that would be helpful to such Committees. (16 U.S.C. 2005a)

* * * *

TITLE XIV—AGRICULTURAL RESEARCH, EXTENSION, AND TEACHING

Note—This title amends the National Agricultural Research, Extension, and Teaching Policy Act of 1977, P.L. 95-113, Title XIV. See that Act for provisions included in this title.

TITLE XVII—RELATED AND MISCELLANEOUS MATTERS

Subtitle G — Miscellaneous

National Tree Seed Laboratory

Sec. 1772. Notwithstanding any other provision of law, fees received by the National Tree Seed Laboratory, administered by the Forest Service, United States Department of Agriculture, for the provision of a tree seed testing service, shall be retained and deposited as a reimbursement to current appropriations used to cover the costs of providing such service. (16 U.S.C. 580q)

Control of Grasshoppers and Mormon Crickets on Federal Lands

Sec. 1773. (a) The Secretary of Agriculture shall carry out a program to control grasshoppers and Mormon Crickets on all Federal lands.

(b)(1) Subject to paragraph (2), the Secretary of Agriculture shall expend or transfer, and upon request, the Secretary of the Interior

shall transfer to the Secretary of Agriculture, from any no-year appropriations, funds for the prevention, suppression, and control of actual or potential grasshopper and Mormon Cricket outbreaks on lands under the jurisdiction of the Federal Government.

(2)(A) Appropriated funds made available to the Secretary of the Interior shall be available for the payment of obligations incurred on Federal lands subject to the jurisdiction of the Secretary of the Interior.

(B) Funds transferred pursuant to this paragraph shall be requested as promptly as possible by the Secretary of Agriculture.

(C) Funds transferred pursuant to this section shall be replenished by supplemental or regular appropriations which shall be requested as promptly as possible.

(c)(1) Except as provided in paragraph (2), from any funds made available to the Department of the Interior until expended, moneys shall be made available for the transfer by the Secretary of the Interior to the Secretary of Agriculture for the prevention, suppression, and control of grasshoppers and Mormon Cricket outbreaks on Federal lands under the jurisdiction of the Secretary of the Interior.

(2) No funds shall be made available under this authority, until contingency funds specifically available to the Animal and Plant Health Inspection Service for grasshopper emergencies have been exhausted.

(d) On request of the administering agency or the Department of Agriculture of an affected State, the Secretary of Agriculture shall immediately treat Federal, State, or private lands that are infested by grasshoppers or Mormon Crickets at levels of economic infestation, unless the Secretary determines that delaying treatment will optimize biological control and not cause greater economic damage to adjacent landowners.

(e) The Secretary of Agriculture shall—

(1) pay out of appropriated funds made available to the Secretary or transferred to the Secretary by the Secretary of the Interior—100 percent of the cost of grasshopper or Mormon Cricket control on Federal lands;

(2) pay out of appropriated funds made available to the Secretary—

(A) 50 percent of the cost of such control on State lands; and

(B) 33.3 percent of the cost of such control on private rangelands; and

(3) participate in prevention, control, or suppression programs for grasshoppers and Mormon Crickets in conjunction with other Federal, State and private prevention, control or suppression efforts.

(f) From appropriated funds made available or transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes, the Secretary of Agriculture shall provide adequate funding for a program to train personnel to effectively accomplish the objective of this section. (7 U.S.C. 148f)

National Forest Ski Area Permit Act of 1986

- **Act of October 22, 1986 (P.L. 99-522; 100 Stat. 3000; 16 U.S.C. 497b (note); 16 U.S.C. 4976)**

Short Title

Sec. 1. This Act may be cited as the "National Forest Ski Area Permit Act of 1986". (16 U.S.C. 497b (note))

Purposes

Sec. 2. The purposes of the Act are to:

(a) provide a unified and modern permitting process for nordic and alpine ski areas on national forest lands;

(b) provide for ski area permits which more closely reflect the acreage and other physical requirements of modern ski area development; and

(c) provide a permit system which will be more commensurate with the long-term construction, financing, and operation needs of ski areas on national forest lands. (16 U.S.C. 497b(note))

Ski Area Permits

Sec. 3. (a) Law Applicable to Permits.—The provisions of the Act of March 4, 1915 (16 U.S.C. 497) notwithstanding, the term and acreage of permits for the operation of nordic and alpine ski areas and facilities on National Forest System lands shall henceforth be governed by this Act and other applicable law.

(b) Authority.—The Secretary of Agriculture (hereinafter referred to as "the Secretary") is authorized to issue permits (hereinafter referred to as "ski area permits") for the use and occupancy of suitable lands within the National Forest System for nordic and alpine skiing operations and purposes. A ski area permit—

(1) may be issued for a term not to exceed 40 years;

(2) shall ordinarily be issued for a term of 40 years (unless the Secretary determines that the facilities or operations are of a scale or nature as are not likely to require long-term financing or operation), or that there are public policy reasons specific to a particular permit for a shorter term;

(3) shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and appropriate ancillary facilities;

(4) may be renewed at the discretion of the Secretary;

(5) may be canceled by the Secretary in whole or in part for any violation of the permit terms or conditions, for nonpayment of permit fees, or upon the determination by the Secretary in his planning for the uses of the national forests that the permitted area is needed for higher public purposes;

(6) may be modified from time to time by the Secretary to accommodate changes in plans or operations in accordance with the provisions of applicable law;

(7) shall be subject to such reasonable terms and conditions as the Secretary deems appropriate; and

(8) shall be subject to a permit fee based on fair market value in accordance with applicable law.

(c) Rules and Regulations.—Within one year after the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act, and shall, to the extent practicable and with the consent of existing permit holders, convert all existing ski area permits or leases on National Forest System lands into ski area permits which conform to the provisions of this Act within 3 years of the date of enactment of this Act.

(d) Nothing in this Act shall be deemed to amend, modify or otherwise affect the Secretary's duties under the National Environmental Policy Act, or the Forest and Rangelands Renewable Resources Planning Act as amended by the National Forest Management Act, including his duties to involve the public in his decisionmaking and planning for the national forests. (16 U.S.C. 497b)

National Forest System Drug Control Act of 1986

- **Act of October 27, 1986 (P.L. 99-570, Title XV, 100 Stat. 3207-191, as amended; 16 U.S.C. 559b(note), 559b-559g)**

Note—See also P.L. 100-690 for 1988 Congressional Statement of Findings.

TITLE XV—NATIONAL FOREST SYSTEM DRUG CONTROL

Short Title

Sec. 15001. This title may be cited as the "National Forest System Drug Control Act of 1986". (16 U.S.C. 559b(note))

Purpose

Sec. 15002. (a) The purpose of this title is to authorize the Secretary of Agriculture (hereinafter in this title referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances.

(b) Nothing in this title shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this title, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802). (16 U.S.C. 559b)

Powers

Sec. 15003. For the purposes of this title, if specifically designated by the Secretary and specially trained, not to exceed 1000 special agents and law enforcement officers of the Forest Service when in the performance of their duties shall have authority to—

(1) carry firearms;

(2) conduct, within the exterior boundaries of the National Forest System, investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands and to conduct such investigations and enforcement of such laws outside the exterior boundaries of the National Forest System for offenses committed within the National Forest System or which affect the administration of the National Forest System (including the pursuit of persons suspected of such offenses who flee the National Forest System to avoid arrest);

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in his presence or view, or for a felony with a warrant or without a warrant if he has probable cause to believe that the person to be arrested has committed or is committing such felony, for offenses committed within the National Forest System or which affect the administration of the National Forest System;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search with or without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize with or without warrant or process any evidentiary item according to Federal law or rule of law. (16 U.S.C. 559c)

Cooperation

Sec. 15004. For the purposes of this title, in exercising the authority provided by section 15003—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed;

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances for offenses committed within the National Forest System or which affect the administration of the National Forest System.

(3) the Forest Service shall cooperate with the Attorney General in carrying out the seizure and forfeiture provisions of section 511 of the Controlled Substances Act (21 U.S.C. 881) for violations of the Controlled Substances Act relating to offenses committed within the National Forest System, or which affect the administration of the National Forest System;

(4) the Secretary is authorized to designate law enforcement officers of any other Federal agency, when the Secretary determines such designation to be economical and in the public interest, and with the concurrence of that agency, to exercise the powers and authorities of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administered by the Forest Service; and

(5) the Forest Service is authorized to accept law enforcement designation from any other Federal agency or agency of a State or political subdivision thereof for the purpose of cooperating in a multi-agency law enforcement task force investigation of violations of the Controlled Substances Act and other offenses committed in the course of or in connection with such violations. (16 U.S.C. 559d)

Penalty

Sec. 15005. Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any

action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.".

Authorization of Appropriations

Sec. 15006. In order to improve Federal law enforcement activities relating to the use and production of narcotics and controlled substances on lands administered by the Forest Service, from amounts appropriated there shall be made available to the Secretary, in addition to sums made available under other authority of law, $10,000,000 for fiscal year 1989, and for each fiscal year thereafter, to be used for employment and training of additional and existing Forest Service law enforcement personnel, for expenses related to such employment, training, equipment, and facilities, and for cooperative programs with State and local law enforcement agencies. (16 U.S.C. 559e)

Approval of Secretary of Agriculture and Attorney General

Sec. 15007. The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General. (16 U.S.C. 559f)

Designation Authority of Secretary of Agriculture

Sec. 15008. (a) It is the purpose of this section to authorize the Secretary of Agriculture to make law enforcement operations more efficient in connection with the administration and use of the National Forest System.

(b) The Secretary is authorized to designate law enforcement officers of any other Federal agency, when the Secretary determines such designation to be economical and in the public interest, and with the concurrence of that agency, to exercise the powers and authorities of the Forest Service while assisting the Forest Service in the National Forest System, or for activities administered by the Forest Service.

(c) The Forest Service is authorized to accept law enforcement designation from any other Federal agency or agency of a State or political subdivision thereof for the purpose of cooperating in the investigation and enforcement of any Federal or State law or ordinance and regulation of any such agency, when such investigation or enforcement is mutually beneficial to the National Forest System and the cooperating agency or jurisdiction, upon entering into a memorandum of understanding or cooperative agreement with such agency or jurisdiction. (16 U.S.C. 559g)

Federal Land Exchange Facilitation Act of 1988

- **Act of August 20, 1988 (P.L. 100-409; 102 Stat. 1086; 43 U.S.C. 1716(note), 43 U.S.C. 751(note))**

Findings and Purposes

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State, and private holdings of land or interests in land for purposes of more efficient management and to secure important objectives including the protection of fish and wildlife habitat and aesthetic values; the enhancement of recreation opportunities; the consolidation of mineral and timber holdings for more logical and efficient development; the expansion of communities; the promotion of multiple-use values; and fulfillment of public needs;

(2) needs for land ownership adjustments and consolidation consistently outpace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and private landowners;

(3) the Federal Land Policy and Management Act of 1976 and other laws provide a basic framework and authority for land exchanges involving lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture; and

(4) such existing laws are in need of certain revisions to streamline and facilitate land exchange procedures and expedite exchanges.

(b) Purposes.—The purposes of this Act are:

(1) to facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving lands managed by the departments of the Interior and Agriculture by—

(A) providing more uniform rules and regulations pertaining to land appraisals which reflect nationally recognized appraisal standards; and

(B) establishing procedures and guidelines for the resolution of appraisal disputes.

(2) to provide sufficient resources to the Secretaries of the Interior and Agriculture to ensure that land exchange activities can proceed consistent with the public interest; and

(3) to require a study and report concerning improvements in the handling of certain information related to Federal and other lands. (43 U.S.C. 1716(note))

Land Exchanges and Appraisals

Sec. 3. (a) FLPMA Amendments.—Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) is hereby amended by adding the following new subsections: (see P.L. 94-579)

(b) Conforming Amendment.—The first sentence of section 206(b) (43 U.S.C. 1716(b)) of the Federal Land Policy and Management Act of 1976 is hereby amended by

inserting the word "concerned" after the words "the Secretary".

(c) Additional Amendment.—Section 206(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719c)) is hereby amended to read as follows: (see P.L. 94-579)

Land Exchange Funding Authorization

Sec. 4. In order to ensure that there are increased funds and personnel available to the Secretaries of the Interior and Agriculture to consider, process, and consummate land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, there are hereby authorized to be appropriated for fiscal years 1989 through 1998 an annual amount not to exceed $4,000,000 which shall be used jointly or divided among the Secretaries as they determine appropriate for the consideration, processing, and consummation of land exchanges pursuant to the Federal Land Policy and Management Act of 1976, as amended, and other applicable law. Such moneys are expressly intended by Congress to be in addition to, and not offset against, moneys otherwise annually requested by the Secretaries, and appropriated by Congress for land exchange purposes. (43 U.S.C. 1716(note))

Saving Clause

Sec. 5. Nothing in this Act shall be construed as amending the Alaska Native Claims Settlement Act (Public Law 92-203, as amended) or the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon either the Secretary of the Interior or the Secretary of Agriculture by either such Acts. If any provision of the Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby. Nothing in this Act shall be construed to change the discretionary nature of land exchanges or to prohibit the Secretary concerned or any other party or parties involved in a land exchange from withdrawing from the exchange at any time, unless the Secretary concerned and the other party or parties specifically commit otherwise by written agreement. (43 U.S.C. 1716(note))

NFMA Amendments

Sec. 6. Section 17(b) of the National Forest Management Act of 1976 is hereby amended—

(1) by striking out "$25,000" and inserting in lieu thereof "$150,000";

(2) by striking out "and" at the end of paragraph (3);

(3) by striking out the period at the end of paragraph (4) and inserting in lieu thereof ";and"; and

(4) by adding after paragraph (4) the following:

"(5) any adjustment made by the Secretary of relative value pursuant to section 206(f)(2)(B)(ii) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).". (see P.L. 94-588)

Additional Amendments

Sec. 7. The Act of July 26, 1956 (70 Stat. 656, 16 U.S.C. 505a, 505b) is hereby amended as follows:

(a) The words "national forest lands" are hereby deleted wherever they occur, and the words "National Forest System lands" are inserted in lieu thereof.

(b) The words "a national forest" are hereby deleted in the first

paragraph, and the words "a unit of the National Forest System" are inserted in lieu thereof.

(c) The following sentence is hereby added at the end of the second paragraph: "Lands interchanged under the authority of this Act shall be deemed to include interests in lands". (see P.L. 84-804)

Land Information Study

Sec. 8. (a) Study.—The Secretary of the Interior shall conduct an assessment of the need for and cost and benefits associated with improvements in the existing methods of land surveying and mapping and of collecting, storing, retrieving, disseminating, and using information about Federal and other lands.

(b) Consultation.—In conducting the assessment required by this section, the Secretary of the Interior shall consult with the following—

(1) the Secretary of Agriculture;

(2) the Secretary of Commerce;

(3) the Director of the National Science Foundation;

(4) representatives of State and local governments;

(5) representatives of private sector surveying and mapping science.

(c) Report.—No later than one year after the day of enactment of this Act, the Secretary of the Interior shall report to the Congress concerning the results of the assessment required by this section.

(d) Topics.—In the report required by subsection (c), the Secretary of the Interior shall include a discussion and evaluation of the following:

(1) relevant recommendations made by the National Academy of Sciences (National Research Council) on the concept of a multipurpose cadastre from time to time prior to the date of enactment of this Act;

(2) ongoing activities concerning development of an overall reference frame for land and resource information, including but not limited to a geodetic network, a series of current and accurate large-scale maps, cadastral overlay maps, unique identifying numbers linking specific land parcels to a common index of all land records in United States cadastral systems, and a series of land data files;

(3) ways to achieve better definition of the roles of Federal and other governmental agencies and the private sector in dealing with land information systems;

(4) ways to improve the coordination of Federal land information activities; and

(5) model standards developed by the Secretary for compatible multipurpose land information systems for use by Federal, State and local governmental agencies, the public, and the private sector.

(e) Recommendations.—The report required by subsection (c) may also include such recommendations for legislation as the Secretary of the Interior considers necessary or desirable. (43 U.S.C. 751(note))

Cash Equalization Waiver

Sec. 9. Subsection 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) is hereby amended by adding the following at the end of the third sentence thereof: (see P.L. 94-579)

Temporary Revocation Authority

Sec. 10. The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), as amended, is further amended by adding the following new section:

"**Sec. 215.** (see P.L. 94-579)

Temporary Emergency Wildfire Suppression Act

- **Act of September 9, 1988 (P.L. 100-428; 102 Stat. 1615; 42 U.S.C. 1856m-1856o)**

Definitions

Sec. 2. As used in this Act—

(1) the term "fire organization" means any governmental, public, or private entity having wildfire protection resources;

(2) the term "wildfire protection resources" means personnel, supplies, equipment, and other resources required for wildfire presuppression activities; and

(3) the term "wildfire" means any forest or range fire. (42 U.S.C. 1856m)

Implementation

Sec. 3. (a)(1) The Secretary of Agriculture or the Secretary of the Interior, in consultation with the Secretary of State, may enter into a reciprocal agreement with any foreign fire organization for mutual aid in furnishing wildfire protection resources for lands and other properties for which such Secretary or organization normally provides wildfire protection.

(2) Any Agreement entered into under this subsection—

(A) shall include a waiver by each party to the agreement of all claims against every other party to the agreement for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement;

(B) shall include a provision to allow the termination of such agreement by any party thereto after reasonable notice; and

(C) may provide for the reimbursement of any party thereto for all or any part of the costs incurred by such party in furnishing wildfire protection resources for, or on behalf of, any other party thereto.

(b) In the absence of any agreement authorized under subsection (a), the Secretary of Agriculture or the Secretary of the Interior may—

(1) furnish emergency wildfire protection resources to any foreign nation when the furnishing of such resources is determined by such Secretary to be in the best interest of the United States, and

(2) accept emergency wildfire protection resources from any foreign fire organization when the acceptance of such resources is determined by such Secretary to be in the best interest of the United States.

(c) Notwithstanding the preceding provisions of this section, reimbursement may be provided for the costs incurred by the Government of Canada or Canadian organization in furnishing wildfire protection resources to the Government of the United States under—

(1) the memorandum entitled "Memorandum of Understanding Between the United States Department of Agriculture and Environment Canada on Cooperation in the Field of Forestry-Related Programs" dated June 25, 1982; and

(2) the arrangement entitled "Arrangement in the Form of an Exchange of Notes Between the Government of Canada and the

Government of the United States of America" dated May 4, 1982.

(d) Any service performed by any employee of the United States under an agreement or otherwise under this Act shall constitute service rendered in the line of duty in such employment. The performance of such service by any other individual shall not make such individual an employee of the United States. (42 U.S.C. 1856n)

Funds

Sec. 4. Funds available to the Secretary of Agriculture or the Secretary of the Interior for wildfire protection resources in connection with activities under the jurisdiction of such Secretary may be used to carry out activities authorized under agreements or otherwise under this Act, or for reimbursements authorized under section 3(c): *Provided,* That no such funds may be expended for wildfire protection resources or personnel provided by a foreign fire organization unless the Secretary determines that no wildfire protection resources or personnel within the United States are reasonably available to provide wildfire protection. (42 U.S.C. 1856o)

Rails to Trails
(National Trails System Improvements Act of 1988)

- **Act of October 4, 1988 (P.L. 100-470, 102 Stat. 2281; 16 U.S.C. 1241(note); 12 U.S.C. 1248(note))**

Short Title

Sec. 1. This Act may be cited as the "National Trails System Improvements Act of 1988".

Findings

Sec. 2. Congress hereby finds that—

(1) State and local governments have a special role to play under the National Trails System Act in acquiring and developing trails for recreation and conservation purposes.

(2) Many miles of public land rights-of-way have been granted to the railroads by the United States, and much of this mileage could be suitable for trail use at such time as it may be abandoned.

(3) The United States should retain any residual interest it may have in such public land rights-of-way and relinquish it, where appropriate, in favor of State and local governments or other nonprofit entities for trail purposes. (16 U.S.C. 1248(note))

National Trails System Act Amendments

Sec. 3. Section 9 of the National Trails System Act (16 U.S.C. 1248) is amended by adding the following new subsections after subsection (b): (see P.L. 90-543)

* * * *

Condemnation

Sec. 5. (a) Nothing in this Act shall be construed as authorizing the Secretary of the Interior to use condemnation proceedings to retain or acquire all or any portion of a right-of-way described in this Act.

(b) Nothing in this Act shall be construed to expand or diminish existing condemnation authorities contained in the National Trails System Act, as amended. (16 U.S.C. 1248(note))

Forest Ecosystems and Atmospheric Pollution Research Act of 1988

- **Act of October 24, 1988 (P.L. 100-521, 102 Stat. 2601; 16 U.S.C. 1600(note), 16 U.S.C. 1642(note))**

Short Title

Sec. 1. This Act may be cited as the "Forest Ecosystems and Atmospheric Pollution Research Act of 1988". (16 U.S.C. 1600(note))

Findings

Sec. 2. Congress finds that—

(1) the health and productivity of forests in certain regions of the United States are declining;

(2) there is a special concern about the decline of certain hardwood species, particularly sugar maples and oaks, in the eastern United States and the effects of atmospheric pollutants on the health and productivity of these forests;

(3) declines in the productivity of certain commercially important Southern pine species have been measured;

(4) existing research indicates that atmospheric pollution, including ozone, acidic deposition, and heavy metals, may contribute to this decline;

(5) there is an urgent need to expand and better coordinate existing Federal, State, and private research, including research by private industry, to determine the cause of changes in the health and productivity of domestic forest ecosystems and to monitor and evaluate the effects of atmospheric pollutants on such ecosystems; and

(6) such research and monitoring should not impede efforts to control atmospheric pollutants. (16 U.S.C. 1642(note))

Establishment of Research Program

Sec. 3. Section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1642) is amended by adding at the end the following:

Note—See P.L. 95-307, Section 3(c) for remainder of Act.

Firefighter Pay Cap
(Forest Wildfire Emergency Pay Equity Act of 1988)

- **Act of October 24, 1988 (P.L. 100-523; 102 Stat. 2605; 5 U.S.C. 5547).**

To amend title 5, United States Code, to allow all forest fire fighting employees to be paid overtime without limitation while serving on forest fire emergencies.

Short Title

Sec. 1. That this Act may be cited as the "Forest Wildfire Emergency Pay Equity Act of 1988".

Note—Sec. 2 of this Act amended Section 5547 of title 5, United States Code. That Section has been further amended by other laws. The latest version of Section 5547 is included below.

Limitation on Premium Pay

Sec. 5547. (a) An employee may be paid premium pay under sections 5542, 5545 (a), (b), and (c), and 5546 (a) and (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law). The first sentence of this subsection shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a of this title.

(b)(1) Subject to regulations prescribed by the Office of Personnel Management, the first sentence of subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency which involves a direct threat to life or property, including a forest wildfire emergency.

(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) if, or to the extent that, the aggregate of such employee's basic pay and premium pay under those provisions would, in any calendar year, exceed the maximum rate payable, for GS-15 in effect at the end of such calendar year.

(c)(1) Subsections (a) and (b) shall not apply to a law enforcement officer.

(2) A law enforcement officer may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) only to the extent that the payment does not cause the officer's aggregate rate of pay for any pay period to exceed the lesser of—

(A) 150 percent of the minimum rate payable for GS-15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or (B) the rate payable for level V of the Executive Schedule.

(3) Repealed. P.L. 102-378, Sec. 2(43), October 2, 1992, 106 Stat. 1352 (5 U.S.C. 5547)

Federal Energy Management Improvement Act of 1988

- **Act of November 5, 1988 (P.L. 100-615, 102 Stat. 3185; 42 U.S.C. 8215-8259)**

Federal Energy Management Improvements

Sec. 2. (a) In general.—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251-8261) is amended to read as follows:

PART 3 — FEDERAL ENERGY MANAGEMENT

Findings

Sec. 541. The Congress finds that—

(1) the Federal Government is the largest single energy consumer in the Nation;

(2) the cost of meeting the Federal Government's energy requirement is substantial;

(3) there are significant opportunities in the Federal Government to conserve and make more efficient use of energy through improved operations and maintenance, the use of new energy efficient technologies, and the application and achievement of energy efficient design and construction;

(4) Federal energy conservation measures can be financed at little or no cost to the Federal Government by using private investment capital made available through contracts authorized by title VIII of this Act; and

(5) an increase in energy efficiency by the Federal Government would benefit the Nation by reducing the cost of government, reducing national dependence on foreign energy resources, and demonstrating the benefits of greater energy efficiency to the Nation. (42 U.S.C. 8251)

Purpose

Sec. 542. It is the purpose of this part to promote the conservation and the efficient use of energy and water, and the use of renewable energy sources, by the Federal Government. (42 U.S.C. 8252)

Energy Management Requirements

Sec. 543. (a) Energy performance requirement for Federal buildings.—

(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1985.

(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 8258(a) of this title the buildings designated by it for such exclusion.

(b) Energy management requirement for Federal agencies.—

(1) Not later than January 1, 2005, each agency shall, to the maximum extend practicable, install in Federal buildings owned by the United States all energy and water conservation measures with payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to section 8254 of this title.

(2) The Secretary may waive the requirements of this subsection for any agency for such periods as the Secretary may determine if the Secretary finds that the agency is taking all practicable steps to meet the requirements and that the requirements of this subsection will pose an unacceptable burden upon the agency. If the Secretary waives the requirements of this subsection, the Secretary shall notify the Congress promptly in writing with an explanation and a justification of the reasons for such waiver.

(3) This subsection shall not apply to an agency's facilities that generate or transmit electric energy or to the uranium enrichment facilities operated by the Department of Energy.

(4) An agency may participate in the Environmental Protection Agency's "Green Lights" program for purposes of receiving technical assistance in complying with the requirements of this section.

(c) Exclusions.—

(1) An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) of this section and the requirements of subsection (b)(1) of this section, any Federal buildings or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operate by such Departments.

(2) Each agency shall identify and list, in each report made under section 8258a of this title, the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the impracticability standards set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse a finding of impracticability. In the case of any such reversal, the agency shall comply with the energy consumption requirements for the building concerned.

(d) Implementation steps.—The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section, each agency shall—

(1) prepare and submit to the Secretary, not later than December 31, 1993, a plan describing how the agency intends to meet such requirements, including how it will—

(A) designate personnel primarily responsible for achieving such requirements;

(B) identify high priority projects through calculation of payback periods;

(C) take maximum advantage of contracts authorized under subchapter VII of this chapter, of financial incentives and other services provided by utilities for efficiency investment, and of other forms of financing to reduce the direct costs to the Government; and

(D) otherwise implement this part;

(2) perform energy surveys of its Federal buildings to the extent necessary and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 8258b of this title;

(3) using such surveys, determine the cost and payback period of energy and water conservation measures likely to achieve the requirements of this section;

(4) install energy and water conservation measures that will achieve the requirements of this section through the methods and procedures established pursuant to section 8254 of this title; and

(5) ensure that the operation and maintenance procedures applied under this section are continued. (42 U.S.C. 8253)

Establishment and Use of Life Cycle Cost Methods and Procedures

Sec. 544. (a) Establishment of life cycle cost methods and procedures.—The Secretary, in consultation with the Director of the Office of Management and Budget, the Secretary of Defense, the Director of the National Institutes of Standards and Technology, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective present value methods for estimating and comparing life cycle costs for Federal buildings, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of such system or during a period of 25 years, whichever is shorter, and using average fuel costs and a discount rate determined by the Secretary; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established.

(b) Use of life cycle cost methods and procedures.—

(1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, shall be made using life cycle cost methods and procedures established under subsection (a).

(2) In leasing buildings for its own use or that of another agency, each agency shall, after January 1, 1994, fully consider the efficiency of all potential building space at the time of renewing or entering into a new lease

(c) Use in non-Federal structures.— The Secretary shall make available information to the public on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy. (42 U.S.C. 8254)

Budget Treatment for Energy Conservation Measures

Sec. 545. The President shall transmit to the Congress, along with each budget that is submitted to the Congress under section 1105 of Title 31, a statement of the amount of appropriations requested in such budget, if any, on an individual agency basis, for—

(1) electric and other energy costs to be incurred in operating and maintaining agency facilities; and

(2) compliance with the provisions of this part, the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.), and all applicable Executive orders, including Executive Order 12003 (42 U.S.C. 6201 note) and Executive Order 12759 (56 Fed. Reg. 16257) (42 U.S.C. 8255)

Incentives for Agencies

Sec. 546. (a) Contracts.—

(1) Each agency shall establish a program of incentives for conserving, and otherwise making more efficient use of, energy as a result of entering into contracts under subchapter VII of this chapter.

(2) The Secretary shall, not later than 18 months after October 24, 1992, and after consultation with the Director of the Office of Management and Budget, the Secretary of Defense, and the Administrator of General Services, develop appropriate procedures and methods for use by agencies to implement the incentives referred to in paragraph (1).

(b) Federal Energy Efficiency Fund.—

(1) The Secretary shall establish a Federal Energy Efficiency Fund to provide grants to agencies to assist them in meeting the requirements of section 8253 of this title.

(2) Not later than June 30, 1993, the Secretary shall issue guidelines to be followed by agencies submitting proposals for such grants. all agencies shall be eligible to submit proposals for grants under the Fund.

(3) The Secretary shall award grants from the Fund after a competitive assessment of the technical and economic effectiveness of each agency proposal. The Secretary shall consider the following factors in determining whether to provide funding under this subsection:

(A) The cost-effectiveness of the project.

(B) The amount of energy and cost savings anticipated to the Federal Government.

(C) The amount of funding committed to the project by the agency requesting financial assistance.

(D) The extent that a proposal leverages financing from other non-Federal sources.

(E) Any other factor which the Secretary determines will result in the greatest amount of energy and cost savings to the Federal Government.

(4) There are authorized to be appropriated, to remain available to be expended, to carry out this subsection not more than $10,000,000 for fiscal year 1994, $50,000,000 for fiscal year 1995, and such sums as may be necessary for fiscal years thereafter.

(c) Utility incentive programs.—

(1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by gas, water, or electric utilities and generally available to customers of such utilities.

(2) Each agency may accept any financial incentive, goods, or services generally available from any such utility, to increase energy efficiency or to conserve water or manage electricity demand.

(3) Each agency is encouraged to enter into negotiations with electric, water, and gas utilities to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.

(4) If an agency satisfies the criteria which generally apply to other customers of a utility incentive program, such agency may not be denied collection of rebates or other incentives.

(5)(A) An amount equal to fifty percent of the energy and water cost savings realized by an agency (other than the Department of Defense) with respect to funds appropriated for any fiscal year beginning

after fiscal year 1992 (including financial benefits resulting from energy savings performance contracts under subchapter VII of this chapter and utility energy efficiency rebates) shall, subject to appropriation, remain available for expenditure by such agency for additional energy efficiency measures which may include related employee incentive programs, particularly at those facilities at which energy savings were achieved.

(B) Agencies shall establish a fund and maintain strict financial accounting and controls for savings realized and expenditures made under this subsection. Records maintained pursuant to this subparagraph shall be made available for public inspection upon request.

(d) Financial incentive program for facility energy managers.—

(1) The Secretary shall, in consultation with the Task Force established pursuant to section 8257 of this title, establish a financial bonus program to reward, with funds made available for such purpose, outstanding Federal facility energy managers in agencies and the United States Postal Service.

(2) Not later than June 1, 1993, the Secretary shall issue procedures for implementing and conducting the award program, including the criteria to be used in selecting outstanding energy managers and contributors who have—

(A) improved energy performance through increased energy efficiency;

(B) implemented proven energy efficiency and energy conservation techniques, devices, equipment, or procedures;

(C) developed and implemented training programs for facility energy managers, operators, and maintenance personnel;

(D) developed and implemented employee awareness programs;

(E) succeeded in generating utility incentives, shared energy savings contracts, and other federally approved performance based energy savings contracts;

(F) made successful efforts to fulfill compliance with energy reduction mandates, including the provisions of section 8253 of this title; and

(G) succeeded in the implementation of the guidelines established under section 8262 of this title.

(3) There is authorized to be appropriated to carry out this subsection not more than $250,000 for each of the fiscal years 1993, 1994, and 1995. (42 U.S.C. 8256)

Interagency Energy Management Task Force

Sec. 547. (a) In general.—To assist the interagency committee organized under section 7266 of this title to coordinate the activities of the Federal Government in promoting energy conservation and the efficient use of energy and in informing non-Federal entities of the Federal experience in energy conservation, the Secretary shall establish an Interagency Energy Management Task Force (hereafter in this section referred to as the "Task Force").

(b) Members.—The Task Force shall be composed of the chief energy managers of agencies represented on the interagency committee organized under section 7266 of this title.

(c) Duties.—The Task Force shall meet when the Secretary requests, but not less often than twice a year, to—

(1) assess the progress of the various agencies in achieving energy savings;

(2) collect and disseminate information to agencies, States, local governments, and the public on effective survey techniques, innovative approaches to the efficient use of energy, incentive programs developed under section 8256 of this title, innovative contracting methods developed under subchapter VII of this chapter, the use of cogeneration facilities and renewable resources, and other technologies that promote the conservation and efficient use of energy;

(3) coordinate energy surveys conducted by the agencies;

(4) develop options for use in conserving energy;

(5) report to the committee organized under section 7266 of this title; and

(6) review, from time to time as may be necessary, the regulations relating to building temperature settings to determine whether changes in such regulations would be appropriate to assist in meeting the goals specified in section 8253 of this title. (42 U.S.C. 8257)

Reports

Sec. 548. (a) Reports to the Secretary.—Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

(1) the agency's progress in achieving the goals established by section 8253 of this title; and

(2) the procedures being used by the agency pursuant to section 8256(a)(2) of this title, the number of contracts entered into by such agency under subchapter VII of this chapter, the energy and cost savings that have resulted from such contracts, the use of such cost savings under section 8256(c) of this title, and any problem encountered in entering into such contracts and otherwise implementing section 8256 of this title.

(b) Reports to Congress.—The Secretary shall report not later than April 2 of each year, with respect to each fiscal year beginning after November 5, 1988, to the Congress—

(1) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including

(A) a copy of the list of the exclusions made under section 8253(a)(2) and 8253(c)(3) of this title; and

(B) a statement detailing the amount of funds awarded to each agency under section 8256(b) of this title, the energy and water conservation measures installed with such funds, the projected energy and water savings to be realized from installed measures, and, for each installed measure for which the projected energy and water savings reported in the previous year were not realized, the percentage of such projected savings that was not realized, the reasons such savings were not realized, and proposals for, and projects costs of, achieving such projected savings in the future;

(2) the number of contracts entered into by all agencies under subchapter VII of this chapter, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties; and

(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy.

(c) Other report.—The Secretary, in consultation with the Administrator of General Services, shall—

(1) conduct a study and evaluate legal, institutional, and other

constraints to connecting buildings owned or leased by the Federal Government to district heating and district cooling systems; and

(2) not later than 18 months after October 24, 1992, transmit to the Congress a report containing the findings and conclusions of such study, including recommendations for the development of streamlined processes for the consideration of connecting buildings owned or leased by the Federal Government to district heating and cooling systems. (42 U.S.C. 8258)

Definitions

Sec. 549. For the purposes of this part—

(1) the term "agency" has the meaning given it in section 551(1) of Title 5;

(2) the term "construction" means new construction or substantial rehabilitation of existing structures;

(3) the term "cogeneration facilities" has the same meaning given such term in section 796(18)(A) of Title 16;

(4) the term "energy conservation measures" means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, or retrofit activities;

(5) the term "energy survey" means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

(6) the term "Federal building" means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection;

(7) the term "life cycle cost" means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

(8) the term "renewable energy sources" includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

(9) the term "Secretary" means the Secretary of Energy. (42 U.S.C. 8259)

Anti-Drug Abuse Amendments Act of 1988

- **Act of November 18, 1988 (P.L. 100-690, Title VI, 102 Stat. 4362; 16 U.S.C. 559b(note), 559b-559g)**

Subtitle H — Investigative Powers of Postal Service Personnel and National Forest System Drug Control

Sec. 6254. National Forest System, National Park System, and Bureau of Land Management Public Lands Safety.

Findings

(a) Congress finds that—

(1) National Forest System lands continue to be a haven for the unlawful production of marijuana and other controlled substances, which—

(A) endangers the public in its use of National Forest System lands;

(B) interferes with the ability of the Forest Service to effectively manage the natural resources and activities within the National Forest System; and

(C) causes damage and destruction of the natural resources and facilities managed by the Forest Service;

(2) the unlawful production of marijuana and other controlled substances often-

(A) is generally harmful to the environment and public health and safety;

(B) pollutes the air, soil, and water; and

(C) is harmful to wildlife;

(3) the Forest Service needs additional authority to adequately deal with the problem of controlled substance production that affects the administration of the National Forest System;

(4) the Forest Service needs to be able to exercise its investigative authorities outside the boundaries of the National Forest System for drug-related crimes arising from within the National Forest System in order to be effective in deterring such crime;

(5) the authority and powers of the Forest Service are not intended to be in conflict or interfere with the statutory authority, powers, or responsibilities of any State or political subdivision thereof; and

(6) the Forest Service, in the exercise of its law enforcement powers, should cooperate to every extent possible with any other Federal, State, or local law enforcement authority having jurisdiction in areas where national forests are located, particularly where coordinated investigative and enforcement actions can be effective to control crime which affects multiple agencies. (16 U.S.C. 559b(note))

* * * *

Note—See P.L. 99-570 for amendments to the National Forest System Drug Control Act of 1986.

(f) Criminal Penalty for Placing Hazardous or Injurious Devices on Federal Lands.—Chapter 91 of title 18, United States Code, is amended by adding at the end the following new section:

"**Sec. 1864.** Hazardous or injurious devices on Federal lands

"(a) Whoever—

"(1) with the intent to violate the Controlled Substances Act,

"(2) with the intent to obstruct or harass the harvesting of timber, or

"(3) with reckless disregard to the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, uses a hazardous or injurious device on Federal land, on an Indian reservation, or on an Indian allotment while the title to such allotment is held in trust by the United States or while such allotment remains inalienable by the allottee without the consent of the United States shall be punished under subsection (b).

"(b) An individual who violates subsection (a) shall-

"(1) if death of an individual results, be fined under this title or imprisoned for any term of years or for life, or both;

"(2) if serious bodily injury to any individual results, be fined under this title or imprisoned for not more than twenty years, or both;

"(3) if bodily injury to any individual results, be fined under this title or imprisoned for not more than ten years, or both;

"(4) if damage exceeding $10,000 to the property of any individual results, be fined under this title or imprisoned for not more than ten years, or both; and

"(5) in any other case, be fined under this title or imprisoned for not more than one year.

"(c) Any individual who is punished under subsection (b)(3), (4), or (5) after one or more prior convictions under any such subsection shall be fined under this title or imprisoned for not more than ten years, or both.

"(d) As used in this section—

"(1) the term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) extreme physical pain;

"(C) protracted and obvious disfigurement; and

"(D) protracted loss or impairment of the function of bodily member, organ, or mental faculty; and

"(2) the term 'bodily injury' means—

"(A) a cut, abrasion, bruise, burn, or disfigurement;

"(B) physical pain;

"(C) illness;

"(D) impairment of the function of a bodily member, organ, or mental faculty; or

"(E) any other injury to the body, no matter how temporary.

"(3) the term 'hazardous or injurious device' means a device, which when assembled or placed, is capable of causing bodily injury, or damage to property, by the action of any person making contact with such device subsequent to the assembly or placement. Such term includes guns attached to trip wires or other triggering mechanisms, ammunition attached to trip wires or other triggering mechanisms, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, lines or wires, lines or wires with hooks attached, nails placed so that the sharpened ends are positioned in an upright manner, or tree spiking devices including spikes, nails, or other objects hammered, driven, fastened, or otherwise placed into or on any timber, whether or not severed from the stump.".

(g) Clerical Amendment.—The table of sections of chapter 91 of title 18, United States Code, is

amended by adding at the end the following new item:

"1864. Hazardous or injurious devices on Federal lands.".

(h) Criminal Penalty for Polluting Federal Lands.—Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by adding at the end the following new paragraph:

"(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use-

"(A) creates a serious hazard to humans, wildlife, or domestic animals,

"(B) degrades or harms the environment or natural resources, or

"(C) pollutes an aquifer, spring, stream, river, or body of water, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.".

(i) Drug Pollution Fund.—Section 516 of the Controlled Substances Act (21 U.S.C. 886) is amended by adding at the end the following new subsection:

"(d)(1) There is established in the Treasury a trust fund to be known as the 'Drug Pollution Fund' (hereinafter referred to in this subsection as the 'Fund'), consisting of amounts appropriate or credited to such Fund under section 401(b)(6).

"(2) There are hereby appropriated to the Fund amounts equivalent to the fines imposed under section 401(b)(6).

"(3) Amounts in the Fund shall be available, as provided in appropriations Acts, for the purpose of making payments in accordance with paragraph (4) for the clean up of certain pollution resulting from the actions referred to in section 401(b)(6).

"(4)(A) The Secretary of the Treasury, after consultation with the Attorney General, shall make payments under paragraph (3), in such amounts as the Secretary determines appropriate, to the heads of executive agencies or departments that meet the requirements of subparagraph (B).

"(B) In order to receive a payment under paragraph (3), the head of an executive agency or department shall submit an application in such form and containing such information as the Secretary of the Treasury shall by regulation require. Such application shall contain a description of the fine imposed under section 401(b)(6), the circumstances surrounding the imposition of such fine, and the type and severity of pollution that resulted from the actions to which such fine applies.

"(5) For purposes of subchapter B of chapter 98 of the Internal Revenue Code of 1986, the Fund established under this paragraph shall be treated in the same manner as a trust fund established under subchapter A of such chapter.".

(j) Arson Involving Timber.—The first undesignated paragraph of section 1855 of title 18, United States Code, is amended by striking out "not more than $5,000" and inserting in lieu thereof "under this title".

(k) Report.—Not later than 180 days after the date of the enactment of this Act, the Attorney General and the Secretary of Agriculture shall each prepare and submit, to the Committee on Agriculture, the Committee on Interior and Insular Affairs, and the Committee on the Judiciary of the House of Representatives, and to the Committee on Agriculture, Nutrition, and Forestry, the Committee on Energy and Natural Resources, and the Committeeon the Judiciary of the Senate, a report

concerning the activities of the Attorney General and the Secretary of Agriculture in expediting investigations referred to in section 15003(2) of the National Forest Systems Drug Control Act of 1986 (16 U.S.C. 559c(2)).

Federal Cave Resources Protection Act of 1988

- **Act of November 18, 1988 (P.L. 100-691; 102 Stat. 4546; 16 U.S.C. 4301-4309).**

Findings, Purposes, and Policy

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) significant caves on Federal lands are an invaluable and irreplaceable part of the Nation's natural heritage; and

(2) in some instances, these significant caves are threatened due to improper use, increased recreational demand, urban spread, and a lack of specific statutory protection.

(b) Purposes.—The purposes of this Act are—

(1) to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all people; and

(2) to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, education, or recreational purposes.

(c) Policy.—It is the policy of the United States that Federal lands be managed in a manner which protects and maintains, to the extent practical, significant caves. (16 U.S.C. 4301)

Definitions

Sec. 3. For purposes of this Act:

(1) Cave.—The term "cave" means any naturally occurring void, cavity, recess, or system of interconnected passages which occurs beneath the surface of the earth or within a cliff or ledge (including any cave resource therein, but not including any vug, mine, tunnel, aqueduct, or other manmade excavation) and which is large enough to permit an individual to enter, whether or not the entrance is naturally formed or manmade. Such term shall include any natural pit, sinkhole, or other feature which is an extension of the entrance.

(2) Federal Lands.—The term "Federal lands" means lands the fee title to which is owned by the United States and administered by the Secretary of Agriculture or the Secretary of the Interior.

(3) Indian Lands.—The term "Indian lands" means lands of Indian tribes or Indian individuals which are either held in trust by the United States for the benefit of an Indian tribe or subject to a restriction against alienation imposed by the United States.

(4) Indian Tribe.—The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims settlement Act (43 U.S.C. 1601 et. seq.).

(5) Cave Resource.—The term "cave resource" includes any material or substance occurring naturally in caves on Federal lands, such as animal life, plant life, paleontological deposits, sediments, minerals, speleogens, and speleothems.

(6) Secretary.—The term "Secretary" means the Secretary of Agriculture or the Secretary of the Interior, as appropriate.

(7) Speleothem.—The term "speleothem" means any natural

mineral formation or deposit occurring in a cave or lava tube, including but not limited to any stalactite, stalagmite, helictite, cave flower, flowstone, concretion, drapery, rimstone, or formation of clay or mud.

(8) Speleogen.—The term "speleogen" means relief features on the walls, ceiling, and floor of any cave or lava tube which are part of the surrounding bedrock, including but not limited to anastomoses, scallops, meander niches, petromorphs and rock pendants in solution caves and similar features unique to volcanic caves. (16 U.S.C. 4302)

Management Actions

Sec. 4. (a) Regulations.—Not later than nine months after the date of the enactment of this Act, the Secretary shall issue such regulations as he deems necessary to achieve the purposes of this Act. Regulations shall include, but not be limited to, criteria for the identification of significant caves. The Secretaries shall cooperate and consult with one another in preparation of the regulations. To the extent practical, regulations promulgated by the respective Secretaries should be similar.

(b) In General.—The Secretary shall take such actions as may be necessary to further the purposes of this Act. Those actions shall include (but need not be limited to)—

(1) identification of significant caves on Federal lands:

(A) The Secretary shall prepare an initial list of significant caves for lands under his jurisdiction not later than one year after the publication of final regulations using the significance criteria defined in such regulations. Such a list shall be developed after consultation with appropriate private sector interests, including cavers.

(B) The initial list of significant caves shall be updated periodically, after consultation with appropriate private sector interests, including cavers. The Secretary shall prescribe by policy or regulation the requirements and process by which the initial list will be updated, including management measures to assure that caves under consideration for the list are protected during the period of consideration. Each cave recommended to the Secretary by interested groups for possible inclusion on the list of significant caves shall be considered by the Secretary according to the requirements prescribed pursuant to this paragraph, and shall be added to the list if the Secretary determines that the cave meets the criteria for significance as defined by the regulations.

(2) regulation or restriction of use of significant caves, as appropriate;

(3) entering into volunteer management agreements with persons of the scientific and recreational caving community; and

(4) appointment of appropriate advisory committees.

(c) Planning And Public Participation.—The Secretary shall—

(1) ensure that significant caves are considered in the preparation or implementation of any land management plan if the preparation or revision of the plan began after the enactment of this Act; and

(2) foster communication, cooperation, and exchange of information between land managers, those who utilize caves, and the public. (16 U.S.C. 4303)

Confidentiality of Information Concerning Nature and Location of Significant Caves

Sec. 5. (a) In general.—Information concerning the specific location of any significant cave may not be made available to the public under section 552 of title 5, United States Code, unless the Secretary determines that disclosure of such information would further the purposes of this Act and would not create a substantial risk of harm, theft, or destruction of such cave.

(b) Exceptions.—Notwithstanding subsection (a), the Secretary may make available information regarding significant caves upon the written request by Federal and State governmental agencies or bona fide educational and research institutions. Any such written request shall, at a minimum—

(1) describe the specific site or area for which information is sought;

(2) explain the purpose for which such information is sought; and

(3) include assurances satisfactory to the Secretary that adequate measures are being taken to protect the confidentiality of such information and to ensure the protection of the significant cave from destruction by vandalism and unauthorized use. (16 U.S.C. 4304)

Collection and Removal From Federal Caves

Sec. 6. (a) Permit.—The Secretary is authorized to issue permits for the collection and removal of cave resources under such terms and conditions as the Secretary may impose, including the posting of bonds to insure compliance with the provisions of any permit:

(1) Any permit issued pursuant to this section shall include information concerning the time, scope, location, and specific purpose of the proposed collection, removal or associated activity, and the manner in which such collection, removal, or associated activity is to be performed must be provided.

(2) The Secretary may issue a permit pursuant to this subsection only if he determines that the proposed collection or removal activities are consistent with the purposes of this Act, and with other applicable provisions of law.

(b) Revocation Of Permit.—Any permit issued under this section shall be revoked by the Secretary upon a determination by the Secretary that the permittee has violated any provision of this Act, or has failed to comply with any other condition upon which the permit was issued. Any such permit shall be revoked by the Secretary upon assessment of a civil penalty against the permittee pursuant to section 8 or upon the permittee's conviction under section 7 of this Act. The Secretary may refuse to issue a permit under this section to any person who has violated any provision of this Act or who has failed to comply with any condition of a prior permit.

(c) Transferability Of Permits.—Permits issued under this Act are not transferable.

(d) Cave Resources Located On Indian Lands.

(1)(A) Upon application by an Indian tribe, the Secretary is authorized to delegate to the tribe all authority of the Secretary under this section with respect to issuing and enforcing permits for the collection or removal of any cave resource, or to carrying out activities associated with such collection or removal, from any cave resource located on the affected Indian lands.

(B) In the case of any permit issued by the Secretary for the

collection or removal of any cave resource, or to carry out activities associated with such collection or removal, from any cave resource located on Indian lands (other than permits issued pursuant to subparagraph (A)), the permit may be issued only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such reasonable terms and conditions as may be requested by such Indian or Indian tribe.

(2) If the Secretary determines that issuance of a permit pursuant to this section may result in harm to, or destruction of, any religious or cultural site, the Secretary, prior to issuing such permit, shall notify any Indian tribe which may consider the site as having significant religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 5.

(3) A permit shall not be required under this section for the collection or removal of any cave resource located on Indian lands or activities associated with such collection, by the Indian or Indian tribe owning or having jurisdiction over such lands.

(e) Effect Of Permit.—No action specifically authorized by a permit under this section shall be treated as a violation of section 7. (16 U.S.C. 4305)

Prohibited Acts

Sec. 7. (a)(1) Any person who, without prior authorization from the Secretary knowingly destroys, disturbs, defaces, mars, alters, removes or harms any significant cave or alters the free movement of any animal or plant life into or out of any significant cave located on Federal lands, or enters a significant cave with the intention of committing any act described in this paragraph shall be punished in accordance with subsection (b).

(2) Any person who possesses, consumes, sells, barters or exchanges, or offers for sale, barter or exchange, any cave resource from a significant cave with knowledge or reason to know that such resource was removed from a significant cave located on Federal lands shall be punished in accordance with subsection (b).

(3) Any person who counsels, procures, solicits, or employs any other person to violate any provisions of this subsection shall be punished in accordance with section (b).

(4) Nothing in this section shall be deemed applicable to any person who was in lawful possession of a cave resource from a significant cave prior to the date of enactment of this Act.

(b) Punishment.—The punishment for violating any provision of subsection (a) shall be imprisonment of not more than one year or a fine in accordance with the applicable provisions of title 18 of the United States Code, or both. In the case of a second or subsequent violation, the punishment shall be imprisonment of not more than 3 years or a fine in accordance with the applicable provisions of title 18 of the United States Code, or both. (16 U.S.C. 4306)

Civil Penalties

Sec. 8. (a) Assessment.—(1) The Secretary may issue an order assessing a civil penalty against any person who violates any prohibition contained in this Act, any regulation promulgated pursuant to this Act, or any permit issued under this Act. Before issuing such an order, the Secretary shall provide such person written notice and the opportunity to request a hearing on the record

within 30 days. Each violation shall be a separate offense, even if such violations occurred at the same time.

(2) The amount of such civil penalty shall be determined by the Secretary taking into account appropriate factors, including (A) the seriousness of the violation; (B) the economic benefit (if any) resulting from the violation; (C) any history of such violations; and (D) such other matters as the Secretary deems appropriate. The maximum fine permissible under this section is $10,000.

(b) Judicial Review.—Any person aggrieved by an assessment of a civil penalty under this section may file a petition for judicial review of such assessment with the United States District Court for the District of Columbia or for the district in which the violation occurred. Such a petition shall be filed within the 30—day period beginning on the date the order assessing the civil penalty was issued.

(c) Collection.—If any person fails to pay an assessment of a civil penalty—

(1) within 30 days after the order was issued under subsection (a), or

(2) if the order is appealed within such 30—day period, within 10 days after court has entered a final judgment in favor of the Secretary under subsection (b), the Secretary shall notify the Attorney General and the Attorney General shall bring a civil action in an appropriate United States district court to recover the amount of penalty assessed (plus costs, attorney's fees, and interest at currently prevailing rates from the date the order was issued or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(d) Subpoenas.—The Secretary may issue subpoenas in connection with proceedings under this subsection compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions. (16 U.S.C. 4307)

Miscellaneous Provisions

Sec. 9. (a) Authorization.—There are authorized to be appropriated $100,000 to carry out the purposes of this Act.

(b) Effect On Land Management Plans.—Nothing in this Act shall require the amendment or revision of any land management plan the preparation of which began prior to the enactment of this Act.

(c) Fund.—Any money collected by the United States as permit fees for collection and removal of cave resources; received by the United States as a result of the forfeiture of a bond or other security by a permittee who does not comply with the requirements of such permit issued under section 7; or collected by the United States by way of civil penalties or criminal fines for violations of this Act shall be placed in a special fund in the Treasury. Such moneys shall be available for obligation or expenditure (to the extent provided for in advance in appropriation Acts) as determined by the Secretary for the improved management, benefit, repair, or restoration of significant caves located on Federal lands.

(d) Nothing in this Act shall be deemed to affect the full operation of the mining and mineral leasing

laws of the United States, or otherwise affect valid existing rights. (16 U.S.C. 4308)

Savings Provisions

Sec. 10. (a) Water.—Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act—

(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

(2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States; or

(3) alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water—related right.

(b) Fish And Wildlife.—Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the States with respect to fish and wildlife. (16 U.S.C. 4309)

Federal Employees Liability Reform and Tort Compensation Act of 1988

- **Act of November 18, 1988 (P.L. 100-694; 102 Stat. 4563; 28 U.S.C. 2671(note), 2674, 2679(note), 2679b and d)**

Note—This act provides protection to Federal employees from personal liability for certain negligent or wrongful acts or omissions. It immunizes Federal employees from personal liability for common law torts committed within the scope of their employment. This act makes the Federal Tort Claims Act (P.L. 79-601, 60 Stat. 812) the exclusive remedy (as in vehicle accidents) for injury to, or loss of, property, death, or personal injury.

Findings and Purposes

Sec. 2. (a) Findings.—The Congress finds and declares the following:

(1) For more than 40 years the Federal Tort Claims Act has been the legal mechanism for compensating persons injured by negligent or wrongful acts of Federal employees committed within the scope of their employment.

(2) The United States, through the Federal Tort Claims Act, is responsible to injured persons for the common law torts of its employees in the same manner in which the common law historically has recognized the responsibility of an employer for torts committed by its employees within the scope of their employment.

(3) Because Federal employees for many years have been protected from personal common law tort liability by a broad based immunity, the Federal Tort Claims Act has served as the sole means for compensating persons injured by the tortious conduct of Federal employees.

(4) Recent judicial decisions, and particularly the decision of the United States Supreme Court in Westfall v. Erwin, have seriously eroded the common law tort immunity previously available to Federal employees.

(5) This erosion of immunity of Federal employees from common law tort liability has created an immediate crisis involving the prospect of personal liability and the threat of protracted personal tort litigation for the entire Federal workforce.

(6) The prospect of such liability will seriously undermine the morale and well being of Federal employees, impede the ability of agencies to carry out their missions, and diminish the vitality of the Federal Tort Claims Act as the proper remedy for Federal employee torts.

(7) In its opinion in Westfall v. Erwin, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

(b) Purpose.—It is the purpose of this Act to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the

common law torts of Federal employees with an appropriate remedy against the United States. (28 U.S.C. 2671(note))

Judicial and Legislative Branch Employees

Sec. 3. Section 2671 of title 28, United States Code, is amended in the first full paragraph by inserting after "executive departments," the following: "the judicial and legislative branches,". (28 U.S.C. 2671 (note))

Retention of Defenses

Sec. 4. Section 2674 of title 28, United States Code, is amended by adding at the end of the section the following new paragraph:

"With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.". (28 U.S.C. 2674 (note))

Exclusiveness of Remedy

Sec. 5. Section 2679(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

"(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

"(A) which is brought for a violation of the Constitution of the United States, or

"(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.". (28 U.S.C. 2679)

Representation and Removal

Sec. 6. Section 2679(d) of title 28, United States Code, is amended to read as follows:

"(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

"(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of

the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

"(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

"(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

"(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

"(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

"(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.". (28 U.S.C. 2679)

Severability

Sec. 7. If any provision of this Act or the amendments made by this Act or the application of the provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation. (28 U.S.C. 2671(note))

Effective Date

Sec. 8. (a) General rule.—This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) Applicability to proceedings.—The amendments made by this Act shall apply to all claims, civil actions, and proceedings pending on, or filed on or after, the date of the enactment of this Act.

(c) Pending state proceedings.—With respect to any civil action or proceeding pending in a State court to which the

amendments made by this Act apply, as to which the period for removal under section 2679(d) of title 28, United States Code (as amended by section 6 of this Act), has expired, the Attorney General shall have 60 days after the date of the enactment of this Act during which to seek removal under such section 2679(d).

(d) Claims Accruing Before Enactment.—With respect to any civil action or proceeding to which the amendments made by this Act apply in which the claim accrued before the date of the enactment of this Act, the period during which the claim shall be deemed to be timely presented under section 2679(d)(5) of title 28, United States Code (as amended by section 6 of this Act) shall be that period within which the claim could have been timely filed under applicable State law, but in no event shall such period exceed two years from the date of the enactment of this Act. (28 U.S.C. 2679(note))

* * * *

North American Wetlands Conservation Act

- **Act of December 13, 1989 (P.L. 101-233, 103 Stat, 1968; 16 U.S.C. 4401(note), 4401-4413, 16 U.S.C. 669b(note))**

Short Title

Sec. 1. This Act may be cited as the "North American Wetlands Conservation Act". (16 U.S.C. 4401 (note)

Findings and Statement of Purpose

Sec. 2. (a) Findings.—The Congress finds and declares that—

(1) the maintenance of healthy populations of migratory birds in North America is dependent on the protection, restoration, and management of wetland ecosystems and other habitats in Canada, as well as in the United States and Mexico;

(2) wetland ecosystems provide essential and significant habitat for fish, shellfish, and other wildlife of commercial, recreational, scientific, and aesthetic values;

(3) almost 35 per centum of all rare, threatened, and endangered species of animals are dependent on wetland ecosystems;

(4) wetland ecosystems provide substantial flood and storm control values and can obviate the need for expensive manmade control measures;

(5) wetland ecosystems make a significant contribution to water availability and quality, recharging ground water, filtering surface runoff, and providing waste treatment;

(6) wetland ecosystems provide aquatic areas important for recreational and aesthetic purposes;

(7) more than 50 per centum of the original wetlands in the United States alone have been lost;

(8) wetlands destruction, loss of nesting cover, and degradation of migration and wintering habitat have contributed to long-term downward trends in populations of migratory bird species such as pintails, American bitterns, and black ducks;

(9) the migratory bird treaty obligations of the United States with Canada, Mexico, and other countries require protection of wetlands that are used by migratory birds for breeding, wintering, or migration and are needed to achieve and to maintain optimum population levels, distributions, and patterns of migration;

(10) the 1988 amendments to the Fish and Wildlife Conservation Act of 1980 require the Secretary of the Interior to identify conservation measures to assure that nongame migratory bird species do not reach the point at which measures of the Endangered Species Act are necessary;

(11) protection of migratory birds and their habitats requires long-term planning and the close cooperation and coordination of management activities by Canada, Mexico, and the United States within the framework of the 1916 and 1936 Migratory Bird Conventions and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(12) the North American Waterfowl Management Plan, signed in 1986 by the Minister of Environment for Canada and the Secretary of the Interior for the United States, provides a framework for maintaining and restoring an

adequate habitat base to ensure perpetuation of populations of North American waterfowl and other migratory bird species;

(13) a tripartite agreement signed in March 1988, by the Director General for Ecological Conservation of Natural Resources of Mexico, the Director of the Canadian Wildlife Service, and the Director of the United States Fish and Wildlife Service, provides for expanded cooperative efforts in Mexico to conserve wetlands for migratory birds that spend the winter there;

(14) the long-term conservation of migratory birds and habitat for these species will require the coordinated action of governments, private organizations, landowners, and other citizens; and

(15) the treaty obligations of the United States under the Convention on Wetlands of International Importance especially as waterfowl habitat requires promotion of conservation and wise use of wetlands.

(b) Purpose.—The purposes of this Act are to encourage partnership among public agencies and other interests—

(1) to protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America;

(2) to maintain current or improved distributions of migratory bird populations; and

(3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries. (16 U.S.C. 4401)

Definitions

Sec. 3. For the purposes of this Act—

(1) The term "Agreement" means the Tripartite Agreement signed in March 1988, by the Director General for Ecological Conservation of Natural Resources of Mexico, the Director of the Canadian Wildlife Service, and the Director of the United States Fish and Wildlife Service.

(2) The term "appropriate Committees" means the Committee on Environment and Public Works of the United States Senate and the Committee on Merchant Marine and Fisheries of the United States House of Representatives.

(3) The term "flyway" means the four administrative units used by the United States Fish and Wildlife Service and the States in the management of waterfowl populations.

(4) The term "Migratory Bird Conservation Commission" means that commission established by section 2 of the Migratory Bird Conservation Act (16 U.S.C. 715a).

(5) The term "migratory birds" means all wild birds native to North America that are in an unconfined state and that are protected under the Migratory Bird Treaty Act, including ducks, geese, and swans of the family Anatidae, species listed as threatened or endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.), and species defined as nongame under the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901-2912).

(6) The term "Plan" means the North American Waterfowl Management Plan signed by the Minister of the Environment for Canada and the Secretary of the Interior for the United States in May 1986.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "State" means the State fish and wildlife agency, which shall be construed to mean any department, or any division of any department of another name, of a State that is empowered under its laws to exercise the functions ordinarily exercised by a State fish and wildlife agency.

(9) The term "wetlands conservation project" means—

(A) the obtaining of a real property interest in lands or waters, including water rights, if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon;

(B) the restoration, management, or enhancement of wetland ecosystems and other habitat for migratory birds and other fish and wildlife species if such restoration, management, or enhancement is conducted on lands and waters that are administered for the long-term conservation of such lands and waters and the migratory birds and other fish and wildlife dependent thereon; and

(C) in the case of projects undertaken in Mexico, includes technical training and development of infrastructure necessary for the conservation and management of wetlands and studies on the sustainable use of wetland resources. (16 U.S.C. 4402)

Establishment of North American Wetlands Conservation Council

Sec. 4. (a) Council membership.—(1) There shall be established a North American Wetlands Conservation Council (hereinafter in this Act referred to as the "Council") which shall consist of nine members who may not receive compensation as members of the Council. Of the Council members—

(A) one shall be the Director of the United States Fish and Wildlife Service; who shall be the responsible Federal official for ensuring Council compliance with the National Environment Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) one shall be the Secretary of the Board of the National Fish and Wildlife Foundation appointed pursuant to section 3(2)(B) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702);

(C) four shall be individuals who shall be appointed by the Secretary, who shall reside in different flyways and who shall each be a Director of the State fish and wildlife agency; and

(D) three shall be individuals who shall be appointed by the Secretary and who shall each represent a different charitable and nonprofit organization which is actively participating in carrying out wetlands conservation projects under this Act, the Plan, or the Agreement. The Provisions of Public Law 92-463, as amended, shall not apply to the Council.

(2) The Secretary shall appoint an alternate member of the Council who shall be knowledgeable and experienced in matters relating to fish, wildlife, and wetlands conservation and who shall perform the duties of a Council member appointed under subsection (a)(1)(C) or subsection (a)(1)(D) of this section—

(A) until a vacancy referred to in subsection (b)(4) of this section is filled; or

(B) in the event of the anticipated absence of such a member from any meeting of the Council.

(b) Appointment and terms.—

(1) Except as provided in paragraphs (2) and (3), the term of office of a member of the Council appointed under subsections (a)(1)(C) and (a)(1)(D) of this section is three years.

(2) Of the Council members first appointed under subsection (a)(1)(C) of this section after the date of enactment of this Act, one shall be appointed for a term of one year, one shall be appointed for a term of two years, and two shall be appointed for a term of three years.

(3) Of the Council members first appointed under subsection (a)(1)(D) of this section after the date of enactment of this Act, one shall be appointed for a term of one year, one shall be appointed for a term of two years, and one shall be appointed for a term of three years.

(4) Whenever a vacancy occurs among members of the Council appointed under subsection (a)(1)(C) or subsection (a)(1)(D) of this section, the Secretary shall appoint an individual in accordance with either such subsection to fill that vacancy for the remainder of the applicable term.

(c) Ex officio council members.—The Secretary is authorized and encouraged to include as ex officio nonvoting members of the Commission representatives of—

(1) the Federal, provincial, territorial, or State government agencies of Canada and Mexico, which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement;

(2) the Environmental Protection Agency and other appropriate Federal agencies, in addition to the United States Fish and Wildlife Service, which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement; and

(3) nonprofit charitable organizations and Native American interests, including tribal organizations, which are participating actively in one or more wetlands conservation projects under this Act, the Plan, or the Agreement.

(d) Chairman.—The Chairman shall be elected by the Council from its members for a three-year term, except that the first elected Chairman may serve a term of less than three years.

(e) Quorum.—A majority of the current membership of the Council shall constitute a quorum for the transaction of business.

(f) Meetings.—The Council shall meet at the call of the Chairman at least once a year. Council meetings shall be open to the public. If a Council member appointed under subsection (a)(1)(C) or (a)(1)(D) of this section misses three consecutive regularly scheduled meetings, the Secretary may remove that individual in accordance with subsection (b)(4).

(g) Coordinator.—The Director of the United States Fish and Wildlife Service shall appoint an individual who shall serve at the pleasure of the Director and—

(1) who shall be educated and experienced in the principles of fish, wildlife, and wetlands conservation;

(2) who shall be responsible, with assistance from the United States Fish and Wildlife Service, for facilitating consideration of wetlands conservation projects by the Council and otherwise assisting the Council in carrying out its responsibilities under this Act; and

(3) who shall be compensated with the funds available under section 8(a)(1) for administering this Act. (16 U.S.C. 4403)

Approval of Wetlands Conservation Projects

Sec. 5. (a) Consideration by the council.—The Council shall recommend wetlands conservation projects to the Migratory Bird Conservation Commission based on consideration of—

(1) the extent to which the wetlands conservation project fulfills the purposes of this Act, the Plan, or the Agreement;

(2) the availability of sufficient non-Federal moneys to carry out any wetlands conservation project and to match Federal contributions in accordance with the requirements of section 8(b) of this Act;

(3) the extent to which any wetlands conservation project represents a partnership among public agencies and private entities;

(4) the consistency of any wetlands conservation project in the United States with the National Wetlands Priority Conservation Plan developed under section 301 of the Emergency Wetlands Resources Act (16 U.S.C. 3921);

(5) the extent to which any wetlands conservation project would aid the conservation of migratory nongame birds, other fish and wildlife and species that are listed, or are candidates to be listed, as threatened and endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.);

(6) the substantiality of the character and design of the wetlands conservation project; and

(7) the recommendations of any partnerships among public agencies and private entities in Canada, Mexico, or the United States which are participating actively in carrying out one or more wetlands conservation projects under this Act, the Plan, or the Agreement.

(b) Recommendations to the Migratory Bird Conservation Commission.—The Council shall submit to the Migratory Bird Conservation Commission by January 1 of each year, a description, including estimated costs, of the wetlands conservation projects which the Council has considered under subsection [a) of this section and which it recommends, in order of priority, that the Migratory Bird Conservation Commission approve for Federal funding under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act.

(c) Council procedures.—The Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section. The procedures shall include requirements that—

(1) a quorum of the Council must be present before any business may be transacted; and

(2) no recommendations referred to in subsection (b) of this section may be adopted by the Council except by the vote of two-thirds of all members present and voting.

(d) Council representation on Migratory Bird Conservation Commission.—The Chairman of the Council shall select one Council member of the United States citizenship to serve with the Chairman as ex officio members of the Migratory Bird Conservation Commission for the purposes of considering and voting upon wetlands conservation projects recommended by the Council.

(e) Approval of council recommendations by the Migratory Bird Conservation Commission.—The Migratory Bird Conservation Commission, along with the two members of the Council referred to in subsection (d) of this section, shall approve, reject or reorder the priority of any wetlands conservation

projects recommended by the Council based on, to the greatest extent practicable, the criteria of subsection (a) of this section. If the Migratory Bird Conservation Commission approves any wetlands conservation project, Federal funding shall be made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act. If the Migratory Bird Conservation Commission rejects or reorders the priority of any wetlands conservation project recommended by the Council, the Migratory Bird Conservation Commission shall provide the Council and the appropriate Committees with a written statement explaining its rationale for the rejection or the priority modification.

(f) Notification of appropriate committees.—The Migratory Re Bird Conservation Commission shall submit annually to the appropriate Committees a report including a list and description of the wetlands conservation projects approved by the Migratory Bird Conservation Commission for Federal funding under subsection (d) of this section in order of priority; the amounts and sources of Federal and non-Federal funding for such projects; a justification for the approval of such projects and the order of priority for funding such projects; a list and description of the wetlands conservation projects which the Council recommended, in order of priority that the Migratory Bird Conservation Commission approve for Federal funding; and a justification for any rejection or re-ordering of the priority of wetlands conservation projects recommended by the Council that was based on factors other than the criteria of section 5(a) of this Act. (16 U.S.C. 4404)

Conditions Relating to Wetlands Conservation Projects

Sec. 6. (a) Projects in the United States.—

(1) Subject to the allocation requirements of section 8(a)(2) and the limitations on Federal contributions under section 8(b) of this Act, the Secretary shall assist in carrying out wetlands conservation projects in the United States, which have been approved by the Migratory Bird Conservation Commission, with the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act.

(2) Except as provided in paragraph (3), any lands or waters or interests therein acquired in whole or in part by the Secretary with the Federal funds made available under this Act and section 3(b) of the Act of September 2,1937 (16 U.S.C. 669b(b)), as amended by this Act, to carry out wetlands conservation projects shall be included in the National Wildlife Refuge System.

(3) In lieu of including in the National Wildlife Refuge System any lands or waters or interests therein acquired under this Act, the Secretary may, with the concurrence of the Migratory Bird Conservation Commission, grant or otherwise provide the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act or convey any real property interest acquired in whole or in part with such funds without cost to a State or to another public agency or other entity upon a finding by the Secretary that the real property interests should not be included in the National Wildlife Refuge System: *Provided,* That any grant recipient shall have been so identified in the project description accompanying the recommendation from the Council and approved by the Migratory Bird Conservation

Commission. The Secretary shall not convey any such interest to a State, another public agency or other entity unless the Secretary determines that such State, agency or other entity is committed to undertake the management of the property being transferred in accordance with the objectives of this Act, and the deed or other instrument of transfer contains provisions for the reversion of title to the property to the United States if such State, agency or other entity fails to manage the property in accordance with the objectives of this Act. Any real property interest conveyed pursuant to this paragraph shall be subject to such terms and conditions that will ensure that the interest will be administered for the long-term conservation and management of the wetland ecosystem and the fish and wildlife dependent thereon.

(b) Projects in Canada or Mexico.—Subject to the allocation requirements of section 8(a)(1) and the limitations on Federal contributions under section 8(b) of this Act, the Secretary shall grant or otherwise provide the Federal funds made available under this Act and section 3(b) of the Act of September 2, 1937 (16 U.S.C. 669b(b)), as amended by this Act, to public agencies and other entities for the purpose of assisting such entities and individuals in carrying out wetlands conservation projects in Canada or Mexico that have been approved by the Migratory Bird Conservation Commission: *Provided,* That the grant recipient shall have been so identified in the project description accompanying the recommendation from the Council and approved by the Migratory Bird Conservation Commission. The Secretary may only grant or otherwise provide Federal funds if the grant is subject to the terms and conditions that will ensure that any real property interest acquired in whole or in part, or enhanced, managed, or restored with such Federal funds will be administered for the long-term conservation and management of such wetland ecosystem and the fish and wildlife dependent thereon. Real property and interests in real property acquired pursuant to this subsection shall not become part of the National Wildlife Refuge System. Acquisitions of real property and interests in real property carried out pursuant to this subsection shall not be subject to any provision of Federal law governing acquisitions of property for inclusion in the National Wildlife Refuge System. (16 U.S.C. 4405)

Amounts Available to Carry Out This Act

Sec. 7. (a) Aid in wildlife restoration.—(1) to (3) omitted.

(b) Migratory bird fines, penalties, forfeitures.—The sums received under section 707 of this title as penalties or fines, or from forfeitures of property are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 4407 of this title. This subsection shall not be construed to require the sale of instrumentalities.

(c) Authorization of appropriations.—In addition to the amounts made available under subsections (a) and (b) of this section, there are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 4407 of this title not to exceed $15,000,000 for each of fiscal years 1991, 1992, 1993, and 1994.

(d) Availability of funds.—Sums made available under this section shall be available until expended. (16 U.S.C. 4406)

Allocation of Amounts Available to Carry Out This Act

Sec. 8. (a) Allocations.—Of the sums available to the Secretary for any fiscal year under this Act and section 3(b) of the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669b(b)), as amended by this Act—

(1) such percentage of that sum (but at least 50 per centum and not more than 70 per centum thereof) as is considered appropriate by the Secretary, which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, less such amount (but not more than 4 per centum of such percentage) considered necessary by the Secretary to defray the costs of administering this Act during such fiscal year, shall be allocated by the Secretary to carry out approved wetlands conservation projects in Canada and Mexico in accordance with section 6(b) of this Act; and

(2) the remainder of such sum after paragraph (1) is applied (but at least 30 per centum and not more than 50 per centum thereof), which can be matched with non-Federal moneys in accordance with the requirements of subsection (b) of this section, shall be allocated by the Secretary to carry out approved wetlands conservation projects in the United States in accordance with section 6(a) of this Act.

(b) Federal contribution for projects.—The Federal moneys allocated under subsection (a) of this section for any fiscal year to carry out approved wetlands conservation projects shall be used for the payment of not to exceed 50 per centum of the total United States contribution to the costs of such projects, or may be used for payment of 100 per centum of the costs of such projects located on Federal lands and waters, including the acquisition of inholdings within such lands and waters. The non-Federal share of the United States contribution to the costs of such projects may not be derived from Federal grant programs.

(c) Partial payments.—

(1) The Secretary may from time to time make payments to carry out approved wetlands conservation projects as such projects progress, but such payments, including previous payments, if any, shall not be more than the Federal pro rata share of any such project in conformity with subsection (b) of this section.

(2) The Secretary may enter into agreements to make payments on an initial portion of an approved wetlands conservation project and to agree to make payments on the remaining Federal share of the costs of such project from subsequent allocations if and when they become available. The liability of the United States under such an agreement is contingent upon the continued availability of funds for the purposes of this Act. (16 U.S.C. 4407)

Restoration, Management, and Protection of Wetlands and Habitat for Migratory Birds on Federal Lands

Sec. 9. The head of each Federal agency responsible for acquiring, managing, or disposing of Federal lands and waters shall, to the extent consistent with the mission of such agency and existing statutory authorities, cooperate with the Director of the United States Fish and Wildlife Service to restore, protect, and enhance the wetland ecosystems and other habitats for migratory birds, fish, and wildlife within the lands and waters of each such agency. (16 U.S.C. 4408)

Report to Congress

Sec. 10. The Secretary shall report to the appropriate Committees on the implementation of this Act. The report shall include—

(1) a biennial assessment of—

(A) the estimated number of acres of wetlands and habitat for waterfowl and other migratory birds that were restored, protected, or enhanced during such two-year period by Federal, State, and local agencies and other entities in the United States, Canada, and Mexico;

(B) trends in the population size and distribution of North American migratory birds; and

(C) the status of efforts to establish agreements with nations in the western hemisphere pursuant to section 17 of this Act.

(2) an annual assessment of the status of wetlands conservation projects, including an accounting of expenditures by Federal, State, and other United States entities, and expenditures by Canadian and Mexican sources to carry out these projects. (16 U.S.C. 4409)

Revisions to the Plan

Sec. 11. The Secretary shall, in 1991 and at five-year intervals thereafter, undertake with the appropriate officials in Canada to revise the goals and other elements of the Plan in accordance with the information required under section 10 and with the other provisions of this Act. The Secretary shall invite and encourage the appropriate officials in Mexico to participate in any revisions of the Plan. (16 U.S.C. 4410)

Relationship to Other Authorities

Sec. 12. (a) Acquisition of lands and waters.—Nothing in this Act affects, alters, or modifies the Secretary's authorities, responsibilities, obligations, or powers to acquire lands or waters or interests therein under any other statute.

(b) Mitigation.—The Federal funds made available under this Act and section 3(b) of the Act of September 2,1937 (16 U.S.C. 669b(b)), as amended by this Act, may not be used for fish and wildlife mitigation purposes under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) or the Water Resources Development Act of 1986, (P.L. 99-662 (1986), 100 Stat. 4235). (16 U.S.C. 4411)

Limitation on Assessments Against Migratory Bird Conservation Fund

Sec. 14. Notwithstanding any other provision of law, only those personnel and administrative costs directly related to acquisition of real property shall be levied against the Migratory Bird Conservation Account. (16 U.S.C. 4412)

Technical and Conforming Amendments to the Migratory Bird Treaty Act

Sec. 15. Section 2 of the Migratory Bird Treaty Act (16 U.S.C. 703) is amended—

(1) by striking "and" after "1936,"; and

(2) by inserting after "1972" the following: "and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976".

Other Agreements

Sec. 16. (a) The Secretary shall undertake with the appropriate officials of nations in the western hemisphere to establish agreements, modeled after the Plan or the

Agreement, for the protection of migratory birds identified in section 13(a)(5) of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2912(a)). When any such agreements are reached, the Secretary shall make recommendations to the appropriate Committees on legislation necessary to implement the agreements. (16 U.S.C. 4413)

ACTS OF THE 1990'S

Americans with Disabilities Act

- **Act of July 26, 1990 (P.L. 101-336, 104 Stat. 328; 42 U.S.C. 12101 (note), 12101-12102, 12111(note), 12111-12117, 12131(note), 12131-12134, 12181(note); 12181-12185, 12187–12189, 12201-12208, 12210–12211)**

Short Title

Sec. 1. (a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1990". (42 U.S.C. 12101(note))

Findings and Purposes

Sec. 2. (a) Findings.—The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national orgin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subject to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self–sufficiency for such individuals, and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people

with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day–to–day by people with disabilities. (42 U.S.C. 12101)

Definitions

Sec. 3. As used in this Act:

(1) Auxiliary aids and services.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) Disability.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) State.—The term "State" means each of the several States, the District of Columbia, the Commonweath of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. (42 U.S.C. 12102)

TITLE I — EMPLOYMENT

Sec. 101. Definitions.—As used in this title—

(1) Commission.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) Covered entity.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat.—The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee.—The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer.—

(A) In general.—The term "employer" means a person engaged in an industry affecting commerce

who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(6) Illegal use of drugs.—

(A) In general.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

(7) Person, etc.—The terms "person", "labor organization","employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(8) Qualified individual with a disability.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship.—

(A) In general.—The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the

reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. (42 U.S.C. 12111)

Discrimination

Sec. 102. (a) General rule.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction.—As used in subsection (a), the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in

question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries.—

(1) In general.—It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with the section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation.—

(A) Presumption.—If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception.—This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination.—For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control, of the employer and the corporation

(d) Medical examinations and inquiries.—

(1) In general.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) Pre-employment.—

(A) Prohibited examination or inquiry.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry.—A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or

duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this title.

(4) Examination and inquiry.—

(A) Prohibited examinations and inquiries.—A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3). (42 U.S.C. 12112)

Defenses

Sec. 103. (a) In general.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) Qualification standards.—The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Religious entities.—

(1) In general.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement.—Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(d) List of infectious and communicable diseases.—

(1) In general.—The Secretary of Health and Human Services, not later than 6 months after the date of enactment of this Act, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Such list shall be updated annually.

(2) Applications.—In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction.—Nothing in this Act shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services. (42 U.S.C 12113)

Illegal Use of Drugs and Alcohol

Sec. 104. (a) Qualified individual with a disability.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction.—Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity.—A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations

(if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing.—

(1) In general.—For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees.—Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c). (42 U.S.C. 12114)

Posting Notices

Sec. 105. Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10). (42 U.S.C. 12115)

Regulations

Sec. 106. Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code. (42 U.S.C. 12116)

Enforcement

Sec. 107. (a) Powers, remedies, and procedures.—The powers, remedies and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5,

2000e-6 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) Coordination.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act. (42 U.S.C. 12117)

Effective Date

Sec. 108. This title shall become effective 24 months after the date of enactment. (42 U.S.C. 12111 (note))

TITLE II — PUBLIC SERVICES

SUBTITLE A — PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

Definition

Sec. 201. As used in this title—

(1) Public entity.—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) Qualified individual with a disability.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. (42 U.S.C. 12131)

Discrimination

Sec. 202. Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. (42 U.S.C. 12132)

Enforcement

Sec. 203. The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202. (42 U.S.C. 12133)

Regulations

Sec. 204. (a) In general.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) Relationship to other regulations.—Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) Standards.—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle other than facilities, stations, rail passenger cars and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act. (42 U.S.C. 12134)

Effective Date

Sec. 205. (a) General rule.—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) Exception.—Section 204 shall become effective on the date of enactment of this Act. (42 U.S.C. 12131(note))

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TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Definition

Sec. 301. As used in this title—

(1) Commerce.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) Commercial facilities.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce. Such term shall not include railroad locomotives, railroad freight cars, railroad

cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) Demand responsive system.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) Fixed route system.—The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) Over-the-road bus.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) Private entity.—The term "private entity" means any entity other than a public entity (as defined in section 201(1)).

(7) Public accommodation.—The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) Rail and railroad.—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(9) Readily achievable.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this Act;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) Specified public transportation.—The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) Vehicle.—The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under this title. (42 U.S.C. 12181)

Prohibition of Discrimination by Public Accommodations

Sec. 302. (a) General rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.—

(1) General prohibition.—

(A) Activities.—

(i) Denial of participation.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) Participation in unequal benefit.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) Separate benefit.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) Individual or class of individuals.—For purposes of

clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) Integrated settings.—Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) Opportunity to participate.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) Administrative methods.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) Association.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) Specific prohibitions.—

(A) Discrimination.—For purposes of subsection (a), discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) Fixed route system.—

(i) Accessibility.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) Equivalent service.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passen-gers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be considered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) Demand responsive system.—For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) Over-the-road buses.—

(i) Limitation on applicability.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) Accessibility requirements.—For purposes of subsection (a), discrimination includes

(I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and

(II) any other failure of such entity to comply with such regulations.

(3) Specific construction.—Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the

health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services. (42 U.S.C. 12182)

New Construction and Alterations in Public Accommodations and Commercial Facilities

Sec. 303. (a) Application of term.—Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 302(a) includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) Elevator.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities. (42 U.S.C. 12183)

Prohibition of discrimination in specified public transportation services provided by private entities

Sec. 304. (a) General rule.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) Construction.—For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary

for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) and with the requirements of section 303(a)(2);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Historical or antiquated cars.—

(1) Exception.—To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or

order issued by the Secretary of Transportation under the Federal Railroad Safety Act of 1970, such compliance shall not be required.

(2) Definition.—As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed. (42 U.S.C. 12184)

Study

Sec. 305. (a) Purposes.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) Contents.—The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) Advisory committee.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices. The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) Deadline.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) Review.—In developing the study required by subsection (a), Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d). (42 U.S.C. 12185)

* * * *

Exemptions for Private Clubs and Religious Organizations

Sec. 307. The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title 11 of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship. (42 U.S.C. 12187)

Enforcement

Sec. 308. (a) In general.—

(1) Availability of remedies and procedures.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) Injunctive relief.—In the case of violations of sections 302(b)(2)(A)(iv) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) Enforcement by the Attorney General.—

(1) Denial of rights.—

(A) Duty to investigate.—

(i) In general.—The Attorney General shall investigate alleged violations of this title. and shall undertake periodic reviews of compliance of covered entities under this title.

(ii) Attorney General certification.—On the application of a State or local government, the Attorney General may, in consultation

with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) Potential violation.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance. The Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court.—In a civil action under paragraph (1)(B,), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) Judicial consideration.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability. (42 U.S.C. 12188)

Examinations and Courses

Sec. 309. Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer

such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals. (42 U.S.C. 12189)

Effective Date

Sec. 310. (a) General rule.—Except as provided in subsections (b) and (c), this title shall become effective 18 months after the date of the enactment of this Act.

(b) Civil actions.—Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—

(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and

(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

(c) Exception.—Sections 302(a) for purposes of section 302(b)(2)(B) and (C) only, 304(a) for purposes of section 304(b)(3) only, 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act. (42 U.S.C. 12181 (note))

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TITLE V—MISCELLANEOUS PROVISIONS

Construction

Sec. 501. (a) In general.—Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws.—Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.

(c) Insurance.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance. Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

(d) Accommodations and services.—Nothing in this Act shall be construed to require an individual

with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept. (42 U.S.C. 12201)

State Immunity

Sec. 502. A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State. (42 U.S.C. 12202)

Prohibition against retaliation and coercion

Sec. 503. (a) Retaliation.—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) Interference, coercion, or intimidation.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) Remedies and procedures.—The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title 1, title II and title III, respectively. (42 U.S.C. 12203)

Regulations by the Architectural and Transportation Barriers Compliance Board

Sec. 504. (a) Issuance of guidelines.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) Contents of guidelines.—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities,

(c) Qualified historic properties.—

(1) In general.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) Sites eligible for listing in national register.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum,

maintain the procedures and requirements established in 4.1.7 (1) and (2) of the Uniform Federal Accessibility Standards.

(3) Other sites.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards. (42 U.S.C. 12204)

Attorney's Fees

Sec. 505. In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual. (42 U.S.C. 12205)

Technical Assistance

Sec. 506. (a) Plan for assistance.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) Publication of plan.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) Agency and public assistance.—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) Implementation.—

(1) Rendering assistance.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) Implementation of titles.—

(A) Title I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for title I.

(B) Title II.—

(i) Subtitle A.—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) Subtitle B.—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) Title III.—The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for

which shall be implemented by the Secretary of Transportation.

(D) Title IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) Technical Assistance Manuals.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) Grants and Contracts.—

(1) In general.—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or award contracts to effectuate the purposes of this section, subject to the availability of appropriations. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this Act. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) Dissemination of information.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) Failure to receive assistance.—An employer, public accommodation, or other entity covered under this Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section. (42 U.S.C. 12206)

Federal Wilderness Areas

Sec. 507. (a) Study.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) Submission of report.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

(c) Specific wilderness access.—

(1) In general.—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) Definition.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that

is suitable for use in an indoor pedestrian area. (42 U.S.C. 12207)

Transvestites

Sec. 508. For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite. (42 U.S.C. 12208)

* * * *

Illegal Use of Drugs

Sec. 510. (a) In general.—For purposes of this Act, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction.—Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who–

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) Health and other services.—Notwithstanding subsection (a) and section 511(b)(3), an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) Definition of illegal use of drugs.—

(1) In general.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) Drugs.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act. (42 U.S.C. 12210)

Definitions

Sec. 511. (a) Homosexuality and bisexuality.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) Certain conditions.—Under this Act, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs. (42 U.S.C. 12211)

* * * *

Forest Resource Conservation and Shortage Relief Act of 1990

- **Act of August 20, 1990 (P.L. 101-382, Title IV, 104 Stat. 714; 16 U.S.C. 620(note), 620, 620a-j)**

Note—This title is Title IV of the Customs and Trade Act of 1990, 104 Stat. 629.

TITLE IV — EXPORTS OF UNPROCESSED TIMBER

Short Title

Sec. 487. This title may be cited as the "Forest Resources Conservation and Shortage Relief Act of 1990". (16 U.S.C. 620(note))

Findings and Purposes

Sec. 488. (a) Findings.—The Congress makes the following findings:

(1) Timber is essential to the United States.

(2) Forests, forest resources, and the forest environment are exhaustible natural resources that require efficient and effective conservation efforts.

(3) In the interest of conserving those resources, the United States has set aside millions of acres of otherwise harvestable timberlands in the western United States, representing well over 100,000,000,000 board feet of otherwise harvestable timber.

(4) In recent years, administrative, statutory, or judicial action has been taken to set aside an increased amount of otherwise harvestable timberlands for conservation purposes.

(5) In the next few months and years, additional amounts of otherwise harvestable timberlands may be set aside for conservation purposes, pursuant to the Endangered Species Act of 1973, the National Forest Management Act of 1976, or other expected statutory, administrative, and judicial actions.

(6) There is evidence of a shortfall in the supply of unprocessed timber in the western United States.

(7) There is reason to believe that any shortfall which may already exist may worsen unless action is taken.

(8) In conjunction with the broad conservation actions expected in the next few months and years, conservation action is necessary with respect to exports of unprocessed timber.

(b) Purposes.—The purposes of this title are—

(1) to promote the conservation of forest resources in conjunction with State and Federal resources management plans, and other actions or decisions, affecting the use of forest resources;

(2) to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States;

(3) to take action necessary, to meet the goals of Article XI 2.(a) of the General Agreement on Tariffs and Trade, to ensure sufficient supplies of certain forest resources or products which are essential to the United States;

(4) to continue and refine the existing Federal policy of

restricting the export of unprocessed timber harvested from Federal lands in the western United States; and

(5) to effect measures aimed at meeting these objectives in conformity with the obligations of the United States under the General Agreement on Tariffs and Trade. (16 U.S.C. 620)

Restrictions on Exports of Unprocessed Timber Originating from Federal Lands

Sec. 489. (a) Prohibition on Export of Unprocessed Timber Originating From Federal Lands.—No person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States, unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States.

(b) Surpluses.—

(1) Determinations by secretary concerned.—The prohibition contained in subsection (a) shall not apply to specific quantities of grades and species of unprocessed timber originating from Federal lands which the Secretary concerned determines to be surplus to domestic manufacturing needs.

(2) Procedures.—Any determination under paragraph (1) shall be made in regulations issued in accordance with section 553 of title 5, United States Code. Any such determination shall be reviewed at least once in every 3-year period. The Secretary concerned shall publish notice of such review in the Federal Register, and shall give the public an opportunity to comment on such review. (16 U.S.C. 620a)

Limitations on the Substitution of Unprocessed Federal Timber for Unprocessed Timber Exported From Private Lands

Sec. 490. (a) Direct Substitution.

(1) Except as provided in subsection (c), no person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if—

(A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(2) Notwithstanding paragraph (1)—

(A) Federal timber purchased pursuant to a contract entered into between the purchaser and the Secretary concerned before the date on which regulations to carry out this subsection are issued under section 495 shall be governed by the regulations of the Secretary concerned in effect before such date that restrict the substitution of unprocessed timber originating from Federal lands for exported timber originating from private lands;

(B) in the 1-year period beginning on the effective date of this title, any person who operates under a Cooperative Sustained Yield Unit Agreement, and who has an historic export quota shall be limited to entering into contracts under such a quota to a volume equal to not more than 66 percent of the person's historic export quota used during fiscal year 1989;

(C) a person referred to in subparagraph (B) shall reduce the person's remaining substitution volume by an equal amount each year thereafter such that no volume is substituted under such a quota in fiscal year 1995 or thereafter; and

(D) the 24-month period referred to in paragraph (1)(B) shall not apply to any person who—

(i) before the enactment of this Act, has, under an historic export quota approved by the Secretary concerned, purchased unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States in substitution for exported unprocessed timber originating from private lands;

(ii) certifies to the Secretary concerned, within 3 months after the date of the enactment of this Act, that the person will, within 6 months after such date of enactment, cease exporting unprocessed timber originating from private lands; and

(iii) ceases exports in accordance with such certification.

(b) Indirect Substitution.—

(1) In general.—Except as provided in paragraph (2), no person may, beginning 21 days after the date of the enactment of this Act, purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph.

(2) Exceptions.—

(A) The Secretary of Agriculture shall, as soon as practicable but not later than 9 months after the date of the enactment of this Act, establish, by rule, a limited amount of unprocessed timber originating from Federal lands described in subparagraph (B) which may be purchased by a person otherwise covered by the prohibition contained in paragraph (1). Such limit shall equal—

(i) the amount of such timber acquired by such person, based on the higher of the applicant's actual timber purchasing receipts or the appropriate Federal agency's records, during fiscal years 1988, 1989, and 1990,divided by 3, or

(ii) 15 million board feet, whichever is less, except that such limit shall not exceed such person's proportionate share, with respect to all persons covered under this paragraph, of 50 million board feet.

(B) The Federal lands referred to in subparagraph (A) are Federal lands administered by the United States Forest Service Region 6 that are located north of the Columbia River from its mouth and east to its first intersection with the 119th meridian, and from that point north of the 46th parallel and east.

(C) Any person may sell, trade, or otherwise exchange with any other person the rights obtained under subparagraph (A), except that such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights obtained under subparagraph (A).

(D) Federal timber purchased from Federal lands described in subparagraph (B) pursuant to a contract entered into between the purchaser and the Secretary of Agriculture before the date on which regulations to carry out this subsection are issued under section 495 shall be governed by the regulations of the Secretary of Agriculture in effect before such date that restrict the substitution of unprocessed timber originating from Federal

lands for exported timber originating from private lands.

(c) Approval of Sourcing Areas.—

(1) In general.—The prohibitions contained in subsections (a) and (b) shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States approved by the Secretary concerned under this subsection by a person who—

(A) in the previous 24 months, has not exported unprocessed timber originating from private lands within the sourcing area; and

(B) during the period in which such approval is in effect, does not export unprocessed timber originating from private lands within the sourcing area.

The Secretary concerned may waive the 24-month requirement set forth in subparagraph (A) for any person who, within 3 months after the date of the enactment of this Act, certifies that, within 6 months after such date, such person will, for a period of not less than 3 years, cease exporting unprocessed timber originating from private lands within the sourcing area.

(2) Requirements for application.—The Secretaries concerned shall, not later than 3 months after the date of the enactment of this Act, prescribe procedures to be used by a person applying for approval of a sourcing area under paragraph (1). Such procedures shall require, at a minimum, the applicant to provide—

(A) information regarding the location of private lands from which such person has, within the previous year, harvested or otherwise acquired unprocessed timber which has been exported from the United States; and

(B) information regarding the location of each timber manufacturing facility owned or operated by such person within the proposed sourcing area boundaries at which the applicant proposes to process timber originating from Federal lands.

The prohibition contained in subsection (a) shall not apply to a person before the date which is 1 month after the procedures referred to in this paragraph are prescribed. With respect to any person who submits an application in accordance with such procedures by the end of the time period set forth in the preceding sentence, the prohibition contained in subsection (a) shall not apply to such person before the date on which the Secretary concerned approves or disapproves such application.

(3) Grant of approval.—For each applicant, the Secretary concerned shall, on the record and after an opportunity for a hearing, not later than 4 months after receipt of the application for a sourcing area, either approve or disapprove the application. The Secretary concerned may approve such application only if the Secretary determines that the area that is the subject of the application, in which the timber manufacturing facilities at which the applicant desires to process timber originating from Federal lands are located, is geographically and economically separate from any geographic area from which that person harvests for export any unprocessed timber originating from private lands. In making a determination referred to in this paragraph, the Secretary concerned shall consider equally the timber purchasing patterns, on private and Federal lands, of the applicant as well as other persons in the same local vicinity as the applicant, and the

relative similarity of such purchasing patterns.

(4) Denial of application.—(A) Subject to subparagraph (B), and notwithstanding any other provision of law, in the 9-month period after receiving disapproval of an application submitted pursuant to this subsection, the applicant may purchase unprocessed timber originating from Federal lands in the area which is the subject of the application in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application. In the subsequent 6-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions contained in subsection (a) shall fully apply.

(B) If a person referred to in subparagraph (A) certifies to the Secretary concerned, within 90 days after receiving disapproval of such application, that such person shall, within 15 months after such disapproval, cease the export of unprocessed timber originating from private lands from the geographic area determined by the Secretary for which the application would have been approved, such person may continue to purchase unprocessed timber originating from Federal lands in the area which is the subject of the application, without being subject to the restrictions of subparagraph (A), except that such purchases during that 15-month period may not exceed 125 percent of the annual average of such person's purchases of unprocessed timber originating from Federal lands in the same area during the 5 full fiscal years immediately prior to submission of the application which was denied.

(C) Any person to whom subparagraph (B) applies may not, during the 15-month period after the person's application for sourcing area boundaries is denied, export unprocessed timber originating from private lands in the geographic area determined by the Secretary concerned for which the application would have been approved in amounts that exceed 125 percent of the annual average of such person's exports of unprocessed timber from such private lands during the 5 full fiscal years immediately prior to submission of the application.

(5) Review of determinations.—Determinations made under paragraph (3) shall be reviewed, in accordance with the procedures prescribed in this title, not less often than every 5 years. (16 U.S.C. 620b)

Restriction on Exports of Unprocessed Timber From State and Other Public Lands

Sec. 491. (a) Order To Prohibit the Export of Unprocessed Timber Originating From State or Other Public Lands.—Except as provided in subsection (e), the Secretary of Commerce shall issue orders to prohibit the export from the United States of unprocessed timber originating from public lands, in the amounts specified in subsection (b).

(b) Schedule for Determination To Prohibit the Export of Unprocessed Timber Originating From State or Other Public Lands.—

(1) States with annual sales of 400,000,000 board feet or less.—With respect to States with annual sales volumes of 400,000,000 board feet or less, the Secretary of Commerce shall issue an order referred to in subsection (a) to prohibit the export of unprocessed timber originating from public lands not later than 21 days after

the date of the enactment of this Act.

(2) States with annual sales of greater than 400,000,000 board feet.—With respect to any State with an annual sales volume greater than 400,000,000 board feet, the following shall apply:

(A) The Secretary of Commerce shall issue an order referred to in subsection (a) not later than 21 days after the date of the enactment of this Act. Such order shall cover a period beginning 120 days after the issuance of such an order, or January 1, 1991, whichever is earlier, and shall extend to December 31, 1991. Such order shall prohibit the export of 75 percent of the annual sales volume in such State of unprocessed timber from public lands.

(B) For the period beginning on January 1, 1992, and ending on December 31, 1993, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) not later than September 30, 1991. Such order shall prohibit the export of at least 75 percent of such State's annual sales volume for this 2-year period.

(C) For the period beginning on January 1, 1994, and ending on December 31, 1995, the Secretary of Commerce shall, after notice and an opportunity for a hearing, issue an order referred to in subsection (a) not later than September 30, 1993. Such order shall prohibit the export of at least 75 percent of such State's annual sales volume for this 2-year period.

(D) For all periods on or after January 1, 1996, the Secretary of Commerce shall issue an order referred to in subsection (a) not later than September 30, 1995. Such order shall prohibit the export of the lesser of 400,000,000 board feet or the total annual sales volume.

(3) Report to congress.—Not later than June 1, 1995, the Secretary of Commerce, in conjunction with the Secretaries of Agriculture and Interior, shall issue a report to the Congress on the effects of the reallocation, as a result of the enactment of this title, of public lands timber resources to the domestic timber processing sector, the ability of the domestic timber processing sector to meet domestic demand for forest products, the volume of transshipment of timber originating from public lands across State borders, the effectiveness of rules issued and administered by States pursuant to this title, and trends in growth and productivity in the domestic timber processing sector.

(c) Basis for Increase in Volume Prohibited From Export.—The Secretary of Commerce may increase the amount of unprocessed timber to be prohibited from export above the minimum amount specified in subsection (b)(2) (B) and (C), based on a determination that the purposes of this title have not been adequately met and that such an increase would further the purposes of this title. In making this determination, the Secretary shall consider—

(1) actions or decisions taken, for the purpose of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products;

(2) whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous 12 months; and

(3) the probable effects of unprocessed timber exports on the ability of timber mills to acquire unprocessed timber.

(d) Administrative Provisions.—

(1) Delay of secretary's order.—In the event that any order

of the Secretary of Commerce under subsection (a) or its implementation is delayed for any reason, the prohibitions on exports under subsection (b) to which such order would apply shall apply in the absence of such order.

(2) Administration by states.—Each State shall determine the species, grade, and geographic origin of unprocessed timber to be prohibited from export under subsection (b) and shall administer such prohibitions consistent with the intent of this title and ensure that the species, grades, and geographic origin of unprocessed timber prohibited from export is representative of the species, grades, and geographic origin of timber comprising such State's total timber sales program. The State is authorized to cooperate with Federal and State agencies with appropriate jurisdiction to further the intent of this title.

(3) State regulations.—

(A) Except for States with annual sales of 400,000,000 board feet or less upon the date of the enactment of this Act, the Governor of each State to which this title applies, or such other State official as the Governor may designate, shall, within 120 days after the date of the enactment of this Act, issue regulations to carry out the purposes of this section, the promulgation of which shall be consistent with section 553 of title 5, United States Code. Such regulations in each State shall remain in effect until such time as the legislature of that State enacts such requirements as it deems appropriate to carry out this section. Before issuing such regulations, the Governor shall enter into formal consultation, concerning such regulations, with appropriate State officials and with a State Board of Natural Resources where such a board exists. When formulating regulations under this paragraph, the Governor shall take into account the intent of this title to effect a net increase in domestic processing of timber harvested from public lands consistent with all orders issued by the Secretary of Commerce under subsection (a).

(B) The Governor of each State with annual sales of 400,000,000 board feet or less upon the date of the enactment of this Act, or such other State official as the Governor may designate, shall, within 120 days after the date of the enactment of this Act, issue regulations to carry out the purposes of this section. Until such regulations are issued in a State, the prohibitions contained in subsections (a) and (b) of section 490 shall apply to unprocessed timber originating from public lands in that State to the same extent as such prohibitions apply to unprocessed timber originating from Federal lands, except that the provisions of subsection (c) of such section shall not apply.

(4) Prior contracts.—Nothing in this section shall apply to any contract for the purchase of unprocessed timber from public lands entered into before the effective date of a Secretary's order issued under subsection (a).

(5) Western red cedar.—Nothing in this section shall be construed to supersede the provisions of section 7(i) of the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)).

(e) Presidential Authority.—The President is authorized, after suitable notice and a public comment period of not less than 120 days, to suspend the provisions of this section if a panel of experts has reported to the Contracting Parties to the General Agreement on Tariffs and Trade, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that the provisions of

this section are in violation of, or inconsistent with, United States obligations under that trade agreement.

(f) Removal or Modifications of State Restrictions.—Based upon a determination that it is in the national economic interest, the President may remove or modify any prohibition on exports from public lands in a State if that State petitions the President to remove or modify such prohibition.

(g) Effect of Prior Federal Law.—No provision of Federal law which imposes requirements with respect to the generation of revenue from State timberlands and was enacted before the enactment of this Act shall be construed to invalidate, supersede, or otherwise affect any action of a State or political subdivision of a State pursuant to this title.

(h) Surplus Timber.—The prohibitions on exports contained in orders of the Secretary of Commerce issued under subsection (a) shall not apply to specific quantities of grades and species of unprocessed timber originating from public lands which the Secretary concerned determines by rule to be surplus to the needs of timber manufacturing facilities in the United States. Any such determination may, by rule, be withdrawn by the Secretary concerned if the Secretary determines that the affected timber is no longer surplus to the needs of timber manufacturing facilities in the United States.

(i) Suspension of Prohibitions.—Notwithstanding any other provision of this section, beginning on January 1, 1998, and annually thereafter, if the President finds, upon review of the purposes and implementation of this title, that the prohibitions on exports required by subsection (a) no longer promote the purposes of this title, then the President may suspend such prohibitions, except that such suspension shall not take effect until 90 days after the President notifies the Congress of such finding.

(j) Existing Authority Not Affected.—Nothing in this title shall be construed to limit the authority of the President or the United States Trade Representative to take action authorized by law to respond appropriately to any measures taken by a foreign government in connection with this title. (16 U.S.C. 620c)

Monitoring and Enforcement

Sec. 492. (a) Monitoring and Reports.—In accordance with regulations issued under this section—

(1) each person who acquires, either directly or indirectly, unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall report the receipt and disposition of such timber to the Secretary concerned, in such form as such Secretary may by rule prescribe; except that nothing in this paragraph shall be construed to hold any person responsible for the reporting of the disposition of any such timber held by subsequent persons; and

(2) each person who transfers to another person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States shall, before completing such transfer—

(A) provide to such other person a written notice, in such form as the Secretary concerned may prescribe, which shall identify the Federal origin of such timber;

(B) receive from such other person a written acknowledgment of such notice and a written agreement that such other person will comply with the requirements of this title, in such form as the Secretary concerned may prescribe; and

(C) provide to the Secretary concerned copies of all notices, acknowledgments, and agreements referred to in subparagraphs (A) and (B).

(b) Report to Congress.—Using the information gathered under subsection (a), the Secretaries of Agriculture and Interior shall, not later than June 1, 1995, submit to the Congress a report on the disposition of unprocessed timber harvested from Federal lands west of the 100th meridian in the contiguous 48 States, and recommendations concerning the practice of indirect substitution of such timber for exported timber harvested from private lands. Specifically, such report shall—

(1) analyze the effects of indirect substitution on market efficiency;

(2) analyze the effects of indirect substitution on domestic log supply;

(3) offer any recommendations that the Secretaries consider necessary for specific statutory or regulatory changes regarding indirect substitution;

(4) provide summaries of the data collected;

(5) analyze the effects of the provisions of section 490(b)(2)(C); and

(6) provide such other information as the Secretaries consider appropriate.

(c) Civil Penalties for Violation.—

(1) Exports.—If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person, with willful disregard for the prohibition contained in this title against exporting Federal timber, exported or caused to be exported unprocessed timber originating from Federal lands in violation of this title, such Secretary may assess against such person a civil penalty of not more than $500,000 for each violation, or 3 times the gross value of the unprocessed timber involved in the violation, whichever amount is greater.

(2) Other violations.—If the Secretary concerned finds, on the record and after an opportunity for a hearing, that a person has violated any provision of this title or any regulation issued under this title relating to lands which they administer (notwithstanding that such violation may not have caused the export of unprocessed Federal timber in violation of this title), such Secretary may—

(A) assess against such person a civil penalty of not more than $75,000 for each violation if the Secretary determines that the person committed such violation in disregard of such provision or regulation;

(B) assess against such person a civil penalty of not more than $50,000 for each violation if the Secretary determines that the person should have known that the action constituted a violation; or

(C) assess against such person a civil penalty of not more than $500,000 if the Secretary determines that the person committed such violation willfully.

(3) Penalties not exclusive; judicial review.—A penalty assessed under this subsection shall not be exclusive of any other penalty provided by law and shall be subject to review in an appropriate United States district court.

(d) Administrative Remedies.—

(1) Debarment.—The head of the appropriate Federal department or agency under this title may debar any person who violates this title, or any regulation or contract issued under this title, from entering into any contract for the purchase of unprocessed timber from Federal lands for a period of not more than

5 years. Such person shall also be precluded from taking delivery of Federal timber purchased by another party for the period of debarment.

(2) Cancellation of contracts.—The head of the appropriate Federal department or agency under this title may cancel any contract entered into with a person found to have violated this title or regulations issued under this title.

(e) Exception.—Subsections (c) and (d) do not apply to violations of section 498. (16 U.S.C. 620d)

Definitions

Sec. 493. For purposes of this title:

(1) The term "acquire" means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction, and the term "acquisition" means the act of acquiring.

(2) The term "Federal lands" means lands that are owned by the United States, but does not include any lands the title to which is—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(3) The term "person" means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, or parent company, and business affiliates where 1 affiliate controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(4) The term "private lands" means lands held or owned by a person. Such term does not include Federal lands or public lands, or any lands the title to which is—

(A) held in trust by the United States for the benefit of any Indian tribe or individual,

(B) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(C) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(5) The term "public lands" means lands west of the 100th meridian in the contiguous 48 States, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is—

(A) held by the United States;

(B) held in trust by the United States for the benefit of any Indian tribe or individual,

(C) held by any Indian tribe or individual subject to a restriction by the United States against alienation, or

(D) held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(6) The term "Secretary concerned" means—

(A) the Secretary of Agriculture, with respect to Federal lands administered by that Secretary; and

(B) the Secretary of the Interior with respect to Federal lands administered by that Secretary.

(7)(A) The term "unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use.

(B) The term "unprocessed timber" does not include timber

processed into any one of the following:

(i) Lumber or construction timbers, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture.

(ii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness.

(iii) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in clause (ii) and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8 3/4 inches in thickness.

(iv) Chips, pulp, or pulp products.

(v) Veneer or plywood.

(vi) Poles, posts, or piling cut or treated with preservatives for use as such.

(vii) Shakes or shingles.

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(ix) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

(8) The acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 States to be used in "substitution" for exported unprocessed timber originating from private lands means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area. (16 U.S.C. 620e)

Effective Date

Sec. 494. Except as otherwise provided in this title, the provisions of this title take effect on the date of the enactment of this Act. (16 U.S.C. 620(note))

Regulations and Review

Sec. 495. (a) Regulations.—The Secretaries of Agriculture and Interior shall, in consultation, each prescribe new coordinated and consistent regulations to implement this title on lands which they administer. The Secretary of Commerce shall promulgate such rules and guidelines as may be necessary to carry out this title. Except as otherwise provided in this title, regulations and guidelines under this subsection shall be issued not later than 9 months after the date of the enactment of this Act.

(b) Review.—The Secretaries of Agriculture and Interior shall, in consultation, review the definition of unprocessed timber under section 493(7) for purposes of this title and, not later than 18 months after the date of the enactment of this Act, submit to the Congress any recommendations they have with respect to such definition. Specifically, the Secretaries shall report on the effects of maintaining 2 size standards under section 493(B) (ii) and (iii). (16 U.S.C. 620f)

Authorization of Appropriations

Sec. 496. There are authorized to be appropriated such sums as may be necessary to carry out this title. (16 U.S.C. 620g)

Savings Clause

Sec. 497. Nothing in this title, or regulations issued under this title, shall be construed to abrogate or affect any timber sale contract entered into before the effective date of this title. (16 U.S.C. 620h)

Eastern Hardwoods Study

Sec. 498. (a) Study.—The Secretary of Commerce, in conjunction with the Secretary of Agriculture and the Secretary of the Interior, shall conduct a study of the export from the United States, during the 2-year period beginning on January 1, 1991, of unprocessed hardwood timber harvested from Federal lands or public lands east of the 100th meridian. In order to carry out the provisions of this section—

(1) the Secretary of Commerce shall require each person exporting such timber from the United States to declare, in addition to the information normally required in the Shipper's Export Declarations, the State in which the timber was grown and harvested; and

(2) the Secretary of Agriculture and the Secretary of the Interior shall ensure that all hardwood saw timber harvested from Federal lands east of the 100th meridian is marked in such a manner as to make it readily identifiable at all times before its manufacture, and shall take such steps as each Secretary considers appropriate to ensure that such markings are not altered or destroyed before manufacturing.

(b) Report to Congress.—Not later than April 1, 1993, the Secretary of Commerce shall submit to the Committees on Agriculture, Interior and Insular Affairs, and Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the volume and value of unprocessed timber grown and harvested from Federal lands or public lands east of the 100th meridian that is exported from the United States during the 2-year period beginning on January 1, 1991, the country to which such timber is exported, and the State in which such timber was grown and harvested. (16 U.S.C. 620i)

International of Export Administration Act of 1979

Sec. 499. Nothing in this title shall be construed to—

(1) prejudice the outcome of pending or prospective petitions filed under, or

(2) warrant the exercise of the authority contained in, Section 7 of the Export Administration Act of 1979 with respect to the export of unprocessed timber. (16 U.S.C. 620j)

International Forestry Cooperation Act of 1990

- **Act of November 5, 1990 (P.L. 101-513, Title VI; 104 Stat. 2070; 16 U.S.C. 4501(note), 4501–4503, 4503a–d, 4504–4505)**

Short Title

Sec. 601. This title may be cited as the "International Forestry Cooperation Act of 1990". (16 U.S.C. 4501(note))

Forestry and Related Natural Resource Assistance

Sec. 602. (a) Focus of Activities.—To achieve the maximum impact from activities undertaken under the authority of this title, the Secretary shall focus such activities on the key countries which could have a substantial impact on emissions of greenhouse gases related to global warming.

(b) Authority for International Forestry Activities.—In support of forestry and related natural resource activities outside of the United States and its territories and possessions, the Secretary of Agriculture may-

(1) provide assistance that promotes sustainable development and global environmental stability, including assistance for—

(A) conservation and sustainable management of forest land;

(B) forest plantation technology and tree improvement;

(C) rehabilitation of cutover lands, eroded watersheds, and areas damaged by wildfires or other natural disasters;

(D) prevention and control of insects, diseases, and other damaging agents;

(E) preparedness planning, training, and operational assistance to combat natural disasters;

(F) more complete utilization of forest products leading to resource conservation;

(G) range protection and enhancement; and

(H) wildlife and fisheries habitat protection and improvement;

(2) share technical, managerial, extension, and administrative skills related to public and private natural resource administration;

(3) provide education and training opportunities to promote the transfer and utilization of scientific information and technologies;

(4) engage in scientific exchange and cooperative research with foreign governmental, educational, technical and research institutions; and

(5) cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife and fisheries, and related natural resource activities.

(c) Eligible Countries.—The Secretary shall undertake the activities described in subsection (b), in countries that receive assistance from the Agency for International Development only at the request, or with the concurrence, of the Administrator of the Agency for International Development. (16 U.S.C. 4501)

Tropical Deforestation Assessment and Assistance

Sec. 603. In support of the Tropical Forestry Action Plan and to

specifically address tropical deforestation and degradation, the Secretary may—

(1) support and actively participate in global and regional meetings that seek to reform such Plan;

(2) together with the United States Agency for International Development, and other Federal agencies, provide technical assistance to tropical countries for the formulation of national forestry sector development strategies; and

(3) cooperate with tropical countries on research, training, and technical programs aimed at implementing national forestry sector development strategies. (16 U.S.C. 4502)

Institute of Tropical Forestry

Sec. 604. (a) Expansion.—The Secretary shall expand the capabilities of and construct additional facilities at the Caribbean National Forest and Institute of Tropical Forestry in Puerto Rico, as the Secretary determines necessary to support the purpose of this title, and as funds are appropriated for such expansion and construction.

(b) Tropical Forestry Plans.—Not later than 1 year after the date of enactment of this Act, the Secretary shall prepare and submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Committee on Agriculture of the House of Representatives, and to the Committees on Appropriations of the Senate and House of Representatives, a tropical forestry plan for the expansion and construction of additional facilities under subsection (a). Such plan shall include provisions for—

(1) the construction or acquisition of a major center for education, interpretation, and appreciation of the benefits and methods of the intelligent management of tropical forests;

(2) the acquisition or construction of facilities for housing and classroom instruction near the Caribbean National Forest/Luguillo Experimental Forest; and

(3) the acquisition or construction of facilities for the study and recovery of endangered tropical wildlife, fish and plan species. (16 U.S.C. 4503)

Institute of Pacific Islands Forestry

Sec. 605. (a) Expansion.—The Secretary shall expand the capabilities of and construct additional facilities, as funds are appropriated for the expansion and construction, at—

(1) the Institute of Pacific Islands Forestry; and

(2) tropical forests in the State of Hawaii.

(b) Tropical forestry plan.—

(1) In general.—Not later than 1 year after the date of receipt by the Secretary of the action plan required by section 5(b) of the Hawaii Tropical Forest Recovery Act, the Secretary shall prepare and submit to the Committee on Agriculture and the Committee on Interior and Insular Affairs of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and to the Committees on Appropriations of the House of Representatives and Senate, a tropical forestry plan to expand the capabilities of and construct additional facilities under subsection (a) of this section.

(2) Elements.—The plan shall provide for—

(A) the establishment of a model center for research, demonstration, education, training, and outreach activities suitable for transferring scientific, technical, managerial, and administrative assistance to governmental and non-governmental

organizations seeking to address problems associated with tropical forests within and outside the United States;

(B) the acquisition or construction of facilities for research, classroom instruction, and housing near an experimental tropical forest in the State of Hawaii;

(C) the acquisition or construction of facilities for the study and recovery of endangered tropical wildlife, fish, and plant species and the restoration of their habitats;

(D) the study of biological control of non-native species that degrade or destroy native forest ecosystems;

(E) achieving a better understanding of global climate change and the significance of achieving a reduction of greenhouse gases through research associated with the unique atmospheric conditions found in Hawaii and the Pacific Ocean;

(F) a review of the extent to which existing Federal forestry programs can be utilized to achieve the purposes of the plan; and

(G) the establishment of experimental tropical forests in the State of Hawaii as authorized by section 4503b of this title.

(3) Capability.—In preparing elements of the plan that address paragraph (2)(F), the Secretary shall identify the capability of the plan—

(A) to promote a greater understanding of tropical forest ecosystem processes, conservation biology, and biodiversity management;

(B) to demonstrate the various benefits of maintaining a tropical forest reserve system;

(C) to promote sound watershed and forest management;

(D) to develop compatible land uses adjacent to protected natural areas; and

(E) to develop new methods of reclaiming and restoring degraded lands. (16 U.S.C. 4503a)

Hawaii Experimental Tropical Forest

Sec. 606. (a) Definitions.–As used in this section:

(1) Forest.—The term "Forest" means the Hawaii Experimental Tropical Forest.

(2) Governor.—The term "Governor" means the Governor of Hawaii.

(3) Lands.—The term "lands" means lands, waters, and interests in lands and waters.

(4) State.—The term "State" means the State of Hawaii.

(b) Establishment and management.—At the request of the Governor, the Secretary shall establish and adminster within the State a Hawaii Experimental Tropical Forest. The Forest shall be managed as—

(1) a model of quality torpical forest management where harvesting on a sustainable yield basis can be demonstrated in balance with natural resource conservation;

(2) a site for research on tropical forestry, conservation biology, and natural resource management; and

(3) a center for demonstration, education, training, and outreach on tropical forestry, conservation biology, and natural resources research and management.

(c) Delineation of the location of the Forest.—

(1) Identification of lands.—The Governor and the Secretary shall identify one or more suitable sites for the Forest in lands within the State. The identification of each site shall be based on scientific, ecological, administrative, and such other factors as the Governor and

Secretary consider to be necessary or desirable to achieve the purposes of this section. Each site identified pursuant to the preceding sentence shall be of sufficient size and locate so that the site can be effectively managed for Forest purposes.

(2) Exterior boundaries.—The exterior boundaries of the Forest, including the boundaries of all sites identified for Forest purposes, shall be delineated on an official map. The map shall be available for public inspection in the office of the Administrator of the Divsion of Forestry and Wildlife of the Department of Land and Natural Resources of the State. The Governor and the Secretary may from time to time, by mutual agreement, amend the official map to modify the boundaries of the Forest.

(d) Authorities of the Secretary.—

(1) In general.—To carry out the purposes of this section, the Secretary is authorized—

(A) to administer the Forest in cooperation with the Governor and affected State agencies;

(B) to make grants and enter into contracts and cooperative agreements with the Federal Government, the government of the State, local governments, corporations, nonprofit organizations and individuals;

(C) to exercise existing authority with respect to cooperative forestry and research for Forest purposes; and

(D) to issue necessary rules and regulations or apply existing rules and regulations applicable to areas administered by the Forest Service that are necessary or desirable to administer the Forest—

(i) for the purposes described in subsection (b) of this section;

(ii) to protect persons within the Forest; and

(iii) to preserve and protect the resources in the Forest.

(2) Land acquisition.—The authority in section 1643 of this title shall be available to the Secretary to carry out this section.

(3) Statutory construction.—Nothing in this section is intended to affect the jurisdiction of the State, both civil and criminal, over any person within the Forest by reason fo the establishment of the Forest under this section, except in the case of a penalty for an offense against the United States. (16 U.S.C. 4503b)

Annual report on Institutes of Tropical Forestry

Sec. 607. The Secretary shall make annual reports to Congress on the progress, needs, and long-range plans of the Institutes of Tropical Forestry in meeting the requirements of section 6706 of Title 7. Such reports shall be submitted by the Secretary pursuant to section 1606(c) of this title. (16 U.S.C. 4503c)

Definitions

Sec. 608. As used in this chapter (unless the context otherwise requires):

(1) Institutes of Tropical Forestry.—The term " Institutes of Tropical Forestry" means the Institutes of Tropical Forestry in Puerto Rico and the Institute of Pacific Islands Forestry established under section 6706 of Title 7.

(2) Secretary.—The term "Secretary" means the Secretary of Agriculture.

(3) State.—The term "State" means each of the 50 States, Guam, American Samoa, the Republic of Palau (until the Compact of Free Association enters into effect), Puerto Rico, The Virgin Islands, and the

Commonwealth of the Northern Mariana Islands. (16 U.S.C. 4503d)

Administrative Provisions

Sec. 609. (a) Coordination of Activities.—The Secretary shall coordinate all activities outside of the United States under this title with other Federal officials, departments, agencies, and international organizations, as the President may require.

(b) Assistance.—The Secretary may provide assistance, as determined appropriate by the Secretary to carry out this title, including technical and financial assistance, equipment, and facilities without reimbursement. (16 U.S.C. 4504)

Authorization of Appropriations

Sec. 610. There are authorized to be appropriated such sums as may be necessary to carry out this title. (16 U.S.C. 4505)

Conforming Amendments

Sec. 607. (a) Forest and Rangeland Renewable Resources Research Act.—The Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1641 et seq.) is amended—

(1) in section 2 (16 U.S.C. 1641)—

(A) by inserting "(1)" after "(a)";

(B) by adding at the end of subsection (a) the following new paragraph:

"(2) Congress further finds that the forest and rangeland renewable resources of the world are threatened by deforestation due to conversion to agriculture of lands better suited to other uses, over-grazing, over-harvesting, and other causes that pose a direct adverse threat to people, the global environment, and the world economy."; and

(C) by adding at the end thereof the following new subsection:

"(c) It is the purpose of this Act to authorize the Secretary to expand research activities to encompass international forestry and natural resource issues on a global scale."; and

(2) in the first section of section 4(c) (16 U.S.C. 1643(c)), by inserting "international," before "Federal". (See P.L. 95-307)

(b) Cooperative Forestry Assistance Act.—The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. et seq.) is amended—

(1) in section 2(a)—

(A) by striking "and" at the end of paragraph (16);

(B) by striking the period at the end of paragraph (17) and inserting "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(18) the same forest resource supply, protection, and management issues that existing in the United States are also present on an international scale, and the forest and rangeland renewable resources of the world are threatened by deforestation due to conversion to agriculture of lands better suited to other purposes, over-grazing, over-harvesting, and other causes which pose a direct adverse threat to people, the global environment, and the world economy.";

(2) in section 2(b), by inserting "in the United States, and forest lands in foreign countries," after "non-Federal forest lands," the first place it appears and in paragraph (10); and

(3) in section 12, by adding at the end thereof the following new subsection— (16 U.S.C. 2101)

"(h) In addition to the authority provided elsewhere in this Act, the Secretary may provide assistance to other countries with respect to the activities described in paragraphs (1) through (10) of section 3(b), paragraphs (1) through (5) of section 7(b), and paragraphs (1) through (3) of section 9(b). For the purposes of providing assistance to other countries under this subsection, the term 'non-Federal forest land' shall mean any forest land and related renewable natural resources in such countries. In providing the assistance authorized under this subsection, the Secretary shall coordinate with other Federal officials, departments, agencies, or international organizations, as the President may direct. The references to 'State foresters or equivalent State officials' in this Act shall not apply to the assistance provided by the Secretary to other countries under this subsection.".

This Act may be cited as the "Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991". (16 U.S.C. 2109) (See P.L. 95-313)

National Forest Foundation Act

- **Act of November 16, 1990 (P.L. 101-593, Title IV; 104 Stat. 2969; 16 U.S.C. 583j(note), 583j, 583j-1 to 583j-8)**

TITLE IV—FOREST FOUNDATION

Short Title

Sec. 401. This title may be cited as the "National Forest Foundation Act". (16 U.S.C. 583j(note))

Establishment and Purposes of Foundation

Sec. 402. (a) Establishment.—There is established the National Forest Foundation (hereinafter referred to as the "Foundation") as a charitable and nonprofit corporation domiciled in the District of Columbia.

(b) Purposes.—The purposes of the Foundation are to—

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Forest Service of the Department of Agriculture;

(2) undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and

(3) undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry and other programs administered by the Forest Service.

(c) Limitation and Conflicts of Interests.—

(1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation partnership, entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest. (16 U.S.C. 583j)

Board of Directors of the Foundation

Sec. 403. (a) Establishment and Membership.—The Foundation shall have a governing Board of Directors (hereinafter referred to as the "Board"), which shall consist of fifteen Directors, each of whom shall be a United States citizen. At all times, a majority of members of the Board shall be educated or have actual experience in natural or cultural resource management, law, or research. To the extent practicable, members of the Board shall represent diverse points of view relating to natural and cultural resource issues. The Chief of the Forest Service shall be an ex officio nonvoting member of the Board.

(b) Appointment and Terms.—Within one year from the date of enactment of this title, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall appoint the Directors of the Board. Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint one-third each of the Directors to terms of two, four, and six years respectively. A vacancy on the Board shall be filled within sixty days of such vacancy in the manner in which the original appointment was made. No individual may serve more than twelve consecutive years as a Director.

(c) Chairman.—The Chairman shall be elected by the Board from its members. A chairman shall serve for a two-year term, and may be re-elected to the post during his tenure as a Director.

(d) Quorum.—A majority of the current voting membership of the Board shall constitute a quorum for the transaction of business.

(e) Meetings.—The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board by majority vote of the Board of Directors and that vacancy filled in accordance with subsection (b) of this section.

(f) Reimbursement of Expenses.—Voting members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties for the Foundation. Such reimbursement may not exceed such amount as would be authorized under section 5703 of title 5, United States Code, for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(g) General Powers.—The Board may complete the organization of the Foundation by appointing employees, adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this subtitle, and undertaking other such acts as may be necessary to function and to carry out the provisions of this subtitle.

(h) Officers and Employees.—Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their services. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. (16 U.S.C. 583j-1)

Corporate Powers and Obligations

Sec. 404. (a) In General.—The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States,territories, and possessions of the United States and in foreign countries;

(3) shall have its principal offices in the Washington, D.C. metropolitan area; and

(4) shall at all times maintain a designated agent in the District of Columbia authorized to accept service of process for the Foundation.

(b) Notice and Service of Process.—The serving of notice to, or service of process upon, the agent required under this paragraph, or mailed to the business address of

such agent, shall be deemed as service upon or notice to the Foundation.

(c) Seal.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(d) Powers.—To carry out its purposes, the Foundation shall have, in addition to powers otherwise authorized under this title, the usual powers of a corporation in the District of Columbia, including the power to—

(1) accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, or real or personal property or any income therefrom or other interest therein;

(2) acquire by donation, gift, devise, purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) borrow money and issue bonds, debentures, or other debt instruments;

(5) sue and be sued, and complain and defend itself in any court of competent jurisdiction (except that the Directors of the Board shall not be personally liable, except for gross negligence);

(6) enter into contracts or other arrangements with public agencies, private organizations, and persons and to make such payments as may be necessary to carry out the purposes thereof; and

(7) do any and all acts necessary and proper to carry out the purposes of the Foundation.

(e) Property.— (1) The Foundation may acquire, hold and dispose of lands, waters, or other interests in real property by donation, gift, devise, purchase or exchange. For the purposes of this title, an interest in real property shall include, but not be limited to, mineral and water rights, rights of way, and easements appurtenant or in gross. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(2) No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Chief of the United States Forest Service to be valuable for purposes established in this title shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(3) The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto.

(4) Contributions, gifts, and other transfers made to or for the use of the Foundation shall be treated as contributions, gifts, or transfers to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986. (16 U.S.C. 583j-2)

Administrative Services and Support

Sec. 405. (a) Startup Funds.—For purposes of assisting the Foundation in establishing an office and meeting initial administrative and other startup expenses, the Secretary is authorized to provide to the Foundation $500,000, from funds appropriated pursuant to section 410(a), per year for the two years following the date of enactment of this title. Such funds shall remain available to the Foundation until they are expended for authorized purposes.

(b) Matching Funds.—In addition to the startup funds provided under subsection (a) of this section, for a period of five years from the date of enactment of this title, the Secretary is authorized to provide matching funds for administrative expenses incurred by the Foundation as authorized by section 410(b) of this title including reimbursement of expenses under section 403, not to exceed then current Federal Government per diem rates.

(c) Administrative Expenses.—At any time, the Secretary may provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish. (16 U.S.C. 583j-3)

Volunteers

Sec. 406. The Secretary may accept, without regard to the civil service classification laws, rules and regulations, any director, officer, employee or agent of the Foundation as a volunteer for purposes of the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a through 558d; 86 Stat. 147). (16 U.S.C. 583j-4)

Audits and Report Requirements

Sec. 407. (a) Audits.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law," approved August 30, 1964 (36 U.S.C. 1101 through 1103; Public Law 88-504) the Foundation shall be treated as a private corporation established under Federal law.

(b) Annual Reports.—The Foundation shall, transmit each year to Congress a report of its proceedings and activities of the previous year, including a full and complete statement of its receipts, expenditures, and investments. (16 U.S.C. 583j-5)

United States Release From Liability

Sec. 408. The United States shall not be liable for any debts, defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligations of the Foundation. (16 U.S.C. 583j-6)

Activities of the Foundation and United States Forest Service

Sec. 409. The activities of the Foundation authorized under the provisions of this Act shall be supplemental to and shall not preempt any authority or responsibility of the United States Forest Service under any other provision of law. (16 U.S.C. 583j-7)

Authorization of Appropriations

Sec. 410. (a) Start-Up Funds.—For the purposes of section 405 of this title, there are authorized to be appropriated $1,000,000.

(b) Matching Funds.—For the purposes of section 405 of this title, during the five-year period following the date of the enactment of this title, there are authorized to be appropriated $1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis, private contributions made to the Foundation. (16 U.S.C. 583j-8)

Native American Graves Protection and Repatriation Act

- **Act of November 16, 1990 (P.L. 101-601, 104 Stat. 3048; 25 U.S.C. 3001-3013)**

Short Title

Sec. 1. This act may be cited as the "Native American Graves Protection and Repatriation Act". (25 U.S.C. 3001 (note))

Definitions

Sec. 1. For purposes of this Act, the term—

(1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "cultural items" means human remains and—

(A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971. (43 U.S.C. 1601 et seq.)

(6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) "Native Hawaiian organization" means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawaii Nei.

(12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to

give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.

(15)"tribal land" means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3. (25 U.S.C. 3001)

Ownership

Sec. 3. (a) Native American human remains and objects.—The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of this Act shall be (with priority given in the order listed—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgement of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) Unclaimed Native American human remains and objects.—Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8, Native American groups, representatives of museums and the scientific community.

(c) Intentional excavation and removal of Native American human remains and objects.—The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) Inadvertent discovery of Native American remains and objects.—(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after the date of enactment of this Act shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) Relinquishment.—Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object. (25 U.S.C. 3002)

Inventory for Human Remains and Associated Funerary Objects

Sec. 3. (a) In general.—Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b) Requirements.—

(1) The inventories and identifications required under subsection (a) shall be—

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment of this Act, and

(C) made available both during the time they are being

conducted and afterward to a review committee established under Sec. 8.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

(e) Inventory.—For the purposes of this section, the term "inventory" means a simple itemized list that summarizes the information called for by this section. (25 U.S.C. 3003)

Summary for Unassociated Funerary Objects Sacred Objects and Cultural Patrimony

Sec. 4. (a) In general.—Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b) Requirements.—

(1) The summary required under subsection (a) shall be

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

(C) completed by not later than the date that is 3 years after the date of enactment of this Act.

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall/be provided in a reasonable manner to be agreed upon by all parties. (25 U.S.C. 3004)

Repatriation

Sec. 5. (a) Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums.—

(1) If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e)

of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5, or the summary pursuant to section 6, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) and, in the case of unassociated funerary objects, subsection (c), such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e), sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

(b) Scientific study.—If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) Standard of repatriation.—If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome

such inference and prove that it has a right of possession to the objects.

(d) Sharing of information by Federal agencies and museums.—Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) Competing claims.—Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(f) Museum obligation.—Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act. (25 U.S.C. 3005)

Review Committee

Sec. 6. (a) Establishment.—Within 120 days after the date of enactment of this Act, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7.

(b) Membership.—

(1) The Committee established under subsection (a) shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) Responsibilities.—The committee established under subsection (a) shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to:

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Admissibility of records.—Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act.

(e) Recommendations and report.—The committee shall make the recommendations under paragraph (c)(5) of this section in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

(f) Access.—The Secretary shall ensure that the committee established under subsection (a) and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

(g) Duties of secretary.—The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(h) Annual report.—The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(i) Termination.—The committee established under subsection (a) shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed. (25 U.S.C. 3006)

Penalty

Sec. 7. (a) Penalty.—Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) Amount of penalty.—The amount of a penalty assessed under subsection (a) shall be determined

under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.

(c) Actions to recover penalties.—If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) Subpoenas.—In hearings held pursuant to subsection (a), subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. (25 U.S.C. 3007)

Grants

Sec. 8. (a) Indian tribes and Native Hawaiian organizations.—The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) Museums.—The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6. (25 U.S.C. 3008)

Savings Provisions

Sec. 9. Nothing in this Act shall be construed to—

(1) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(2) delay actions on repatriation requests that are pending on the date of enactment of this Act;

(3) deny or otherwise affect access to any court;

(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property. (25 U.S.C. 3009)

Special Relationship Between Federal Government and Indian Tribes

Sec. 10. This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government. (25 U.S.C. 3010)

Regulations

Sec. 11. The Secretary shall promulgate regulations to carry out

this Act within 12 months of enactment. (25 U.S.C. 3011)

Authorization of Appropriations

Sec. 12. There is authorized to be appropriated such sums as may be necessary to carry out this Act. (25 U.S.C. 3012)

Enforcement

Sec. 13. The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act. (25 U.S.C. 3013)

National Environmental Education Act

- **Act of November 16, 1990 (P.L. 101-619, 104 Stat. 3552; 20 U.S.C. 5501(note), 5501-5510)**

Short Title

Sec. 1. (a) This Act may be cited as the "National Environmental Education Act". (20 U.S.C. 5501 (note))

Findings and Policy

Sec. 2. (a) Findings.—The Congress finds that—

(1) Threats to human health and environmental quality are increasingly complex, involving a wide range of conventional and toxic contaminants in the air and water and on the land.

(2) There is growing evidence of international environmental problems, such as global warming, ocean pollution, and declines in species diversity, and that these problems pose serious threats to human health and the environment on a global scale.

(3) Environmental problems represent as significant a threat to the quality of life and the economic vitality of urban areas as they do the natural balance of rural areas.

(4) Effective response to complex environmental problems requires understanding of the natural and built environment, awareness of environmental problems and their origins (including those in urban areas), and the skills to solve these problems.

(5) Development of effective solutions to environmental problems and effective implementation of environmental programs requires a well educated and trained, professional work force.

(6) Current Federal efforts to inform and educate the public concerning the natural and built environment and environmental problems are not adequate.

(7) Existing Federal support for development and training of professionals in environmental fields is not sufficient.

(8) The Federal Government, acting through the Environmental Protection Agency, should work with local education institutions, State education agencies, not-for-profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to support development of curricula, special projects, and other activities, to increase understanding of the natural and built environment and to improve awareness of environmental problems.

(9) The Federal Government, acting through the coordinated efforts of its agencies and with the leadership of the Environmental Protection Agency, should work with local education institutions, State education agencies, not–for–profit educational and environmental organizations, noncommercial educational broadcasting entities, and private sector interests to develop programs to provide increased emphasis and financial resources for the purpose of attracting students into environmental engineering and assisting them in pursuing the programs to complete the advanced technical education required to

provide effective problem solving capabilities for complex environmental issues.

(10) Federal natural resource agencies such as the United States Forest Service have a wide range of environmental expertise and a long history of cooperation with educational institutions and technology transfer that can assist in furthering the purposes of the Act.

(b) Policy.—It is the policy of the United States to establish and support a program of education on the environment, for students and personnel working with students, through activities in schools, institutions of higher education, and related educational activities, and to encourage postsecondary students to pursue careers related to the environment. (20 U.S.C. 5501)

Definitions

Sec. 3. For the purposes of this Act, the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Agency" means the United States Environmental Protection Agency;

(3) "Federal agency" or "agency of the United States" means any department, agency or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation;

(4) "Secretary" means the Secretary of the Department of Education;

(5) "local education agency" means any education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381) and shall include any tribal education agency;

(6) "not-for-profit organization" means an organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation pursuant to the provisions of section 501(a) of such Code;

(7) "noncommercial education broadcasting entities" means any noncommercial educational broadcasting station (and/or its legal nonprofit affiliates) as defined and licensed by the Federal Communications Commission;

(8) "tribal education agency" means a school or community college which is controlled by an Indian tribe, band, or nation, including any Alaska Native village, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and which is not administered by the Bureau of Indian Affairs;

(9) "Federal natural resource management agencies" means the United States Forest Service, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service;

(10) "environmental engineering" means the discipline within engineering and science concerned with the development and application of scientific and technical solutions to protecting the aquatic and atmospheric environment, including, but not limited to, all phases of water resources planning, water supply, water treatment, air pollution characterization and control, remediation of hazardous substances, environmental transport of contaminants in surface and ground water and atmosphere, and methods for assessment and control of pollution;

(11) "environmental education" and "environmental education and

training" mean educational activities and training activities involving elementary, secondary, and post-secondary students, as such terms are defined in the State in which they reside, and environmental education personnel, but does not include technical training activities directed toward environmental management professionals or activities primarily directed toward the support of noneducational research and development;

(12) "Foundation" means the National Environmental Education and Training Foundation established pursuant to section 10 of this Act; and

(13) "Board of Directors" means the Board of Directors of the National Environmental Education and Training Foundation. (20 U.S.C. 5502)

Office of Environmental Education

Sec. 4. (a) The Administrator shall establish an Office of Environmental Education within the Environmental Protection Agency.

(b) The Office of Environmental Education shall—

(1) develop and support programs and related efforts, in consultation and coordination with other Federal agencies, to improve understanding of the natural and built environment, and the relationships between humans and their environment, including the global aspects of environmental problems;

(2) support development and the widest possible dissemination of model curricula, educational materials, and training programs for elementary and secondary students and other interested groups, including senior Americans;

(3) develop and disseminate, in cooperation with other Federal agencies, not-for-profit educational and environmental organizations, State agencies, and noncommercial educational broadcasting entities, environmental education publications and audio/visual and other media materials;

(4) develop and support environmental education seminars, training programs, teleconferences, and workshops for environmental education professionals, as provided for in section 5 of this Act;

(5) manage Federal grant assistance provided to local education agencies, institutions of higher education, other not-for-profit organizations, and noncommercial education broadcasting entities, under section 6 of this Act;

(6) administer the environmental internship and fellowship programs provided for in section 7 of this Act;

(7) administer the environmental awards program provided for in section 8 of this Act;

(8) provide staff support to the Advisory Council and Task Force provided for in section 9 of this Act;

(9) assess, in coordination with other Federal agencies, the demand for professional skills and training needed to respond to current and anticipated environmental problems and cooperate with appropriate institutions, organizations, and agencies to develop training programs, curricula, and continuing education programs for teachers, school administrators, and related professionals;

(10) assure the coordination of Federal statutes and programs administered by the Agency relating to environmental education, consistent with the provisions and purposes of those programs, and work to reduce duplication or inconsistencies within these programs;

(11) work with the Department of Education, the Federal Interagency Committee on Education, and

with other Federal agencies, including Federal natural resource management agencies, to assure the effective coordination of programs related to environmental education, including environmental education programs relating to national parks, national forests, and wildlife refuges;

(12) provide information on environmental education and training programs to local education agencies, State education and natural resource agencies, and others; and

(13) otherwise provide for the implementation of this Act.

(c) The Office of Environmental Education shall—

(1) be directed by a Director who shall be a member of the Senior Executive Service;

(2) include a headquarters staff of not less than six and not more than ten full-time equivalent employees; and

(3) be supported by one full--time equivalent employee in each Agency regional office. (20 U.S.C. 5503)

Environmental Education and Training Program

Sec. 5. (a) Establishment.—There is hereby established an Environmental Education and Training Program. The purpose of the program shall be to train educational professionals in the development and delivery of environmental education and training programs and studies.

(b) Functions and activities.—The functions and activities of the program shall include, at a minimum—

(1) classroom training in environmental education and studies including environmental sciences and theory, educational methods and practices, environmental career or occupational education, and topical environmental issues and problems;

(2) demonstration of the design and conduct of environmental field studies and assessments;

(3) development of environmental education programs and curriculum, including programs and curriculum to meet the needs of diverse ethnic and cultural groups;

(4) sponsorship and management of international exchanges of teachers and other educational professionals between the United States, Canada, and Mexico involved in environmental programs and issues;

(5) maintenance or support of a library of environmental education materials, information, literature, and technologies, with electronic as well as hard copy accessibility;

(6) evaluation and dissemination of environmental education materials, training methods, and related programs;

(7) sponsorship of conferences, seminars, and related forums for the advancement and development of environmental education and training curricula and materials, including international conferences, seminars, and forums;

(8) supporting effective partnerships and networks and the use of distant learning technologies; and

(9) such other activities as the Administrator determines to be consistent with the policies of this Act.

Special emphasis should be placed on developing environmental education programs, workshops, and training tools that are portable and can be broadly disseminated.

(c)(1) Grants.—The Administrator shall make a grant on an annual basis to an institution of higher education or other institution which is a not-for-profit institution (or consortia of such institutions) to operate the environmental education and training program required by this section.

(2) Any institution of higher education or other institution (or consortia of such institutions) which is a not-for-profit organization and is interested in receiving a grant under this section may submit to the Administrator an application in such form and containing such information as the Administrator may require.

(3) The Administrator shall award grants under this section on the basis of—

(A) the capability to develop environmental education and training programs;

(B) the capability to deliver training to a range of participants and in a range of settings;

(C) the expertise of the staff in a range of appropriate disciplines;

(D) the relative economic effectiveness of the program in terms of the ratio of overhead costs to direct services;

(E) the capability to make effective use of existing national environmental education resources and programs;

(F) the results of any evaluation under paragraph (5) of this subsection; and

(G) such other factors as the Administrator deems appropriate.

(4) No funds made available to carry out this section shall be used for the acquisition of real property (including buildings) or the construction or substantial modification of any building.

(5) The Administrator shall establish procedures for a careful and detailed review and evaluation of the environmental education and training program to determine whether the quality of the program being operated by the grantee warrants continued support under this section.

(d)(1) Eligibility.—Individuals eligible for participation in the program are teachers, faculty, administrators and related support staff associated with local education agencies, colleges, and universities, employees of State education, environmental protection, and natural resource departments, and employees of not-for-profit organizations involved in environmental education activities and issues.

(2) Individuals shall be selected for participation in the program based on applications which shall be in such form as the Administrator determines to be appropriate.

(3) In selecting individuals to participate in the program, the Administrator shall provide for a wide geographic representation and a mix of individuals, including minorities, working at primary, secondary, postsecondary levels, and with appropriate other agencies and departments.

(4) Individuals selected for participation in the program may be provided with a stipend to cover travel and accommodations from grant funds awarded pursuant to this section in such amounts as the Administrator determines to be appropriate. (20 U.S.C. 5504)

Environmental Education Grants

Sec. 6. (a) Cooperative agreements and grants.—The Administrator may enter into a cooperative agreement or contract, or provide financial assistance in the form of a grant, to support projects to design, demonstrate, or disseminate practices, methods, or techniques related to environmental education and training.

(b) Eligible activities.—Activities eligible for grant support pursuant to this section shall include, but not be limited to, environmental education and training programs for—

(1) design, demonstration, or dissemination of environmental

curricula, including development of educational tools and materials;

(2) design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;

(3) projects to understand and assess a specific environmental issue or a specific environmental problem;

(4) provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and

(5) design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.

(c) Priority projects.—In making grants pursuant to this section, the Administrator shall give priority to those proposed projects which will develop—

(1) a new or significantly improved environmental education practice, method, or technique;

(2) an environmental education practice, method, or technique which may have wide application;

(3) an environmental education practice, method, or technique which addresses a skill or scientific field identified as a priority in the report developed pursuant to section 9(d) of this Act; and

(4) an environmental education practice, method, or technique which addresses an environmental issue which, in the judgment of the Administrator, is of a high priority.

(d) Scope of program and implementing regulations.—The program established by this section shall include solicitations for projects, selection of suitable projects from among those proposed, supervision of such projects, evaluation of the results of projects, and dissemination of information on the effectiveness and feasibility of the practices, methods, techniques and processes. Within one year of the date of enactment of this Act, the Administrator shall publish regulations to assure satisfactory implementation of each element of the program authorized by this section.

(e) Solicitation notices.—Within 90 days after the date on which amounts are first appropriated for carrying out this Act, and each year thereafter, the Administrator shall publish a solicitation for environmental education grants. The solicitation notice shall prescribe the information to be included in the proposal and other information sufficient to permit the Administrator to assess the project.

(f) Applications.—Any local education agency, college or university, State education agency or environmental agency, not-for-profit organization, or noncommercial educational broadcasting entity may submit an application to the Administrator in response to the solicitations required by subsection (e) of this section.

(g) Performance of projects.—Each project under this section shall be performed by the applicant, or by a person satisfactory to the applicant and the Administrator.

(h) Matching requirements.—Federal funds for any demonstration project under this section shall not exceed 75 percent of the total cost of such project. For the purposes of this section, the non-Federal share of project costs may be provided by inkind contributions and other noncash support. In cases where the Administrator determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, the Administrator may approve grants under this section with a matching requirement other than that specified

in this subsection, including full Federal funding.

(i) Limitations on grants.—Grants under this section shall not exceed $250,000. In addition, 25 percent of all funds obligated under this section in a fiscal year shall be for grants of not more than $5,000. (20 U.S.C. 5505)

Environmental Internships and Fellowships

Sec. 7. (a) Postsecondary students and in-service teachers.—The Administrator shall, in consultation with the Office of Personnel Management and other appropriate Federal agencies, provide for internships by postsecondary level students and fellowships for in-service teachers with agencies of the Federal Government.

(b) Purpose.—The purpose of internships and fellowships pursuant to this section shall be to provide college level students and in-service teachers with an opportunity to work with professional staff of Federal agencies involved in environmental issues and thereby gain an understanding and appreciation of such issues and the skills and abilities appropriate to such professions.

(c) Minimum number of internships and fellowships.—The Administrator shall, to the extent practicable, support not less than 250 internships each year and not less than 50 fellowships each year.

(d) Management of programs.—The internship and fellowship programs shall be managed by the Office of Environmental Education. Interns and fellows may serve in appropriate agencies of the Federal Government including, but not limited to, the Environmental Protection Agency, the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Council on Environmental Quality, Federal natural resource management agencies, the Department of Agriculture, and the National Science Foundation.

(e) Length of internships and fellowships; funding.—Interns shall be hired on a temporary, full-time basis for not to exceed 6 months and shall be compensated appropriately. Fellows shall be hired on a temporary full-time basis for not to exceed 12 months and shall be compensated appropriately. Federal agencies hiring interns shall provide the funds necessary to support salaries and related costs.

(f) Eligible individuals.—

(1) Individuals eligible for participation in the internship program are students enrolled at accredited colleges or universities who have successfully completed not less than four courses or the equivalent in environmental sciences or studies, as determined by the Administrator.

(2) Individuals eligible for participation in the fellowship program are in-service teachers who are currently employed by a local education agency and have not less than 2 years experience in teaching environmental education, environmental sciences, or related courses.

(g) Applications.—Individuals shall be selected for internships and fellowships based on applications which shall be in such form as the Administrator considers appropriate.

(h) Geographic, cultural, and minority representation.—In selecting individuals for internships and fellowships, the Administrator shall provide for wide geographic, cultural, and minority representation. (20 U.S.C. 5506)

Environmental Education Awards

Sec. 8. (a) National awards.—The Administrator shall provide for

a series of national awards recognizing outstanding contributions to environmental education.

(b) Required awards.—In addition to such other awards as the Administrator may provide for, national environmental awards shall include—

(1) The "Theodore Roosevelt Award" to be given in recognition of an outstanding career in environmental education, teaching, or administration;

(2) The "Henry David Thoreau Award" to be given in recognition of an outstanding contribution to literature on the natural environment and environmental pollution problems;

(3) The "Rachael Carson Award" to be given in recognition of an outstanding contribution in print, film, or broadcast media to public education and information on environmental issues or problems; and

(4) The "Gifford Pinchot Award" to be given in recognition of an outstanding contribution to education and training concerning forestry and natural resource management, including multiple use and sustained yield land management.

(c) Nomination by Environmental Education Advisory Council.—Recipients of education awards provided for in subsection (b) shall be nominated by the Environmental Education Advisory Council provided for in section 9 of this Act.

(d) President's Environmental Youth Awards.—The Administrator may provide for the "President's Environmental Youth Awards" to be given to young people in grades kindergarten through twelfth for an outstanding project to promote local environmental awareness.

(e) Cash awards for elementary and secondary education teachers and local educational agencies.—

(1) The Chairman of the Council on Environmental Quality, on behalf of the President, is authorized to develop and administer an awards program to recognize elementary and secondary education teachers and their local educational agencies who demonstrate excellence in advancing environmental education through innovative approaches. One teacher, and the local education agency employing such teacher, from each State, including the District of Columbia and the Commonwealth of Puerto Rico, are eligible to be selected for an award pursuant to this subsection.

(2) The Chairman is authorized to provide a cash award of up to $2,500 to each teacher selected to receive an award pursuant to this section, which shall be used to further the recipient's professional development in environmental education.

(3) The Chairman is also authorized to provide a cash award of up to $2,500 to the local education agency employing any teacher selected to receive an award pursuant to this section, which shall be used to fund environmental educational activities and programs. Such awards may not be used for construction costs, general expenses, salaries, bonuses, or other administrative expenses. (20 U.S.C. 5507)

Environmental Education Advisory Council and Task Force

Sec. 9. (a) Establishment.—There is hereby established a National Environmental Education Advisory Council and a Federal Task Force on Environmental Education.

(b) Advisory Council.—

(1) The Advisory Council shall advise, consult with, and make

recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this Act. With respect to such matters, the Council shall be the exclusive advisory entity for the Administrator. The Council may exchange information with other Advisory Councils established by the Administrator. The Office of Environmental Education shall provide staff support to the Council.

(2) The Advisory Council shall consist of 11 members appointed by the Administrator after consultation with the Secretary. Two members shall be appointed to represent primary and secondary education (one of whom shall be a classroom teacher); two members shall be appointed to represent colleges and universities; two members shall be appointed to represent not-for-profit organizations involved in environmental education; two members shall be appointed to represent State departments of education and natural resources; two representatives shall be appointed to represent business and industry; and one representative shall be appointed to represent senior Americans. A representative of the Secretary shall serve as an ex officio member of the Advisory Council. The conflict of interest provision at section 208(a) of title 18, United States Code, shall not apply to members' participation in particular matters which affect the financial interests of employers which they represent pursuant to this subsection.

(3) The Administrator shall provide that members of the Council represent the various geographic regions of the country, has minority representation, and that the professional backgrounds of the members include scientific, policy, and other appropriate disciplines.

(4) Each member of the Advisory Council shall hold office for a term of 3 years, except that—

(A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of the members first taking office shall expire as follows: four shall expire 3 years after the date of enactment of this Act, four shall expire 2 years after such date, and three shall expire 1 year after such date, as designated by the Administrator at the time of appointment.

(5) Members of the Advisory Council appointed under this section shall, while attending meetings of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(6) Section 14(a) of the Federal Advisory Committee Act relating to termination, shall not apply to the Advisory Council.

(c) Federal Task Force.—

(1) The Federal Task Force on Environmental Education shall advise, consult with and make

recommendations to the Administrator on matters relating to implementation of this Act and assure the coordination of such implementation activities with related activities of other Federal agencies.

(2) Membership of the Task Force shall include the—

(A) Department of Education,

(B) Department of the Interior,

(C) Department of Agriculture,

(D) the Environmental Protection Agency,

(E) National Oceanic and Atmospheric Administration,

(F) Council on Environmental Quality,

(G) Tennessee Valley Authority, and

(H) National Science Foundation.

(3) The Environmental Protection Agency shall chair the Task Force.

(4) The Administrator may ask other Federal agencies to participate in the meetings and activities of the Task Force where the Administrator finds it appropriate in carrying out the requirements of this Act.

(d) Reports.—

(1) The Advisory Council shall, after providing for public review and comment, submit to the Congress, within 24 months of enactment of this Act and biannually thereafter, a report which shall—

(A) describe and assess the extent and quality of environmental education in the Nation;

(B) provide a general description of the activities conducted pursuant to this Act and related authorities over the previous 2-year period;

(C) summarize major obstacles to improving environmental education (including environmental education programs relating to national parks and wildlife refuges) and make recommendations for addressing such obstacles;

(D) identify personnel skills, education, and training needed to respond to current and anticipated environmental problems and make recommendations for actions to assure sufficient educational and training opportunities in these professions; and

(E) describe and assess the extent and quality of environmental education programs available to senior Americans and make recommendations thereon; describe the various Federal agency programs to further senior environmental education; and evaluate and make recommendations as to how such educational apparatuses could best be coordinated with nonprofit senior organizations across the Nation, and environmental education institutions and organizations now in existence.

(2) The Federal Task Force on Environmental Education shall review and comment on a draft of the report to Congress. (20 U.S.C. 5508)

The National Environmental Education and Training Foundation

Sec. 10. (a) Establishment and Purposes.—

(1) Establishment.—

(A) There is hereby established the National Environmental Education and Training Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal,

State, and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

(B) The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States.

(2) Purposes.—The purposes of the Foundation are—

(A) subject to the limitation contained in the final sentence of subsection (d) herein, to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

(B) to conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system;

(C) to participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

(3) Programs.—The Foundation will develop, support, and/or operate programs and projects to educate and train educational and environmental professionals, and to assist them in the development and delivery of environmental education and training programs and studies.

(b) Board of Directors.—

(1) Establishment and membership.—

(A) The Foundation shall have a governing Board of Directors (hereafter referred to in this section as "the Board"), which shall consist of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board shall oversee the activities of the Foundation and shall assure that the activities of the Foundation are consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to environmental education and training.

(B) The Administrator of the Environmental Protection Agency shall, pursuant to paragraph (2), appoint the Director of the Office of Environmental Education established pursuant to section 3 of this Act as an ex-officio member of the Board. Ex officio membership shall also be offered to other Federal agencies or departments with an interest and/or experience in environmental education and training.

(C) Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(2) Appointment and terms.—(A) Members of the Board shall be appointed by the Administrator of the Environmental Protection Agency.

(B) Within 90 days of the date of the enactment of this Act, and as appropriate thereafter, the Administrator shall publish in the Federal Register an announcement of appointments of Directors of the Board. At the same time, the Administrator shall transmit a copy of

such announcement to the Education and Labor Committee and the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the United States Senate. Such appointments shall become final and effective 90 days after publication in the Federal Register.

(C) The directors shall be appointed for terms of 4 years, except that the Administrator, in making the initial appointments to the Board, shall appoint 5 directors to a term of 2 years, 4 directors to a term of 3 years, and 4 directors to a term of 4 years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a director.

(3) Chair.—The Chair shall be elected by the Board from its members for a 2-year term.

(4) Quorum.—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(5) Meetings.—The Board shall meet at the call of the Chair at least twice a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with this subsection.

(6) Reimbursement of expenses.—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(7) General powers.—(A) The Board may complete the organization of the Foundation by—

(i) appointing officers and employees;

(ii) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this section; and

(iii) undertaking such other acts as may be necessary to carry out the provisions of this section.

(B) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(i) Officers and employees may not be appointed until the Foundation has sufficient funds to pay for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5, of the United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 or subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(ii) The first officer or employee appointed by the Board shall be the Executive Director of the Foundation who—

(I) shall serve, at the direction of the Board, as the Secretary of the Board and the Foundation's chief executive officer; and

(II) shall be experienced in matters relating to environmental education and training.

(c) Rights and Obligations of the Foundation.—

(1) In general.—The Foundation—

(A) shall have perpetual succession;

(B) may conduct business throughout the several States, territories, and possessions of the United States and abroad;

(C) shall have its principal offices in the District of Columbia or in the greater metropolitan area; and

(D) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The service of notice to, or service of notice upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(2) Seal.—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(3) Powers.—To carry out its purposes under section 10(a) of this Act, the Foundation shall have, in addition to the powers otherwise given it under this section, the usual powers of a corporation acting as a trustee, including the power—

(A) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(B) to acquire by purchase or exchange any real or personal property or interest therein;

(C) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;

(D) to sue, or to be sued, and complain or defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(E) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and

(F) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

(d) Conditions on Donations.—

(1) For the purposes of this section, a gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current future interest therein is for the benefit of the Foundation.

(2) No donation, gift, devise, bequest, property (either real or personal), voluntary services, or any other thing of value may be accepted by the Foundation if it—

(A) is contingent upon the transmission by the Foundation of materials or information prepared by the donor or a third party in such a fashion as to convey a particular point of view favorable to the economic interests of the donor or its constituents or associates; or

(B) in the judgment of the Board carries with it an explicit or implied requirement on the part of the Foundation to do a specific act or make general representations which are to the benefit of the donor and which are not consistent with the environmental and education goals and policies of the Environmental Protection Agency and with the intents and purposes of this Act.

(3) No materials bearing "logos", letterhead or other means of identification associated with a donor or third party may be transmitted by the Foundation, for use in environmental education and training except as required pursuant to subsection (f).

(e) Administrative Services and Support.—Subject to the requirements of this subsection, the Administrator may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under subsection (b)(6) of this section, not to exceed then current Federal Government per diem rates, for a period of up to 4 years from the date of enactment of this Act, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the costs of providing such services. With respect to personnel, the Administrator may provide no more than 1 full-time employee to serve the Foundation in a policy capacity, and may provide clerical and other support staff at a level equivalent to 2 full-time equivalent employees to the Foundation, for a period not to exceed 2 years from the date of initial assignment of any personnel for this purpose.

(f) Report.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress a report of its proceedings and activities during the year, including a full and complete statement of its receipts, expenditures, and investments.

(g) Volunteer Status.—The Administrator may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Environmental Protection Agency, as volunteers in the performance of the functions authorized herein, in the manner provided for under this section.

(h) Audits and Petition of the Attorney General for Equitable Relief.—For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (Public Law 88-504; 36 U.S.C. 1101-1103), the Foundation shall be treated as a private corporation established under Federal law.

(i) United States Release From Liability.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

(j) Amendment and Repeal.—The Congress expressly reserves the right to repeal or amend this section at any time. (20 U.S.C. 5509)

Authorization

Sec. 11. (a) Authorization of appropriations.—There is hereby authorized to be appropriated to the Environmental Protection Agency to carry out this Act not to exceed $12,000,000 for each fiscal year 1992 and 1993, not to exceed $13,000,000 for fiscal year 1994, and not to exceed $14,000,000 for each fiscal year 1995 and 1996.

(b) Limitations.—Of such sums appropriated in a fiscal year, 25 percent shall be available for the activities of the Office of Environmental Education, 25 percent shall be available for the operation of the environmental education and training program, 38 percent shall be available for environmental education grants, 10 percent shall be available for support of the National Environmental Education and Training Foundation, and 2 percent shall be available to support awards pursuant to section 8(e) of this Act.

(c) Availability of funds.—Funds appropriated pursuant to this section may be made available to the National Environmental Education and Training Foundation to—

(1) match partially or wholly the amount or value of contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local governments; and

(2) provide administrative services under section 10(d) of this Act: *Provided,* That the Administrator determines that such funds will be used to carry out the statutory purposes of the Foundation in a manner consistent with the goals, objectives and programs of this Act. (20 U.S.C. 5510)

1990 Farm Bill
(Forest Stewardship Act of 1990)

- **Act of November 28, 1990 (P.L. 101-624, Title XII, Chapter 5, 104 Stat. 3521, 16 U.S.C. 582a, 582a-8, 1648, 1642(note), 1647a, 2101(note), 2106a, 2112(note), 6601(note))**

Note—Technical amendments of P.L. 102-237 are included herein.

TITLE XII — STATE AND PRIVATE FORESTRY

Short Title

Sec. 1201. This title may be cited as the "Forest Stewardship Act of 1990". (16 U.S.C. 2101(note))

SUBTITLE A — COOPERATIVE FORESTRY ASSISTANCE ACT OF 1978

Note—Subtitle A, Cooperative Forestry Assistance Act of 1978 amends the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 et seq.). Those amendments are included in that Act, P.L. 95-313 and excluded here.

Section 1219(b) amends the Renewable Resources Extension Act of 1978 (16 U.S.C. 1672(a)). Those amendments are included in that Act, P.L. 95-306.

SUBTITLE B — RESEARCH AND EDUCATION

CHAPTER 1—GENERAL RESEARCH PROGRAMS

McIntire-Stennis Research Program

Sec. 1231. It is the sense of Congress to reaffirm the importance of Public Law 87-788 (16 U.S.C. 582a et seq.) commonly known as the McIntire-Stennis Cooperative Forestry Act. (16 U.S.C. 582a-8 (note))

Competitive Forestry, Natural Resources, and Environmental Grants Program

Sec. 1232. (a) Establishment.—The Secretary of Agriculture (hereafter referred to in this section as the "Secretary") shall establish a competitive forestry, natural resources, and environmental grant program to award grants for the conduct of research as described in subsection (c).

(b) Eligible Entities.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be a State agricultural experiment station, a college or university, a research institution or organization, a Federal agency, a private organization, or a corporation that has a demonstrable capacity to conduct forestry, natural resources, and environmental research as determined by the Secretary; and

(2) prepare and submit to the Secretary, an application at such time, in such manner, and containing such information as the Secretary shall require, including the proposed use of the amounts that may be received under a grant.

(c) Use.—In awarding the initial grants under subsection (a) the Secretary shall give priority to applicants who will use such grants for research concerning—

(1) the biology of forest organisms, including physiology, genetic mechanisms, and biotechnology;

(2) ecosystem function and management, including forest ecosystem research, biodiversity, forest productivity, pest management, water resources, and alternative silvicultural systems;

(3) wood as a raw material, including forest products and harvesting;

(4) human forest interactions, including outdoor recreation, public policy formulation, economics, sociology, and administrative behavior;

(5) international trade, competition, and cooperation related to forest products;

(6) alternative native crops, products, and services that can be produced from renewable natural resources associated with privately held forest lands;

(7) viable economic production and marketing systems for alternative natural resource products and services;

(8) economic and environmental benefits of various conservation practices on forest lands;

(9) genetic tree improvement; and

(10) market expansion.

(d) Facilities and Equipment.—

(1) Authority.—Grants made under this section may be used to update research facilities and equipment available to facilitate the conduct of state-of-the-art research in forestry, natural resources, and the environment.

(2) Priorities and criteria.—The Secretary, in consultation with the Cooperative Forestry Research Council appointed under section 5(b) of Public Law 87-788 (16 U.S.C. 582e(b)), may develop criteria and priorities for the awarding of grants for use under paragraph (1).

(e) Recommendations.—The Secretary shall request the Cooperative Forestry Research Council referred to in subsection (d)(2) to provide recommendations regarding grant priorities.

(f) Term.—The Secretary may make grants under this section for periods of not to exceed 5 years.

(g) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

CHAPTER 2—SPECIALIZED RESEARCH

Research and Utilization

Sec. 1241. (a) Reforestation Research; Appropriations; Private Forestry. Section 3 of the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1642) is amended—

Note—Section 1241(a) and (b) amendments are included in the Forest and Rangeland Renewable Resources Research Act of 1978, P.L. 95-307 and excluded here.

(c) Modern Timber Bridge Initiative.—

(1) In general.—The Secretary of Agriculture is authorized to continue the Modern Timber Bridge Initiative to provide Federal funds, on a cost share basis as determined by the Secretary, for the construction of

demonstration bridges, modern bridge technology transfer projects, and conferences.

(2) Appropriations.—There are hereby authorized to be appropriated annually $5,000,000 to carry out this subsection.

(d) Forestry Research Needs Assessments.—Within 6 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that responds to the recommendations contained in the report of the National Research Council entitled "Forestry Research: A Mandate for Change". The report shall include—

(1) an assessment of the capability of current forestry research programs to address research areas specified in the report, including research on ecosystem functions and management;

(2) an evaluation of alternatives to current organizational frameworks for providing guidance to forestry research programs and establishing research priorities, including the establishment of a National Forestry Research Council; and

(3) recommendations for changes in current forestry research programs, including levels of research funding, that may be needed to address existing deficiencies. (16 U.S.C. 1648)

Southern Forest Regeneration Program

Sec. 1242. (a) Establishment.—The Secretary of Agriculture shall make a grant to a State for the establishment, within such State, of a center, to be known as the "Southern Forest Regeneration Center" (hereafter referred to in this section as the "Center"), to study forest regeneration problems and forest productivity in the southern region of the United States.

(b) Duties of Center.—The Center shall study forest regeneration problems and forest productivity in the southern region of the United States, including—

(1) nursery management concerns that will lead to improved seedling quality;

(2) forest management practices that account for environmental stresses; and

(3) the development of low-cost forest regeneration methods that provide options for wood products, species diversity, wildlife habitat, and production of clean air and water.

(c) Establishment of Other Programs.—The Secretary of Agriculture may establish other programs in other regions of the United States, or a comprehensive National program, to carry out the purposes of this section as the Secretary determines appropriate.

(d) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section. (16 U.S.C. 1642(note))

Semiarid Agroforestry Research Center

Sec. 1243. (a) Semiarid Agroforestry Research, Development, and Demonstration Center.—The Secretary of Agriculture shall establish at the Forestry Sciences Laboratory of the United States Forest Service, in Lincoln, Nebraska, a Semiarid Agroforestry Research, Development, and Demonstration Center (hereafter referred to in this section as the "Center") and appoint a Director to manage and coordinate the program established at the Center under subsection (b).

(b) Program.—The Secretary shall establish a program at the Center and seek the participation of Federal or State governmental entities, land-grant colleges or universities, State agricultural experiment stations, State and private foresters, the National Arbor Day Foundation, and other nonprofit foundations in such program to conduct or assist research, investigations, studies, and surveys to—

(1) develop sustainable agroforestry systems on semiarid lands that minimize topsoil loss and water contamination and stabilize or enhance crop productivity;

(2) adapt, demonstrate, document, and model the effectiveness of agroforestry systems under different farming systems and soil or climate conditions;

(3) develop dual use agroforestry systems compatible with paragraphs (1) and (2) which would provide high-value forestry products for commercial sale from semiarid land;

(4) develop and improve the drought and pest resistance characteristics of trees for conservation forestry and agroforestry applications in semiarid regions, including the introduction and breeding of trees suited for the Great Plains region of the United States;

(5) develop technology transfer programs that increase farmer and public acceptance of sustainable agroforestry systems;

(6) develop improved windbreak and shelterbelt technologies for drought preparedness, soil and water conservation, environmental quality, and biological diversity on semiarid lands;

(7) develop technical and economic concepts for sustainable agroforestry on semiarid lands, including the conduct of economic analyses of the costs and benefits of agroforestry systems and the development of models to predict the economic benefits under soil or climate conditions;

(8) provide international leadership in the development and exchange of agroforestry practices on semiarid lands worldwide;

(9) support research on the effects of agroforestry systems on semiarid lands in mitigating nonpoint source water pollution;

(10) support research on the design, establishment, and maintenance of tree and shrub plantings to regulate the deposition of snow along roadways; and

(11) conduct sociological, demographic, and economic studies as needed to develop strategies for increasing the use of forestry conservation and agroforestry practices.

(c) Information Collection and Dissemination.—The Secretary shall establish at the Center a program, to be known as the National Clearinghouse on Agroforestry Conservation and Promotion to—

(1) collect, analyze, and disseminate information on agroforestry conservation technologies and practices; and

(2) promote the use of such information by landowners and those organizations associated with forestry and tree promotion.

(d) Authorization of Appropriations.—There are authorized to be appropriated $5,000,000 annually to carry out this section. (16 U.S.C. 1642(note))

Forest Land Protection

Sec. 1244. (a) Northern Forest Lands.—In furtherance of Public Law 100-446, the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") is authorized to continue support for the study of changing land ownership and management patterns in the northern forest lands of Maine, New

Hampshire, Vermont, and New York.

(b) New York-New Jersey Highlands.—

(1) In general.—The Secretary is authorized to conduct a study of the region known as the New York-New Jersey Highlands, located in the States of New York, New Jersey, and Pennsylvania, including the Sterling Forest in Orange County, New York.

(2) Scope of study.—The study authorized under this subsection (hereafter in this subsection referred to as the "study") shall include an identification and assessment of—

(A) the physiographic boundaries of the region referred to in this subsection (hereafter in this subsection referred to as the "region");

(B) forest resources of the region, including (but not limited to) timber and other forest products, fish and wildlife, lakes and rivers, and recreation;

(C) historical land ownership patterns in the region and projected future land ownership, management, and use, including future recreational demands and deficits and the potential economic benefits of recreation to the region;

(D) the likely impacts of changes in land and resource ownership, management, and use on traditional land use patterns in the region, including economic stability and employment, public use of private lands, natural integrity, and local culture and quality of life; and

(E) alternative conservation strategies to protect the long-term integrity and traditional uses of lands within the region.

(3) Alternative conservation strategies.—The alternative conservation strategies referred to in paragraph (2)(E) shall include a consideration of—

(A) sustained flow of renewable resources in a combination that will meet the present and future needs of society;

(B) public access for recreation;

(C) protection of fish and wildlife habitat;

(D) preservation of biological diversity and critical natural areas; and

(E) new local, State, or Federal designations.

(4) Public participation.—In conducting the study, the Secretary shall provide an opportunity for public participation.

(5) Appropriations.—There are hereby authorized to be appropriated $250,000 to carry out this subsection. (16 U.S.C 1642(note))

Presidential Commission on State and Private Forests

Sec. 1245. (a) Establishment.—The President shall establish a Commission on State and Private Forests (hereafter in this section referred to as the "Commission" which shall assess the status of the State and private forest lands of the United States, the problems affecting these lands, and the potential contribution of these lands to the renewable natural resource needs of the United States associated with their improved management and protection.

(b) Composition.—The Commission shall be composed of 25 members to be appointed by the President, including Federal, State, and local officials, timber industry representatives, nonindustrial private forest landowners, conservationists, and community leaders. No more than five members shall be appointed from any one State. Not fewer than 20 members shall be appointed by the President from nominations submitted by the following Members of Congress:

(1) The chairman of the Committee on Agriculture of the House of Representatives.

(2) The ranking minority member of the Committee on Agriculture of the House of Representatives.

(3) The chairman of the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(4) The ranking minority member of the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) Vacancy.—A vacancy on the Commission shall be filled by appointment by the President in the manner provided in subsection (b).

(d) Chairperson.—The Commission shall elect a chairperson from among the members of the Commission by a majority vote.

(e) Meetings.—The Commission shall meet at the call of the chairperson or a majority of the members of the Commission.

(f) Duties.

(1) Study.—The Commission shall conduct a study that shall include—

(A) an assessment using existing inventories of the current status of the State and private forest lands of the United States, including—

(i) ownership status and past and future trends;

(ii) the production of timber and nontimber resources from such lands; and

(iii) landowner attitudes toward the protection and management of these lands;

(B) a review of the problems affecting the State and private forest lands of the United States, including—

(i) resource losses to insects, disease, fire, and damaging weather;

(ii) inadequate reforestation;

(iii) fragmentation and conversion of the forest land base; and

(iv) management options;

(C) constraints on, and opportunities for, providing multiresource outputs from forest lands;

(D) administrative and legislative recommendations for addressing the problems and capitalizing on the potential of these lands for contributing to the renewable natural resource needs of the United States.

(2) Findings and recommendations.—On the basis of its study, the Commission shall make findings and develop recommendations for consideration by the President with respect to the future demands placed on State and private forests in meeting both commodity and noncommodity needs of the United States in anticipation of impending changes in the management of the national forests, especially with regard to timber harvest. This assessment should focus on the role of State and private forest lands and help to identify means of improving their contribution to meeting the timber and nontimber needs of the United States.

(3) Report.—The Commission shall submit to the President, not later than December 1, 1992, a report containing its findings and recommendations. The President shall submit the report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the report is authorized to be printed as a House Document.

(g) Operations in General.—

(1) Agency cooperation.—The heads of executive agencies, the General Accounting Office, the Office of Technology Assessment, and the Congressional Budget Office shall cooperate with the Commission.

(2) Compensation.—Members of the Commission shall serve without compensation for work on the Commission. While away from

their homes or regular places of business in the performance of duties of the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service under section 5703 of title 5 of the United States Code.

(3) Director.—To the extent there are sufficient funds available to the Commission and subject to such rules as may be adopted by the Commission, the Commission, without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to the classification and General Schedule pay rates, may—

(A) appoint and fix the compensation of a director; and

(B) appoint and fix the compensation of such additional personnel as the Commission determines necessary to assist it to carry out its duties and functions.

(4) Staff and services.—On the request of the Commission, the heads of executive agencies, [and] the Comptroller General [may furnish] the Commission with such office, personnel or support services as the head of the agency, or office, and the chairperson of the Commission agree are necessary to assist the Commission to carry out its duties and functions. The Commission shall not be required to pay, or reimburse, any agency for office, personnel or support services provided by this subsection.

(5) Exemptions.—

(A) FACA.—The Commission shall be exempt from sections 7(d), 10(e), 10(f), and 14 of the Federal Advisory Committee Act (5 U.S.C. App. 2, 1 et seq.).

(B) Title 5.—The Commission shall be exempt from the requirements of sections 4301 through 4305 of title 5 of the United States Code.

(h) Authorization of Appropriations and Spending Authority.—

(1) Authorization of appropriations.—There is authorized to be appropriated such sums as are necessary to implement this section.

(2) Spending authority.—Any spending authority (as defined in section 401 of the Congressional Budget Act of 1974) provided in this title shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(i) Termination.—The Presidential Commission on State and Private Forests shall cease to exist 90 days following the submission of its report to the President. (16 U.S.C. 1601(note))

Blue Mountain Natural Resource Institute

Sec. 1246. (a) Findings.—The Congress finds that—

(1) the forests and rangelands in the States of Washington and Oregon east of the Cascade Crest do not yield their productive capacity of multiple products, services and benefits, yet these forests and rangelands are expected to yield more;

(2) these forests are among the most insect infested and disease infected in North America due to previous management practices, including the exclusion of fire and past management treatments, which have allowed these forests to become overstocked or to succeed to pest-susceptible forest types;

(3) forage productivity of these forests and rangelands is reduced due to the spread of nonactive grasses, juniper, and noxious weeds;

(4) the unprecedented build-up of fuel loads in these forests places them under continual threat of catastrophic fire;

(5) losses due to insects, disease, and fire and reduced productivity of these forests and rangelands have far reaching environmental and economic consequences to local communities and a region entirely dependent on land-based resources; and

(6) concerns over global climate change, water quality and quantity, air quality, fish and wildlife habitat, biodiversity, long-term forest and rangeland health and productivity, welfare of resource-dependent communities and regional economies, catastrophic fire, and scenic quality of landscapes set the dimensions of multifaceted resources issued which are straining the effectiveness of policy makers and land managers.

(b) Establishment of Research and Demonstration Program.—The Secretary of Agriculture shall establish, plan, and initiate a research, development, and application program for the forests and rangelands of the States of Oregon and Washington located east of the Cascade Crest which shall address research, development, and application needs of the Blue Mountain area in Washington and Oregon. The program, through research, technology development and application, and public involvement, shall—

(1) compile and develop basic biological and ecological information to improve forest and rangeland health and vigor;

(2) focus research on joint management and production of timber, wildlife, grazing, fish, water quality, and recreation;

(3) stimulate cooperative research between universities and Federal and State agencies;

(4) identify and evaluate opportunities to enhance the long-term economic and social benefits derived from the region's forest and rangeland resources in concert with county and regional economic strategies;

(5) convert results of research into technology development products and apply new information in a timely manner;

(6) develop technology to guide intensive multiresource management and policy decisions for sustaining long-term productivity and ecological values into the early decades of the 21st century;

(7) develop new technologies that will enable forest and range managers to maximize multiresource benefits and minimize the hazards of fire, insect, and disease outbreaks;

(8) develop forest management practices for use by land managers and landowners that are appropriate at the wildland-urban interface and in concert with public values for these areas;

(9) demonstrate the application of technology and resource knowledge on specific management areas; and

(10) establish mutually beneficial relations with the public to inform them regarding research and technology development and new management directions and to obtain feedback.

(c) Partnership.—The Secretary of Agriculture shall establish and carry out the program under subsection (b) in consultation and cooperation with Federal, State, and local agencies, universities, and the private sector. In addition, the Secretary of Agriculture shall establish an advisory committee representing broad interests and perspectives to assist in the formulation of plans for implementing the program. (16 U.S.C. 1601(note))

International Forest Products Trade Institute

Sec. 1247. (a) Establishment.—The Secretary of Agriculture may establish an International Forest Products Trade Institute (hereafter in this section referred to as the "Institute").

(b) Mission.—The mission of the Institute will be to increase the competitive position of the forest industries of the northeastern United States as major producers of international forest products in order to increase domestic employment and stimulate rural development, and to provide a knowledgeable, objective analysis of global forest resource problems.

(c) Functions.—The Institute shall—

(1) emphasize the application of existing knowledge to the manufacturing and international marketing of forest products as well as conduct new research related to the competitiveness of the northeastern forest products industry;

(2) study and evaluate domestic and international forest, forest sector, agroforestry, development, economic, and trade policies;

(3) design, analyze and test technologically appropriate manufacturing, processing and marketing systems which are supportive of and consistent with forest policy and management strategies formulated by the Institute and which enhance opportunities for markets in forest products; and

(4) formulate and test management strategies for—

(A) United States forests, and

(B) manufacturing facilities that promote ecologically sustainable use, and long-term management, of international forests.

(d) Authorization of Appropriations. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section. (16 U.S.C. 2112(note))

CHAPTER 3—EDUCATION

Extension

Sec. 1251. (a) Expansion of Programs.—The Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.) is amended by inserting after section 5 the following new section:

Note—Section 1251 amendments are included in the Renewable Resources Extension Act of 1978, P.L. 95-306 and excluded here.

Forestry Student Grant Program

Sec. 1252. The Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1641 et seq.) is amended by adding at the end thereof the following new section:

Note—Section 1252 amendments are included in the Forest and Rangeland Renewable Resources Research Act of 1978, P.L. 95-307, and excluded here.

SUBTITLE C—AMERICA THE BEAUTIFUL

Short Title

Sec. 1261. This subtitle may be cited as the "America the Beautiful Act of 1990". (16 U.S.C. 2101 (note))

Findings

Sec. 1262. Congress finds that—

(1) trees and forests provide beauty and diversity to both rural and urban landscapes;

(2) trees and forests protect the United States's soil, water, and wetland resources by filtering runoff and preventing erosion;

(3) trees and forests provide food and cover for many species of wildlife;

(4) trees and forests provide shade, block winds, and add moisture to the air, thereby mitigating the urban "heat island" effect and significantly reducing energy use;

(5) trees and forests make important contributions to the environmental, social, and economic well-being of both rural and urban areas across the United States; and

(6) stewardship of trees and forests could be significantly enhanced by encouraging, promoting, and supporting partnerships and community service projects involving individuals, youth groups, organizations, businesses and governments at all levels.

Purposes

Sec. 1263. The purposes of this subtitle are to—

(1) authorize the President to designate a private nonprofit foundation as eligible for a one-time grant from the Secretary of Agriculture, to be used for promoting public awareness and a spirit of volunteerism, soliciting private sector contributions, and overseeing the use of these contributions to encourage tree planting projects in communities and urban areas;

(2) promote the principles of basic forest stewardship through the nationwide planting, improvement, and maintenance of trees in order to increase reforestation, enhance the environmental and aesthetic qualities of the United States's rural and urban areas, and reduce global carbon dioxide levels;

(3) authorize the Secretary of Agriculture to provide increased financial and technical assistance to State forestry agencies and others, and enter into cost-sharing agreements with individuals, for the purpose of encouraging owners of nonindustrial private lands to plant and maintain trees and improve forests in rural areas; and

(4) authorize the Secretary of Agriculture to provide increased financial and technical assistance to State forestry agencies and others for the purpose of encouraging units of local government, civic groups, and individuals to plant and maintain trees and improve forests in communities and urban areas.

Tree Planting Foundation

Sec. 1264. (a) Purpose.—The purpose of this section is to authorize the President to designate a private nonprofit Foundation as eligible to receive a grant from the Department of Agriculture to be used—

(1) to provide grants, including matching grants, to qualifying nonprofit organizations (including youth groups), municipalities, counties, towns and townships for the implementation of programs to promote public awareness and a spirit of volunteerism in support of tree planting, maintenance, management, protection, and cultivation projects in rural areas, communities and urban areas throughout the United States;

(2) to solicit public and private sector contributions through the mobilization of individuals, businesses, governments, and community organizations with the goal of increasing the number of trees planted, maintained, managed, and protected in

rural areas, communities and urban environments;

(3) to accept and administer public and private gifts and make grants, including matching grants, to encourage local participation, for the planting, maintenance, management, protection, and cultivation of trees; and

(4) to ensure that our descendants will be able to share their ancestors' pride when referring to their land as "America the Beautiful".

(b) Authority.—The President is authorized to designate a private nonprofit organization (hereafter in this section referred to as the "Foundation") as eligible to receive funds pursuant to subsections (d) and (e) upon determining that such organization can, consistent with its charter, carry out the purposes stated in subsection (a), and that the officers of such organization have the experience and expertise necessary to direct the activities of the organization. Nothing in this section shall be construed to make officers, employees, or members of the board of directors of the Foundation officers or employees of the United States. The Foundation shall be a private and nonprofit organization and not an agency or establishment of the United States.

(c) Implementation.—The Foundation shall carry out this section in accordance with the purposes stated in subsection (a).

(d) Funding.—For fiscal year 1991, the Secretary is authorized to make a grant of not to exceed $25,000,000 to the Foundation.

(e) Use of Funds.—Funds made available pursuant to subsection (d) shall be granted to the Foundation by the Secretary to enable the Foundation to carry out the purposes specified in subsection (a).

(f) Interest.—Notwithstanding any other provision of law, the Foundation may hold funds made available pursuant to subsection (e) in interest-bearing accounts prior to the disbursement of the funds for purposes specified in subsection (a) and may retain to carry out such purposes any interest earned on the deposits.

(g) Limitations on Uses of Funds.—

(1) In general.—The Foundation may use funds provided by this section only for making grants to qualified organizations, municipalities, counties, towns and townships for the implementation of projects and activities that are consistent with the purposes specified in subsection (a).

(2) Qualified organizations.—For the purposes of this section, qualified organizations shall consist of those organizations that meet the requirements of section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and have demonstrated a capability to implement the project or activity for which the Foundation funds will be used.

(h) Compensation from Outside Sources.—An officer or employee of the Foundation may not receive any salary or other compensation for services rendered to the Foundation from any source other than the Foundation.

(i) Stock and Dividends.—The Foundation shall not issue any shares of stock or declare or pay any dividends.

(j) Lobbying.—The Foundation shall not engage in lobbying or propaganda for the purpose of influencing legislation and shall not participate or intervene in any political campaign on behalf of any candidate for public office.

(k) Salary; Travel and Expenses; Conflicts of Interest.—

(1) Personal benefit from funds.—No part of the funds of the

Foundation shall inure to the benefit of any board member, officer, or employee of the Foundation, except as salary or reasonable compensation for services or expenses.

(2) Travel and expense reimbursement.—Compensation for board members shall be limited to reimbursement for reasonable costs of travel and expenses.

(3) Conflicts of interest.—No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting—

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation, partnership,entity, or organization in which such director, officer, or employee—

(i) is an officer, director, or trustee; or

(ii) has any direct or indirect financial interest.

(l) Records; Audits.—The Foundation shall ensure that—

(1) each recipient of assistance provided through the Foundation under this section maintains, for at least 5 years after the receipt of the assistance, separate accounts with respect to the assistance and such records as may be reasonably necessary to disclose fully—

(A) the amount and the disposition by the recipient of the proceeds of the assistance;

(B) the total cost of the project or undertaking in connection with which the assistance is given or used;

(C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(D) such other records as will facilitate an effective audit; and

(2) the Foundation and any duly authorized representative of the Foundation shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to assistance provided through the Foundation under this section.

(m) Audits.—

(1) Independent audits.—For the fiscal year in which the Foundation receives the grant awarded under subsection (e), and for the succeeding 5 fiscal years, the accounts of the Foundation shall be audited annually in accordance with generally accepted auditing standards by an independent certified public accountant or an independent licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The report of each such independent audit shall be included in the annual report required by subsection (n).

(2) Agency audits.—For the fiscal year in which the Foundation receives the grant awarded under subsection (d), and for the succeeding 5 fiscal years, the financial transactions undertaken pursuant to this section by the Foundation may be audited by any agency designated by the President.

(n) Annual Reports.—

(1) In general.—Not later than 3 months after the conclusion of each fiscal year, the Foundation shall publish an annual report that includes a comprehensive and detailed report of the operations, activities, financial condition, and accomplishments of the Foundation under this Act during the fiscal year.

(2) Termination.—The obligation of the Foundation to publish annual reports pursuant to this subsection shall terminate after publication of the report incorporating the findings of the final audit in accordance with procedures required by subsection (l).

(o) Prohibition on commercial harvest.—Trees planted pursuant to a program receiving funds under this section may not be commercially harvested and sold for Christmas trees.

(p) Authorization of appropriations.—There is authorized to be appropriated $25,000,000 to be granted by the Secretary of Agriculture to the Foundation. All funds appropriated under this section may remain available until expended.

Rural Tree Planting and Forest Management Program

Sec. 1265. The Secretary of Agriculture is authorized to establish a rural tree planting and forest management program as a special component of the forest stewardship program and the stewardship incentive program established under sections 5 and 6 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2102) (as amended by subtitle A). Such program shall terminate on December 31, 2001.

Tree Planting and Improvement Program

Sec. 1266. The Secretary of Agriculture is authorized to establish a community tree planting and improvement program as a special component of the urban and community forestry assistance program established under section 9 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105) (as amended by section 1219). Such program shall terminate on December 31, 2001.

SUBTITLE D — MISCELLANEOUS PROVISIONS

Emergency Reforestation Assistance

Sec. 1271. (a) In general.—The Secretary of Agriculture is authorized to provide assistance under this section to eligible landowners who suffer destruction of 35 percent or more of a commercial tree stand due to damaging weather, related condition, or wildfire.

(b) Form of assistance.—The assistance, if any, provided by the Secretary under this section shall consist of either—

(1) reimbursement of up to 65 percent of the cost of reestablishing such tree stand damaged by the damaging weather, related condition, or wildfire in excess of 35 percent mortality; or

(2) at the discretion of the Secretary, provision of sufficient tree seedlings to reestablish such tree stand.

(c) Conditions.—

(1) Limitation on assistance.—No person may receive an amount in excess of $25,000 in any fiscal year, or an equivalent value in tree seedlings, under this section.

(2) Ineligibility.—A person who has qualifying gross revenues in excess of $2,000,000 annually, as determined by the Secretary, shall not be eligible to receive any disaster payment or other benefits under this section.

(3) Implementation.—In implementing this section, the Secretary shall issue regulations—

(A) defining the term "person" for the purposes of this section that shall conform, to the extent practicable, to the regulations defining the term "person" issued under section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308);

(B) prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitations established under this subsection; and

(C) ensuring that no person receives duplicative payments or assistance under this section, the Cooperative Forestry Assistance Act of 1978, and the Agricultural Conservation Program established under section 16(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h, 590l, or 590p), or other Federal program.

(d) Definitions.—As used in this section—

(1) the term "damaging weather" includes drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof;

(2) the term "eligible landowner" means a person who—

(A) produces annual crops from trees for commercial purposes and owns 500 acres or less of such trees;

(B) owns 1,000 acres or less of private forest land; or

(C) owns more than 1,000 acres but less than 5,000 acres of private forest land if the Secretary, in the Secretary's discretion, determines the person eligible;

(3) the term "qualifying gross revenues" means—

(A) if a majority of the person's annual income is received from farming, ranching, and forestry operations, the gross revenue from the person's farming, ranching, and forestry operations; and

(B) if less than a majority of the person's annual income is received from farming, ranching, and forestry operations, the person's gross revenue from all sources;

(4) the term "related condition" includes insect infestations, disease, or other deterioration of a tree stand that is accelerated or exacerbated by damaging weather;

(5) the term "reestablish" includes site preparation, reforestation of a damaged stand, and timber stand improvement practices, including thinning, prescribed burning, and other practices approved by the Secretary for reforestation;

(6) the term "Secretary" means the Secretary of Agriculture; and

(7) the term "wildfire" means any forest or range fire.

(e) Retroactive assistance.—The Secretary shall use funds provided under this section to reimburse landowners for approved reforestation practices that were implemented before the date of enactment of this section. The Secretary shall not make reimbursements for reforestation practices that were implemented prior to September 1, 1989.

Talladega National Forest Expansion

Sec. 1272. The boundaries of the Talladega National Forest are hereby modified to include all lands depicted on a map entitled "Talladega Forest Expansion" and dated October 1990, which shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia. Within the area delineated on such map, the Secretary shall utilize his authorities under the Act of March 1, 1911 (Chapter 186, 36 Stat. 961), to acquire lands, waters, and interests therein. Lands so acquired shall be managed under such Act for National Forest purposes. It is the intent of the Congress that, to the extent practicable, private lands be acquired on a willing seller basis without undue delay. (16 U.S.C. 2106a)

1990 Farm Bill
(Agricultural Development and Trade Act of 1990; National Forest-Dependent Rural Communities Economic Diversification Act of 1990)

- **Act of November 28, 1990 (P.L. 101-624, Title XV, Chapter 5 104 Stat. 3632; 7 U.S.C. 936b, 946(note), 950aaa-4, 1691(note), 1927(a)(3), 1932(f), 6601, 6601(note), 6611-6617, 2001a, 2001a(note), 2007(note), 2204d, 2661(note), 2662, 2662(note), 3125b, 6702-10; 13 U.S.C. 141(note), 142(note),**

Short Title

Sec. 1501. This title may be cited as the "Agricultural Development and Trade Act of 1990". (7 U.S.C. 1691(note))

* * * *

CHAPTER 5—EFFECTIVE DATE

Effective Date

Sec. 2368. (a) In general.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of enactment of this Act.

(b) Technical Amendments.—The amendments made by section 2367 shall take effect as if such amendments had been included in chapter 2 of subtitle D of title I of the Omnibus Budget Reconciliation Act of 1987 on the date of enactment of such chapter. (7 U.S.C. 946(note))

SUBTITLE G — RURAL REVITALIZATION THROUGH FORESTRY

CHAPTER 1—FORESTRY RURAL REVITALIZATION

Forestry Rural Revitalization

Sec. 2371. (a) Establishment of economic development and global marketing program.—The Secretary of Agriculture, acting through the Extension Service and the Cooperative Extension System, and in consultation with the Forest Service, shall establish and implement educational programs and provide technical assistance to assist businesses, industries, and policymakers to create jobs, raise incomes, and increase public revenues in manners consistent with environmental concerns.

(b) Activities.—Each program established under subsection (a) shall—

(1) transfer technologies to natural resource-based industries in the United States to make such industries more efficient, productive, and competitive;

(2) assist businesses to identify global marketing opportunities, conduct business on an international basis, and market themselves more effectively; and

(3) train local leaders in strategic community economic development.

(c) Types of programs.—The Secretary of Agriculture shall establish specific programs under subsection (a) to—

(1) deliver educational services focused on community economic

analysis, economic diversification, economic impact analysis, retention and expansion of existing commodity and noncommodity industries, amenity resource and tourism development, and entrepreneurship focusing on forest lands and rural communities;

(2) use Cooperative Extension System databases and analytical tools to help communities diversify their economic bases, add value locally to raw forest product materials, and retain revenues by helping to develop local businesses and industries to supply forest products locally; and

(3) use the full resources of the Cooperative Extension Service, including land-grant universities and county offices, to promote economic development that is sustainable and environmentally sound. (7 U.S.C. 6601)

CHAPTER 2—NATIONAL FOREST-DEPENDENT RURAL COMMUNITIES

Short Title

Sec. 2372. This chapter may be cited as the "National Forest-Dependent Rural Communities Economic Diversification Act of 1990". (7 U.S.C. 6601(note))

Findings and Purposes

Sec. 2373. (a) Findings.—The Congress finds that—

(1) the economic well-being of rural America is vital to our national growth and prosperity;

(2) the economic well-being of many rural communities depends upon the goods and services that are derived from national forests;

(3) the economies of many of these communities suffer from a lack of industrial and business diversity;

(4) this lack of diversity is particularly serious in communities whose economies are predominantly dependent on timber and recreation resources and where management decisions made on the national forests by Federal and private organizations may disrupt the supply of those resources;

(5) the Forest Service has expertise and resources that could be directed to promote modernization and economic diversification of existing industries and services based on forest resources;

(6) the Forest Service has the technical expertise to provide leadership, in cooperation with other governmental agencies and the private sector, to assist rural communities dependent upon national forest resources to upgrade existing industries and diversify by developing new economic activity in non--forest-related industries; and

(7) technical assistance, training, education, and other assistance provided by the Department of Agriculture can be targeted to provide immediate help to those rural communities in greatest need.

(b) Purposes.—The purposes of this chapter are—

(1) to provide assistance to rural communities that are located in or near national forests and that are economically dependent upon forest resources or are likely to be economically disadvantaged by Federal or private sector land management practices;

(2) to aid in diversifying such communities' economic bases; and

(3) to improve the economic, social, and environmental well-being of rural America. (7 U.S.C. 6611)

Definitions

Sec. 2374. As used in this chapter:

(1) The term "action team" means a rural forestry and economic diversification action team established by the Secretary pursuant to section 2375(b).

(2) The term "economically disadvantaged" means economic hardship due to the loss of jobs or income (labor or proprietor) derived from forestry, the wood products industry, or related commercial enterprises such as recreation and tourism in the national forest.

(3) The term "rural community" means—

(A) any town, township, municipality, or other similar unit of general purpose local government having a population of not more than 10,000 individuals (according to the latest decennial census) that is located in a county where at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, and forest-related industries such as recreation and tourism; or

(B) any county or similar unit of general purpose local government having a population of not more than 22,550 individuals (according to the latest decennial census) in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, and forest-related industries such as recreation and tourism,

that is located within the boundary, or within 100 miles of the boundary, of a national forest.

(4) The term "Secretary" means the Secretary of Agriculture. (7 U.S.C. 6612)

Rural Forestry and Economic Diversification Action Teams

Sec. 2375. (a) Requests for assistance.—Economically disadvantaged rural communities may request assistance from the Secretary in identifying opportunities that will promote economic improvement and diversification and revitalization.

(b) Establishment.—Upon request, the Secretary may establish rural forestry and economic diversification action teams to prepare an action plan to provide technical assistance to economically disadvantaged communities. The action plan shall identify opportunities to promote economic diversification and enhance local economies now dependent upon national forest resources. The action team may also identify opportunities to use value-added products and services derived from national forest resources.

(c) Organization.—The Secretary shall design and organize any action team established pursuant to subsection (b) to meet the unique needs of the requesting rural community. Each action team shall be directed by an employee of the Forest Service and may include personnel from other agencies within the Department of Agriculture, from other Federal and State departments and agencies, and from the private sector.

(d) Cooperation.—In preparing action plans, the Secretary may cooperate with State and local governments, universities, private companies, individuals, and nonprofit organizations for procurement of services determined necessary or desirable.

(e) Eligibility.—The Secretary shall ensure that no substantially similar geographical or defined local area in a State receives a grant for technical assistance to an economically disadvantaged community under this chapter and a grant for assistance under a designated rural development program, as defined in section 365(b)(2) of the Consolidated Farm and Rural Development

Act, during any continuous five-year period.

(f) Approval.—After reviewing requests under this section for financial and economic feasibility and viability, the Secretary shall approve and implement in accordance with section 2376 those action plans that will achieve the purposes of this chapter. (7 U.S.C. 6613)

Action Plan Implementation

Sec. 2376. (a) In general.—Action plans shall be implemented, insofar as practicable, to upgrade existing industries to use forest resources more efficiently and to expand the economic base of rural communities so as to alleviate or reduce their dependence on national forest resources.

(b) Assistance.—To implement action plans, the Secretary may make grants and enter into cooperative agreements and contracts to provide necessary technical and related assistance. Such grants, cooperative agreements, and contracts may be with the affected rural community, State and local governments, universities, corporations, and other persons.

(c) Limitation.—The Federal contribution to the overall implementation of an action plan shall not exceed 80 percent of the total cost of the plan, including administrative and other costs. In calculating the Federal contribution, the Secretary shall take into account the fair market value of equipment, personnel, and services provided.

(d) Available authority.—The Secretary may use the Secretary's authority under the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 et seq.) and other Federal, State, and local governmental authorities in implementing action plans.

(e) Consistency with forest plans.—The implementation of action plans shall be consistent with land and resource management plans. (7 U.S.C. 6614)

Training and Education

Sec. 2377. (a) Programs.—In furtherance of an action plan, the Secretary may use the Extension Service and other appropriate agencies of the Department of Agriculture to develop and conduct education programs that assist businesses, elected or appointed officials, and individuals in rural communities to deal with the effects of a transition from being economically disadvantaged to economic diversification. These programs may include—

(1) community economic analysis and strategic planning;

(2) methods for improving and retooling enterprises now dependent on national forest resources;

(3) methods for expanding enterprises and creating new economic opportunities by emphasizing economic opportunities in other industries or services not dependent on national forest resources; and

(4) assistance in the evaluation, counseling, and enhancement of vocational skills, training in basic and remedial literacy skills, assistance in job seeking skills, and training in starting or operating a business enterprise.

(b) Existing educational and training programs.—Insofar as practicable, the Secretary shall use existing Federal, State, and private education resources in carrying out these programs. (7 U.S.C. 6615)

Loans to Economically Disadvantaged Rural Communities

Sec. 2378. (a) In general.—The Secretary, under such terms and

conditions as the Secretary shall establish, may make loans to economically disadvantaged rural communities for the purposes of securing technical assistance and services to aid in the development and implementation of action plans, including planning for—

(1) improving existing facilities in the community that may generate employment or revenue;

(2) expanding existing infrastructure, facilities, and services to capitalize on opportunities to diversify economies now dependent on national forest resources; and

(3) supporting the development of new industries or commercial ventures unrelated to national forest resources.

(b) Interest rates.—The interest rates on a loan made pursuant to this section shall be as determined by the Secretary, but not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loan, plus not to exceed 1 percent, as determined by the Secretary, and rounded to the nearest one-eighth of 1 percent. (7 U.S.C. 6616)

Authorization of Appropriations and Spending Authority

Sec. 2379. (a) Authorization of appropriations.—Except as provided in subsection (b), there are authorized to be appropriated—

(1) an amount not to exceed 5 percent of the sum of—

(A) the sums received by the Secretary from sales of timber and other products of the forests; and

(B) user fees paid in connection with the use of forest lands; and

(2) such additional sums as may be necessary to carry out the purposes of this chapter.

(b) Limitation on authorization.—Subsection (a) shall not in any way affect payments to the States pursuant to chapter 192 of the Act of May 23, 1908 (16 U.S.C. 500).

(c) Spending authority.—Any spending authority (as defined in section 401 of the Congressional Budget Act of 1974) provided in this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. (7 U.S.C. 6617)

SUBTITLE H — MISCELLANEOUS PROVISIONS

National Rural Information Center Clearinghouse

Sec. 2381. (a) Establishment.—The Secretary shall establish, within the National Agricultural Library, in coordination with the Extension Service, a National Rural Information Center Clearinghouse (in this section referred to as the "Clearinghouse") to perform the functions specified in subsection (b) of this section.

(b) Functions.—The Clearinghouse shall provide and distribute information and data to any industry, organization, or Federal, State, or local government entity, on request, about programs and services provided by Federal, State, and local agencies and private nonprofit organizations and institutions under which individuals residing in, or organizations and State and local government entities operating in, a rural area may be eligible for any kind of assistance, including job training, education, health care, and economic development assistance,

and emotional and financial counseling. To the extent possible, the National Agricultural Library shall use telecommunications technology to disseminate information to rural areas.

(c) Federal agencies.—On request of the Secretary, the head of a Federal agency shall provide to the Clearinghouse such information as the Secretary may request to enable the Clearinghouse to carry out subsection (b).

(d) State and local agencies and nonprofit organizations.—The Secretary shall request State and local governments and private nonprofit organizations and institutions to provide to the Clearinghouse such information as such agencies and organizations may have about any program or service of such agencies, organizations, and institutions under which individuals residing in a rural area may be eligible for any kind of assistance, including job training, educational, health care, and economic development assistance, and emotional and financial counseling.

(e) Limitation on authorization of appropriations.—To carry out this section, there are authorized to be appropriated $500,000 for each of the fiscal years 1991 through 1995. (7 U.S.C. 3125b)

Monitoring the Economic Progress of Rural America

Sec. 2382. (a) Bureau of the Census.—The Director of the Bureau of the Census shall expand the data collection efforts of the Bureau to enable the Bureau to collect statistically significant data concerning the changing economic condition of rural counties and communities in the United States, including data on rural employment, poverty, income, and other information concerning the rural labor force.

(b) Limitation on authorization of appropriations.—To carry out subsection (a), there are authorized to be appropriated $1,000,000 for each fiscal year. (13 U.S.C. 141(note))

Analysis by Office of Technology Assessment

Sec. 2385. (a) In general.—The Office of Technology Assessment shall include, in a study of the effects of information age technology on rural America, an analysis of the feasibility of ensuring that rural citizens in their homes and schools have the ability to acquire, by computer, information in a national library.

(b) Contents.—In conducting the analysis under subsection (a), the Office of Technology Assessment shall—

(1) evaluate, in consultation with the Librarian of Congress, the costs and benefits of establishing a national library whose volumes, periodicals, instructional materials, sound and video resources, and other data are accessible to individuals through their personal computers;

(2) assess the technological, regulatory, or other impediments to the establishment of the library and information retrieval system described in paragraph (1), and the length of time required to establish such a library and retrieval system;

(3) describe the potential for the library and information described in paragraph (1) to provide rural citizens the opportunity to study and explore foreign languages, geography, math, science, history, or other interests, and to exchange scholarly information and ideas with other users, and otherwise to engage in interactive study; and

(4) recommend to the Congress the measures that should be

taken to establish the library and retrieval system described in paragraph (1). (7 U.S.C. 950aaa-4 (note))

Encouragement of Private Contracting

Sec. 2394. (a) In general.—For the purpose of promoting local job creation and private sector investment in rural communities, the Secretary of Agriculture is encouraged, where appropriate and feasible, to use private enterprise concerns located in rural areas, rather than government employees or government enterprises, to provide commercial activities or products to carry out the purposes of this title.

(b) Plan required.—The Secretary shall develop and implement a plan that will result in increasing the use of contracts awarded to private firms by the Department of Agriculture, and maximizing the use of grant, loan, or other financial assistance made for the purpose of rural development to provide the goods and services purchased to carry out the purposes of this title. (7 U.S.C. 2204d)

Preservation of Eligibility

Sec. 2395. Notwithstanding any other provision of law, this title shall not be construed to adversely affect the eligibility, as it existed on the date of enactment of this Act, of cooperatives and other entities for any other credit assistance under Federal law. (7 U.S.C. 2007e (note))

Regulations

Sec. 2396. Except as otherwise provided in this title, no later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate such regulations as may be necessary to carry out this title and the amendments made by this title. (7 U.S.C. 2007e(note))

1990 Farm Bill
(Global Climate Change Prevention Act of 1990)

- **Act of November 28, 1990 (P.L. 101-624, Title XXIV, 104 Stat. 4058; 7 U.S.C. 2007(note), 6702-10)**

Short Title

Sec. 2401. This title may be cited as the "Global Climate Change Prevention Act of 1990". (7 U.S.C. 2007(note))

Global Climate Change Program

Sec. 2402. (a) Establishment.—For the purpose of having within the Department of Agriculture a focal point for coordinating all issues of climate change, the Secretary of Agriculture (hereafter in this title referred to as the "Secretary") shall establish a Global Climate Change Program (hereafter in this section referred to as the "Program"). The Secretary shall designate a director of the Program who shall be responsible to the Secretary for carrying out the duties specified in subsections (b) and (c).

(b) General duties.—The Director shall—

(1) coordinate policy analysis, long range planning, research, and response strategies relating to climate change issues;

(2) provide liaison with other Federal agencies, through the Office of Science and Technology Policy, regarding issues of climate change;

(3) inform the Department of scientific developments and policy issues relating to the effects of climate change on agriculture and forestry, including broader issues that affect the impact of climate change on the farms and forests of the United States;

(4) recommend to the Secretary alternative courses of action with which to respond to such scientific developments and policy issues; and

(5) ensure that recognition of the potential for climate change is fully integrated into the research, planning, and decision-making processes of the Department.

(c) Specific Responsibilities.—The Director shall—

(1) coordinate the global climate change studies required by section 2403;

(2) provide, through such other agencies as the Secretary determines appropriate, competitive grants for research in climatology relating to the potential impact of climate change on agriculture;

(3) coordinate the participation of the Department in interagency climate-related activities;

(4) consult with the National Academy of Sciences and private, academic, State, and local groups with respect to climate research and related activities;

(5) represent the Department to the Office of Science and Technology Policy and coordinate the activities of the Department in response to requirements of this title;

(6) represent the Department on the Intergovernmental Panel on Climate Change; and

(7) review all Department budget items relating to climate change issues, including specifically the research budget to be submitted by the Secretary to the Office of

Science and Technology Policy and the Office of Management and Budget. (7 U.S.C. 6701)

Study of Global Climate Change, Agriculture, and Forestry

Sec. 2403. (a) Crops.—

(1) In general. The Secretary shall study the effects of global climate change on agriculture and forestry. The study shall, at a minimum address—

(A) the effects of simultaneous increases in temperature and carbon dioxide on crops of economic significance;

(B) the effects of more frequent or more severe weather events on such crops;

(C) the effects of potential changes in hydrologic regimes on current crop yields;

(D) the economic effects of widespread and increased drought frequency in the south, midwest, and plains States; and

(E) changes in pest problems due to higher temperatures.

(2) Further studies.—If the results of the study conducted under paragraph (1) warrant, the Secretary shall conduct further studies that address the means of mitigating the effects of global climate change on crops of economic significance that shall, at a minimum—

(A) identify whether climate change tolerance can be bred into these crops, the amount of time necessary for any such breeding, and the effects on the income of farmers;

(B) evaluate existing genetic resource and breeding programs for crops for their ability to develop new varieties that can tolerate potential climate changes; and

(C) assess the potential for the development of crop varieties that are tolerant to climate changes and other environmental stresses, such as drought, pests, and salinity.

(b) Forests.—The Secretary shall conduct a study on the emissions of methane, nitrous oxide, and hydrocarbons from tropical and temperate forests, the manner in which such emissions may affect global climate change; the manner in which global climate change may affect such emissions; and the manner in which such emissions may be reduced through management practices. The study shall, at a minimum—

(1) obtain measurements of nitrous oxide, methane, and nonmethane hydrocarbons from tropical and temperate forests;

(2) determine the manner in which the nitrous oxide, methane, and nonmethane hydrocarbon emissions from temperate and tropical forest systems will respond due to climate change; and

(3) identify and address alternative management strategies for temperate and tropical forests that may mitigate any negative effects of global climate change.

(c) Reports.—The Secretary shall submit reports of the studies conducted under subsections (a) and (b) within 3 and 6 years, respectively, after the date of enactment of this Act to the Committee on Agriculture and the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate. In addition, interim reports regarding such studies shall be provided by the Secretary to such Committees annually, with recommendations for actions which may be taken to mitigate the negative effects of global climate change and to adapt to global climate changes and related phenomena. (7 U.S.C. 6702)

Technical Advisory Committee

Sec. 2404. (a) Establishment.—The Secretary of Agriculture shall establish a technical advisory committee to provide advice to the Secretary concerning the major study areas required under this title.

(b) Members.—The committee established under subsection (a) shall be composed of such representatives of universities, professional societies, government laboratories, and agricultural, environmental and other organizations as the Secretary of Agriculture, in consultation with the Office of Science and Technology Policy and the Administrator of the Environmental Protection Agency, determines appropriate based on an assessment by the Secretary of qualifications required for service on such committee. Appointments to such committee shall be made not later than 90 days after the date of the enactment of this Act. Such committee shall have a chairperson who shall be elected by the members of the committee from among such members. (7 U.S.C. 6703)

Office of International Forestry

Sec. 2405. (a) Establishment.—The Secretary, acting through the Chief of the Forest Service, shall establish an Office of International Forestry within the Forest Service within six months after the date of enactment of this Act.

(b) Deputy Chief designation.—The Chief shall appoint a Deputy Chief for International Forestry.

(c) Duties.—The Deputy Chief shall—

(1) be responsible for the international forestry activities of the Forest Service;

(2) coordinate the activities of the Forest Service in implementing the provisions of this title; and

(3) serve as Forest Service liaison to the director for the program established pursuant to section 2402. (7 U.S.C. 6704)

Line Item

Sec. 2406. The President's proposed budget to Congress for the first fiscal year beginning after the date of enactment of this Act and for each subsequent fiscal year shall specifically identify funds to be spent on Forest Service international cooperation and assistance. (7 U.S.C. 6705)

Institutes of Tropical Forestry

Sec. 2407. The Secretary is authorized and directed to establish an Institute of Tropical Forestry in Puerto Rico and an Institute of Pacific Islands Forestry (hereafter in this section referred to as the "Institutes"). The Institutes shall conduct research on forest management and natural resources that shall include—

(1) management and development of tropical forests;

(2) the relationship between climate change and tropical forests;

(3) threatened and endangered species;

(4) recreation and tourism;

(5) development of tropical forest resources on a sustained yield basis;

(6) techniques to monitor the health and productivity of tropical forests;

(7) tropical forest regeneration and restoration; and

(8) the effects of tropical deforestation on biodiversity, global climate, wildlife, soils, and water. (7 U.S.C. 6706)

The Forest and Rangeland Renewable Resources Planning Act of 1974

Sec. 2408. (a) Renewable resource assessment.—Section 3(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601(a)) is amended—

Note—Section 2408(a) and (b) amendments are included in the Forest and Rangeland Renewable Resources Planning Act of 1974, P.L. 93-378, and excluded here.

Urban Forestry Demonstration Projects

Sec. 2409. The Secretary is authorized to undertake, through the Forest Service's Northeastern Area State and Private Forestry program, a study and pilot implementation project to demonstrate the benefits of retaining and integrating forests in urban development. The focus of such a study and implementation project should be to protect the environment and associated natural resource values, for current and future generations. (7 U.S.C. 6706)

Biomass Energy Demonstration Projects

Sec. 2410. The Secretary, in consultation with the Secretary of Energy, may carry out projects that demonstrate the potential of short--rotation silvicultural methods to produce wood for electricity production and industrial energy needs. In carrying out such projects, the Secretary shall cooperate with private industries, Federal and State agencies, and other organizations. (7 U.S.C. 6708)

Interagency Cooperation to Maximize Biomass Growth

Sec. 2411. The Secretary may enter into an agreement with the Secretary of Defense to—

(1) conduct a study of reforestation and improved management of Department of Defense military installations and lands; and

(2) develop a program to manage such forests and lands so as to maximize their potential for biomass growth and sequestering carbon dioxide. (7 U.S.C. 6709)

Authorization of Appropriations

Sec. 2412. There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1996, to carry out this title. (7 U.S.C. 6710)

Take Pride in America Act

- **Act of November 28, 1990 (P.L. 101-628, Title XI, 104 Stat. 4502, 16 U.S.C. 4601(note), 4601-4608)**

TITLE XI — TAKE PRIDE IN AMERICA PROGRAM

Short Title

Sec. 1101. This title may be cited as the "Take Pride in America Act". (16 U.S.C. 4601(note))

Establishment of Take Pride in America Program

Sec. 1102. (a) In general.—There is hereby established the Take Pride in America Program within the Department of the Interior (hereinafter referred to as the "TPIA Program").

(b) Purposes.—The purposes of the TPIA Program shall include the following:

(1) To establish and maintain a public awareness campaign in cooperation with the public and private organizations and individuals—

(A) to instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural and cultural resources;

(B) to encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and

(C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources.

(2) To conduct a national awards program to honor those individuals and entities which, in the opinion of the Secretary of the Interior (hereafter in this Act referred to as the "Secretary"), have distinguished themselves in the activities described in paragraph (1) of this subsection. (16 U.S.C. 4601)

Gifts and Bequests

Sec. 1103. (a) Authority.—The Secretary may solicit, accept, hold, administer, invest in government securities, and use gifts and bequests of money and other personal property to aid or facilitate the purposes of the TPIA Program. Property so donated and accepted shall not be subject to sequestration.

(b) Accounting.—The Secretary shall maintain a full accounting of such gifts and bequests.

(c) Treatment of donations, etc.—For purposes of Federal law, property accepted pursuant to this section shall be considered as a gift, bequest, or devise to the United States.

(d) Use of property.—Any property and the proceeds thereof shall be used as nearly as practicable in accordance with the terms of the gift or bequest. (16 U.S.C. 4602)

Administrative Services

Sec. 1104. The Secretary of the Interior shall provide such facilities, administrative services, personnel, and support to the TPIA Program as the Secretary determines is necessary and appropriate. (16 U.S.C. 4603)

Volunteers

Sec. 1105. (a) Authority to use volunteers.—The Secretary is authorized to recruit, train, and accept the services of individuals or entities, without compensation, as volunteers for or in aid of the purposes of the TPIA Program, without regard to the provisions of title 5, United States code, that govern appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, that relate to classification and General Schedule pay rates.

(b) Incidental expenses.—The Secretary is authorized to provide for the incidental expenses of such volunteers, such as transportation, uniforms, lodging, or subsistence.

(c) Volunteers' Status as Federal Employees.—(1) Except as otherwise provided in this subsection, a volunteer shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those provisions relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) For purposes of chapter 171 of title 28, United States Code (commonly referred to as the "Federal Tort Claims Act"), a volunteer under this subsection shall be considered an employee of the government (as defined in section 2671 of such title).

(3) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to compensation to Federal employees for work injuries, a volunteer under this subsection shall be considered an employee (as defined in section 8101 of title 5, United States Code). (16 U.S.C. 4604)

Authority to Execute Contracts

Sec. 1106. The Secretary is authorized to enter into contracts and cooperative agreements and generally to do any and all lawful acts necessary or appropriate to further the purposes of the TPIA Program. (16 U.S.C. 4605)

Distribution of Appropriate Items

Sec. 1107. The Secretary is authorized to distribute pamphlets and other such appropriate items in order to promote the purposes of the TPIA Program. (16 U.S.C. 4606)

Slogan and Logo

Sec. 1108. The "Take Pride in America" slogan and logo, which are registered by the Department of the Interior, and the goodwill associated with such slogan and logo, shall be administered pursuant to the TPIA Program. (16 U.S.C. 4607)

Authorization of Appropriations

Sec. 1109. (a) Department of the Interior.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this title, not to exceed the amount expended for such purposes for fiscal year 1990.

(b) Other Federal Agencies.—There are authorized to be appropriated to other Federal departments and agencies such sums as may be necessary to carry out the provisions of any other Take Pride in America programs established by such departments or agencies. (16 U.S.C. 4608)

National Indian Forest Resources Management Act

- **Act of November 28, 1990 (P.L. 101-630, Title III, 104 Stat. 4532; 25 U.S.C. 3101(note), 3102-3120)**

TITLE III — INDIAN FOREST AND WOODLANDS

Short Title

Sec. 301. This title may be cited as the "National Indian Forest Resources Management Act." (25 U.S.C. 3101(note))

Findings

Sec. 302. The Congress finds and declares that—

(1) the forest lands of Indians are among their most valuable resources and Indian forest lands—

(A) encompass more than 15,990,000 acres, including more than 5,700,000 acres of commercial forest land and 8,700,000 acres of woodland,

(B) are a perpetually renewable and manageable resource,

(C) provide economic benefits, including income, employment, and subsistence, and

(D) provide natural benefits, including ecological, cultural, and aesthetic values;

(2) the United States has a trust responsibility toward Indian forest lands;

(3) existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian forest lands;

(4) the Federal investment in, and the management of, Indian forest land is significantly below the level of investment in, and management of, National Forest Service forest land, Bureau of Land Management forest land, or private forest land;

(5) tribal governments make substantial contributions to the overall management of Indian forest land; and

(6) there is a serious threat to Indian forest lands arising from trespass and unauthorized harvesting of Indian forest land resources. (25 U.S.C. 3102)

Purposes

Sec. 303. The purposes of this title are to—

(1) allow the Secretary of the Interior to take part in the management of Indian forest lands, with the participation of the lands' beneficial owners, in a manner consistent with the Secretary's trust responsibility and with the objectives of the beneficial owners;

(2) clarify the authority of the Secretary to make deductions from the proceeds of sale of Indian forest products, assure the use of such deductions on the reservation from which they are derived solely for use in forest land management activities, and assure that no other deductions shall be collected;

(3) increase the number of professional Indian foresters and related staff in forestry programs on Indian forest land; and

(4) provide for the authorization of necessary appropriations to carry out this title for the protection, conservation, utilization, management, and enhancement of Indian forest lands. (25 U.S.C. 3102)

Definitions

Sec. 304. For the purposes of this title, the term—

(1) "Alaska Native" means Native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604);

(2) "forest" means an ecosystem of at least one acre in size, including timberland and woodland, which—

(A) is characterized by a more or less dense and extensive tree cover,

(B) contains, or once contained, at least ten percent tree crown cover, and

(C) is not developed or planned for exclusive nonforest use;

(3) "Indian forest land" means Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken;

(4) "forest land management activities" means all activities performed in the management of Indian forest lands, including—

(A) all aspects of program administration and executive direction such as—

(i) development and maintenance of policy and operational procedures, program oversight, and evaluation,

(ii) securing of legal assistance and handling of legal matters,

(iii) budget, finance, and personnel management, and

(iv) development and maintenance of necessary data bases and program reports;

(B) all aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re-inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans;

(C) forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment;

(D) protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of firebreaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements;

(E) protection against insects and disease, including—

(i) all aspects of detection and evaluation,

(ii) preparation of project proposals containing project description, environmental assessments and statements, and costbenefit analyses necessary to secure funding,

(iii) field suppression operations, and

(iv) reporting;

(F) assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance, and report, demand letter, and testimony preparation;

(G) all aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents including—

(i) cruising, product marking, silvicultural prescription, appraisal and harvest supervision,

(ii) forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products,

(iii) archeological, historical, environmental and other land management reviews, clearances, and analyses,

(iv) advertising, executing, and supervising contracts,

(v) marking and scaling of timber, and

(vi) collecting, recording and distributing receipts from sales;

(H) provision of financial assistance for the education of Indians enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses;

(I) participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands;

(J) improvement and maintenance of extended season primary and secondary Indian forest land road systems; and

(K) research activities to improve the basis for determining appropriate management measures to apply to Indian forest lands;

(5) "forest management plan" means the principal document, approved by the Secretary, reflecting and consistent with a tribal integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods assuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include—

(A) standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and

(B) standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan;

(6) "forest product" means—

(A) timber,

(B) a timber product, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles and split products,

(C) bark,

(D) Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, and herbs,

(E) other marketable material, and

(F) gravel which is extracted from, and utilized on, Indian forest lands;

(7) "forest resources" means all the benefits derived from Indian forest lands, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest lands;

(8) "forest trespass" means the act of illegally removing forest products from, or illegally damaging forest products on, forest lands;

(9) "Indian" means a member of an Indian tribe;

(10) "Indian land" means land title to which is held by—

(A) the United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe, or

(B) an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation;

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation;

(12) "reservation" includes Indian reservations established pursuant to treaties, Acts of Congress or Executive orders, public domain Indian allotments, and former Indian reservations in Oklahoma;

(13) "Secretary" means the Secretary of the Interior;

(14) "sustained yield" means the yield of forest products that a forest can produce continuously at a given intensity of management; and

(15) "tribal integrated resource management plan" means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of such tribe's natural resources. (25 U.S.C. 3103)

Management of Indian Forest Land

Sec. 305. (a) Management activities.—The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

(b) Management objectives.—Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives—

(1) the development, maintenance, and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to—

(A) the harvesting of forest products,

(B) forestation,

(C) timber stand improvement, and

(D) other forestry practices;

(2) the regulation of Indian forest lands through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives and forest marketing programs;

(3) the regulation of Indian forest lands in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) the development of Indian forest lands and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) the retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) the management and protection of forest resources to retain the beneficial effects to Indian forest lands of regulating water run-off and minimizing soil erosion; and

(7) the maintenance and improvement of timber productivity, grazing, wildlife, fisheries, recreation, aesthetic, cultural and other traditional values. (25 U.S.C. 3104)

Forest Management Deduction

Sec. 306. (a) Withholding of deduction.—Pursuant to the authority of section 1 of the Act of February 14, 1920 (41 Stat. 415; 25 U.S.C. 413), the Secretary shall withhold a reasonable deduction from the gross proceeds of sales of forest products harvested from Indian forest land under a timber sale contract, permit, or other harvest sale document, which has been approved by the Secretary, to cover in whole or part the cost of managing and protecting such Indian forest land.

(b) Amount of deduction.—Deductions made pursuant to subsection (a) shall not exceed the lesser amount of—

(1) 10 percent of gross proceeds, or

(2) the percentage of gross proceeds collected on the date of enactment of this title as forest management deductions by the Secretary on such sales of Indian forest products, unless the appropriate Indian tribe consents to an increase in the deductions.

(c) Use of deduction.—The full amount of any deduction collected by the Secretary shall be expended according to an approved expenditure plan, approved by the Secretary and the appropriate Indian tribe, for the performance of forest land management activities on the reservation from which such deductions are collected and shall be made available to the tribe, upon its request, by contract or agreement for the performance of such activities.

(d) Limitations.—(1) Forest management deductions withheld pursuant to this section shall not be available to—

(A) cover the costs that are paid from funds appropriated specifically for fire suppression or pest control, or

(B) otherwise offset Federal appropriations for meeting the Federal trust responsibility for management of Indian forest lands.

(2) No other forest management deductions derived from Indian forest lands shall be collected to be covered into the general funds of the United States Treasury. (25 U.S.C. 3105)

Forest Trespass

Sec. 307. (a) Civil penalties; regulations.—Not later than 18 months from the date of enactment of this title, the Secretary shall issue regulations that—

(1) establish civil penalties for the commission of forest trespass which provide for—

(A) collection of the value of the products illegally removed plus a penalty of double their value,

(B) collection of the costs associated with damage to the Indian forest land caused by the act of trespass, and

(C) collection of the costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(2) designate responsibility with the Department of the Interior for the detection and investigation of forest trespass; and

(3) set forth responsibilities and procedures for the assessment and collection of civil penalties.

(b) Treatment of proceeds.—The proceeds of civil penalties collected under this section shall be treated as proceeds from the sale of forest products from the Indian forest lands upon which such trespass occurred.

(c) Concurrent jurisdiction.—Indian tribes which adopt the regulations promulgated by the Secretary pursuant to subsection (a) shall have concurrent civil jurisdiction to enforce the provisions of this section and the regulation promulgated thereunder. The Bureau of Indian Affairs and other agencies of the Federal Government shall, at the request of the tribe, defer to tribal prosecutions of forest trespass cases. Tribal court judgments regarding forest trespass shall be entitled to full faith and credit in Federal and State courts to the same extent as a Federal court judgment obtained under this section. (25 U.S.C. 3106)

Direct Payment of Forest Products Receipts

Sec. 308. (a) Regulations.—Notwithstanding any other law, the Secretary shall, within 1 year from the date of enactment of this title, promulgate regulations providing for the payment of the receipts from the sale of Indian forest products as provided in this section.

(b) Payment into a bank depository.—Upon the request of an Indian tribe, the Secretary shall provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit or other harvest sale document which has been approved by the Secretary, shall make prompt direct payments of the gross proceeds of sales of such forest products, less any amounts segregated as forest management deductions pursuant to section 306, into a bank depository account designated by such Indian tribe. (25 U.S.C. 3107)

Secretarial Recognition of Tribal Laws

Sec. 309. Subject to the Secretary's responsibilities as reflected in sections 302(2) and 303(1) and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest lands, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest lands. Such cooperation shall include—

(1) assistance in the enforcement of such laws;

(2) provision of notice of such laws to persons or entities undertaking activities on Indian forest lands; and

(3) upon the request of an Indian tribe, the appearance in tribal forums. (25 U.S.C. 3108)

Indian Forest Land Assistance Account

Sec. 310. (a) Establishment.—At the request of an Indian tribe, the Secretary may establish a special Indian forest land assistance account within the tribe's trust fund account to fund the Indian forest land management activities of such tribe.

(b) Deposits and expenditures.—(1) The Secretary may deposit into the Indian forest land assistance account established pursuant to subsection (a) any funds received by the Secretary or in the Secretary's possession from—

(A) non-Federal sources, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation,

(B) donations and contributions,

(C) unobligated forestry appropriations for the benefit of such Indian tribe, and

(D) user fees or other funds transferred under Federal interagency agreements if otherwise authorized by Federal law and, if such funds are related to activities on or for the Indian forest lands of such tribe's reservation.

Funds deposited in such account shall be for the purpose of conducting forest land management activities on the Indian forest lands of such tribe.

(2) Funds in the Indian forest land assistance account and any interest or other income earned thereon shall remain available until expended and shall not be available to otherwise offset Federal appropriations for meeting the Federal responsibility for management of Indian forest lands.

(c) Audits.—At the request of an Indian tribe or upon the Secretary's own volition, the Secretary may conduct audits of the Indian forest land assistance account and shall publish the results of such audit. (25 U.S.C. 3109)

Tribal Forestry Programs

Sec. 311. (a) Establishment.—The Secretary shall establish within the Bureau of Indian Affairs a program to provide financial support to forestry programs established by an Indian tribe.

(b) Support allocation formula; criteria.—(1) The Secretary, with the participation of Indian tribes with Indian forest lands, shall establish, and promulgate by regulations, a formula—

(A) for the determination of Indian tribes eligible for such support,

(B) for the provision of levels of assistance for the forestry programs of such tribes, and

(C) the allocation of base support funds to such tribes under the program established pursuant to subsection (a).

(2) The formula established pursuant to this subsection shall provide funding necessary to support—

(A) one professional forester, including fringe benefits and support costs, for each eligible tribe, and

(B) one additional professional forester or forest technician, including fringe benefits and support costs, for each level of assistance for which an eligible Indian tribe qualifies.

(3) In any fiscal year that appropriations are not sufficient to fully fund tribal forestry programs at each level of assistance under the formula required to be established in this section, available funds for each level of assistance shall be evenly divided among the tribes qualifying for that level of assistance. (25 U.S.C. 3110)

Assessment of Indian Forest Land and Management Programs

Sec. 312. (a) Initial assessment.—(1) Within 1 year after the date of enactment of this title, the Secretary, in consultation with affected Indian tribes, shall enter into a contract with a non-Federal entity knowledgeable in forest management practices on Federal and private lands to conduct an independent assessment of Indian forest lands and Indian forest land management practices.

(2) Such assessment shall be national in scope and shall include—

(A) an in-depth analysis of management practices on, and the level of funding for, specific Indian forest land compared with similar Federal and private forest lands,

(B) a survey of the condition of Indian forest lands, including health and productivity levels,

(C) an evaluation of the staffing patterns of forestry organizations of the Bureau of Indian Affairs and of Indian tribes,

(D) an evaluation of procedures employed in timber sales administration, including preparation, field supervision, and accountability for proceeds,

(E) an analysis of the potential for reducing or eliminating relevant administrative procedures, rules and policies of the Bureau of Indian Affairs consistent with the Federal trust responsibility,

(F) a comprehensive review of the adequacy of Indian forest land management plans, including their compatibility with applicable tribal integrated resource management plans and their ability to meet tribal needs and priorities,

(G) an evaluation of the feasibility and desirability of establishing minimum standards against which the adequacy of the forestry programs of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian tribes can be measured, and

(H) a recommendation of any reforms and increased funding levels necessary to bring Indian forest land management programs to a state-of-the-art condition.

(3) Such assessment shall include specific examples and comparisons from each of the regions of the United States where Indian forest lands are located.

(4) The initial assessment required by this subsection shall be completed no later than 36 months following the date of enactment of this title. Upon completion, the assessment shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

(b) Periodic assessments.—On each 10-year anniversary of the date of enactment of this title, the Secretary shall provide for an independent assessment of Indian forest lands and Indian forest land management practices under the criteria established in subsection (a) which shall include analyses measured against findings in previous assessments.

(c) Status report to Congress.—The Secretary shall submit, within 1 year of the first full fiscal year after the date of enactment of this title and within 6 months of the end of each succeeding fiscal year, a report to Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes a report on the status of Indian forest lands with respect to standards, goals and objectives set forth in approved forest management plans for each Indian tribe with Indian forest lands. The report shall identify the amount of Indian forest land in need of forestation or other silviculture treatment and the quantity of timber available for sale, offered for sale, and sold for each Indian tribe.

(d) Assistance from Secretary of Agriculture.—The Secretary of Agriculture, through the Forest Service, is authorized to provide, upon the request of the Secretary of the Interior, on a nonreimbursable basis, technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or

assessments required by this title. (25 U.S.C. 3111)

Alaska Native Technical Assistance Program

Sec. 313. (a) Establishment.—The Secretary, in consultation with the village and regional corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), shall establish a program of technical assistance for such corporations to promote the sustained yield management of their forest resources. Such technical assistance shall also be available to promote local processing and other value-added activities with such forest resources.

(b) Indian Self-Determination Act.—The technical assistance to be provided by the Secretary pursuant to subsection (a) shall be made available through contracts, grants or agreements entered into in accordance with, and made available to entities eligible for, such contracts, grants, or agreements under the Indian Self-Determination Act (25 U.S.C. 450 et seq.). (25 U.S.C. 3112)

Establishment of Indian and Alaska Native Forestry Education Assistance

Sec. 314. (a) Forester intern program.—(1) Notwithstanding the provisions of title 5 of the United States Code governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau of Indian Affairs at least 20 forester intern positions for Indian and Alaska Native students.

(2) For purposes of this subsection, the term "forester intern" means an Indian or Alaska Native who—

(A) is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields, and

(B) is appointed to one of the positions established under paragraph (1).

(3) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an approved post-secondary or graduate school in a full-time forestry-related curriculum.

(4) A forester intern shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for 2 years for each year of education for which the Secretary pays the intern's educational costs under paragraph (3) of this subsection.

(5) A forester intern shall be required to report for service with the Bureau of Indian Affairs during any break in attendance at school of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement.

(b) Cooperative education program.—(1) The Secretary shall maintain, through the Bureau of Indian Affairs, a cooperative education program for the purpose of recruiting promising Indian and Alaska Native students who are enrolled in secondary schools, tribally-controlled community colleges, and other post-secondary or graduate schools for employment as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise.

(2) The cooperative educational program that is to be maintained under paragraph (1) shall be modeled on and shall have essentially

the same features of the program operated on the date of enactment of this title pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) Under the cooperative agreement program that is to be maintained under paragraph (1), the Secretary shall pay all costs for tuition, books, and fees of an Indian or Alaska Native student who—

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement, and

(B) is interested in a career with the Bureau of Indian Affairs, an Indian tribe or a tribal enterprise in the management of Indian forest land.

(4) Financial need shall not be a requirement to receive assistance under the cooperative agreement program that is to be maintained under this subsection.

(5) A recipient of assistance under the cooperative education program that is to be maintained under this subsection shall be required to enter into an obligated service agreement to serve as a professional forester or other forestry-related professional with the Bureau of Indian Affairs, an Indian tribe, or a tribal forest-related enterprise for one year for each year for which the Secretary pays the recipient's educational costs pursuant to paragraph (3).

(c) Scholarship program.—

(1) The Secretary is authorized to grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipient's forestry or forestry-related course of study, with—

(A) the Bureau of Indian Affairs;

(B) a forestry program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination Act (25 U.S.C. 450 et seq.);

(C) an Indian enterprise engaged in a forestry or forestry-related business; or

(D) an Indian tribe's forestry-related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited post-secondary or graduate institution.

(d) Forestry education outreach.—The Secretary shall conduct, through the Bureau of Indian Affairs, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, a forestry education outreach program for Indian and Alaska Native youth to explain and stimulate interest in all aspects of Indian forest land management and careers in forestry.

(e) Adequacy of programs.—The Secretary shall administer the programs described in this section until a sufficient number of Indians and Alaska Natives are trained to ensure that there is an adequate number of qualified, professional Indian foresters to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for Indian tribes. (25 U.S.C. 3113)

Postgraduation Recruitment, Education and Training Programs

Sec. 315. (a) Postgraduation recruitment.—The Secretary shall establish and maintain a program to attract Indian and Alaska Native professional foresters and forester technicians who have already graduated from their course of post-secondary or graduate education for employment in either the Bureau of Indian Affairs forestry programs or, subject to the approval of the tribe, in tribal forestry programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian and Alaska Native professional foresters or forestry technicians in exchange for the Secretary's assumption of the employee's outstanding student loans. The period of employment shall be determined by the amount of the loan that is assumed.

(b) Postgraduate intergovernmental internships.—For the purposes of training, skill development and orientation of Indian, Alaska native, and Federal forestry personnel, and the enhancement of tribal and Bureau of Indian Affairs forestry programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal, Indian, and Alaska Native forestry personnel. Such program shall—

(1) for agencies within the Department of the Interior—

(A) provide for the internship of Bureau of Indian Affairs, Alaska Native, and Indian forestry employees in the forestry-related programs of other agencies of the Department of the Interior, and

(B) provide for the internship of forestry personnel from other Department of the Interior agencies within the Bureau of Indian Affairs and, with the consent of the tribe, within tribal forestry programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an interagency agreement, internships within the Bureau of Indian Affairs and, with the consent of the tribe, within a tribal forestry program of other forestry personnel of such agencies who are above their sixth year of Federal service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian and Alaska Native forestry employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) Continuing education and training.—The Secretary shall maintain a program within the Division of Forestry of the Bureau of Indian Affairs for the ongoing education and training of Bureau of Indian Affairs, Alaska Native, and Indian forestry personnel. Such program shall provide for—

(1) orientation training for Bureau of Indian Affairs forestry personnel in tribal-Federal relations and responsibilities;

(2) continuing technical forestry education for Bureau of Indian Affairs, Alaska Native, and tribal forestry personnel; and

(3) developmental training of Indian and Alaska Native personnel in forest land based enterprises and marketing. (25 U.S.C. 3114)

Cooperative Agreement Between the Department of the Interior and Indian Tribes

Sec. 316. (a) Cooperative agreements.—

(1) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements with Indian tribes to—

(A) engage in cooperative manpower and job training and development programs,

(B) to develop and publish cooperative environmental education and natural resource planning materials, and

(C) to perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

The Secretary may enter into such agreements when the Secretary determines the public interest will be benefitted.

(2) In such cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of section 3324, title 31, United States Code, relating to the advance of public moneys.

(b) Supervision.—In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of section 2671 through 2680 of title 28, United States Code, and section 8101 through 8193 of title 5, United States Code.

(c) Savings clause.—Nothing in this title shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law. (25 U.S.C. 3115)

Obligated Service; Breach of Contract

Sec. 317. (a) Obligated service.—Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this title, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(b) Breach of contract; repayment.—Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, prorated for the amount of time of obligated service performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States. (25 U.S.C. 3116)

Authorizations

Sec. 318. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title. (25 U.S.C. 3117)

Regulations

Sec. 319. Except as otherwise provided by this title, the Secretary is directed to promulgate final

regulations for the implementation of the title within eighteen months from the date of its enactment. All regulations promulgated pursuant to this title shall be developed by the Secretary with the participation of the affected Indian tribes. (25 U.S.C. 3118)

Severability

Sec. 320. If any provision of this title, or the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this title shall not be affected thereby. (25 U.S.C. 3119)

Trust Responsibility

Sec. 321. Nothing in this title shall be construed to diminish or expand the trust responsibility of the United States toward Indian forest lands, or any legal obligation or remedy resulting therefrom. (25 U.S.C. 3120)

Federal Debt Collection Procedures Act of 1990

- **Act of November 29, 1990 (P.L. 101-647, 104 Stat. 4933; 28 U.S.C. 3001–3015, 3101–3105, 3201–3206, 3301–3308)**

Sec. 3611. Title 28 of the United States Code is amended by inserting after chapter 175 the following:

CHAPTER 176—FEDERAL DEBT COLLECTION PROCEDURE

Subchapter A — Definitions and General Provisions

Applicability of Chapter

Sec. 3001. (a) In general.—Except as provided in subsection (b), the chapter provides the exclusive civil procedures for the United States—

(1) to recover a judgment on a debt; or

(2) to obtain, before judgment on a claim for a debt, a remedy in connection with such claim.

(b) Limitation.—To the extent that another Federal law specifies procedures for recovering on a claim or a judgment for a debt arising under such law, those procedures shall apply to such claim or judgment to the extent those procedures are inconsistent with this chapter.

(c) Amounts owing other than debts.—This chapter shall not apply with respect to an amount owing that is not a debt or to a claim for an amount owing that is not a debt.

Definitions

Sec. 3002. As used in this chapter—

(1) "Counsel for the United States" means—

(A) a United States attorney, an assistant United States attorney designated to act on behalf of the United States attorney, or an attorney with the United States Department of Justice or with a Federal agency who has litigation authority; and

(B) any private attorney authorized by contract made in accordance with section 3718 of title 31 to conduct litigation for collection of debts on behalf of the United States.

(2) "Court" means any court created by the Congress of the United States, excluding the United States Tax Court.

(3) "Debt" means—

(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or

(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

and includes any amount owing to the United States for the benefit of an Indian tribe or individual Indian,

but excludes any amount to which the United States is entitled under section 3011(a).

(4) "Debtor" means a person who is liable for a debt or against whom there is a claim for a debt.

(5) "Disposable earnings" means that part of earnings remaining after all deductions required by law have been withheld.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(7) "Garnishee" means a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

(8) "Judgment" means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt.

(9) "Nonexempt disposable earnings" means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.

(10) "Person" includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

(11) "Prejudgment remedy" means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt

(12) "Property" includes any present or future interest, whether legal or equitable, in real, personal (including chosen in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes—

(A) property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and

(B) Indian lands subject to restrictions against alienation imposed by the United States.

(13) "Security agreement" means an agreement that creates or provides for a lien.

(14) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

(15) "United States" means—

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States.

(16) "United States marshal" means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.

Rules of Construction

Sec. 3003. (a) Terms.—For purposes of this chapter—

(1) the terms "includes" and "including" are not limiting;

(2) the term "or" is not exclusive; and

(3) the singular includes the plural.

(b) Effect on rights of the United States.—This chapter shall not be construed to curtail or limit the right of the United States under any other Federal law or any State law—

(1) to collect taxes or to collect any other amount collectible in the same manner as a tax;

(2) to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case;

(3) to appoint or seek the appointment of a receiver; or

(4) to enforce a security agreement.

(c) Effect on other laws.—This chapter shall not be construed to supersede or modify the operation of—

(1) title 11;

(2) admiralty law;

(3) section 3713 of title 31;

(4) section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673);

(5) a statute of limitation applicable to a criminal proceeding;

(6) the common law or statutory rights to set-off or recoupment;

(7) any Federal law authorizing, or any inherent authority of a court to provide, injunctive relief;

(8) the authority of a court—

(A) to impose a sanction under the Federal Rules of Civil Procedure;

(B) to appoint a receiver to effectuate its order; or

(C) to exercise the power of contempt under any Federal law;

(9) any law authorizing the United States to obtain partition, or to recover possession, of property in which the United States holds title; or

(10) any provision of any other chapter of this title, except to the extent such provision is inconsistent with this chapter.

(d) Preemption.—This chapter shall preempt State law to the extent such law is inconsistent with a provision of this chapter.

(e) Effect on rights of the United States under foreign and international law.—This chapter shall not be construed to curtail or limit the rights of the United States under foreign law, under a treaty or an international agreement, or otherwise under international law.

(f) Applicability of Federal Rules of Civil Procedure.—Except as provided otherwise in this chapter, the Federal Rules of Civil Procedure shall apply with respect to actions and proceedings under this chapter.

Service of Process; Enforcement; Notice

Sec. 3004. (a) Manner of service.—A complaint, notice, writ, or other process required to be served in an action or proceeding under this chapter shall be served in accordance with the Federal Rules of Civil Procedure unless otherwise provided in this chapter.

(b) Nationwide enforcement.—(1) Except as provided in paragraph (2)—

(A) any writ, order, judgment, or other process, including a summons and complaint, filed under this chapter may be served in any State; and

(B) such writ, order, or judgment may be enforced by the court issuing the writ, order, or process, regardless of where the person is served with the writ, order, or process.

(2) If the debtor so requests, within 20 days after receiving the notice described in section 3101(d) or 3202(b), the action or proceeding in which the writ, order, or

judgment was issued shall be transferred to the district court for the district in which the debtor resides.

(c) Notice and other process.—At such time as counsel for the United States considers appropriate, but not later than the time a prejudgment or postjudgment remedy is put into effect under this chapter, counsel for the United States shall exercise reasonable diligence to serve on the debtor and any person who the United States believes, after exercising due diligence, has possession, custody, or control of the property, a copy of the application for such remedy, the order granting such remedy, and the notice required by section 3101(d) or 3202(b).

Application of Chapter to Judgments

Sec. 3005. This chapter shall not apply with respect to a judgment on a debt if such judgment is entered more than 10 years before the effective date of this chapter.

Affidavit Requirements

Sec. 3006. Any affidavit required of the United States by this chapter may be made on information and belief, if reliable and reasonably necessary, establishing with particularity, to the court's satisfaction, facts supporting the claim of the United States.

Perishable Personal Property

Sec. 3007. (a) Authority to sell.—If at any time during any action or proceeding under this chapter the court determines on its own initiative or upon motion of any party, that any seized or detained personal property is likely to perish, waste, or be destroyed, or otherwise substantially depreciate in value during the pendency of the proceeding, the court shall order a commercially reasonable sale of such property.

(b) Deposit of sale proceeds.—Within 5 days after such sale, the proceeds shall be deposited with the clerk of the court, accompanied by a statement in writing and signed by the United States marshal, to be filed in the action or proceeding, stating the time and place of sale, the name of the purchaser, the amount received, and an itemized account of expenses.

(c) Presumption.—For purposes of liability on the part of the United States, there shall be a presumption that the price paid at a sale under subsection (a) is the fair market value of the property or portion.

Proceedings Before United States Magistrates

Sec. 3008. A district court of the United States may assign its duties in proceedings under this chapter to a United States magistrate to the extent not inconsistent with the Constitution and laws of the United States.

United States Marshals' Authority to Designate Keeper

Sec. 3009. Whenever a United States marshal is authorized to seize property pursuant to this chapter, the United States marshal may designate another person or Federal agency to hold for safekeeping such property seized.

Co-owned Property

Sec. 3010. (a) Limitation.—The remedies available to the United States under this chapter may be enforced against property which is co-owned by a debtor and any other person only to the extent allowed by the law of the State where the

property is located. This section shall not be construed to limit any right or interest of a debtor or co-owner in a retirement system for Federal military or civilian personnel established by the United States or any agency thereof or in a qualified retirement arrangement.

(b) Definitions.—For purposes of subsection (a)—

(1) the term "retirement system for Federal military or civilian personnel" means a pension or annuity system for Federal military or civilian personnel of more than one agency, or for some or all of such personnel of a single agency, established by statute or by regulation pursuant to statutory authority; and

(2) the term "qualified retirement arrangement" means a plan qualified under section 401(a), 403(a), or 409 of the Internal Revenue Code of 1986 or a plan that is subject to the requirements of section 205 of the Employee Retirement Income Security Act of 1974.

Assessment of Surcharge on a Debt

Sec. 3011. (a) Surcharge authorized.—In an action or proceeding under subchapter B or C, and subject to subsection (b), the United States is entitled to recover a surcharge of 10 percent of the amount of the debt in connection with the recovery of the debt, to cover the cost of processing and handling the litigation and enforcement under this chapter of the claim for such debt.

(b) Limitation.—Subsection (a) shall not apply if—

(1) the United States receives an attorney's fee in connection with the enforcement of the claim; or

(2) the law pursuant to which the action on the claim is based provides any other amount to cover such costs.

Joinder of Additional Defendant

Sec. 3012. The United States or the debtor may join as an additional defendant in an action or proceeding under this chapter any person reasonably believed to owe money (including money owed on account of a requirement to provide goods or services pursuant to a loan or loan guarantee extended under Federal law) to the debtor arising out of the transaction or occurrence giving rise to a debt.

Modification or Protective Order; Supervision of Enforcement

Sec. 3013. The court may at any time on its own initiative or the motion of any interested person, and after such notice as it may require, make an order denying, limiting, conditioning, regulating, extending, or modifying the use of any enforcement procedure under this chapter.

Exempt Property

Sec. 3014. (a) Election to exempt property.—An individual debtor may, in an action or proceeding under this chapter, elect to exempt property listed in either paragraph (1) or, in the alternative, paragraph (2). If such action or proceeding is against debtors who are husband and wife, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2). If the debtors cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1). Such property is either—

(1) property that is specified in section 522(d) of title 11, as amended from time to time; or

(2)(A) any property that is exempt under Federal law, other

than paragraph (1), or State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety or joint tenant, or an interest in a community estate, to the extent that such interest is exempt from process under applicable nonbankruptcy law.

(b) Effect on assertion and manner of determination.—

(1) Statement.—A court may order the debtor to file a statement with regard to any claimed exemption. A copy of such statement shall be served on counsel for the United States. Such statement shall be under oath and shall describe each item of property for which exemption is claimed, the value and the basis for such valuation, and the nature of the debtor's ownership interest.

(2) Hearing.—The United States or the debtor, by application to the court in which an action or proceeding under this chapter is pending, may request a hearing on the applicability of any exemption claimed by the debtor. The court shall determine the extent (if any) to which the exemption applies. Unless it is reasonably evident that the exemption applies, the debtor shall bear the burden of persuasion.

(3) Stay of disposition.—Assertion of an exemption shall prevent the United States from selling or otherwise disposing of the property for which such exemption is claimed until the court determines whether the debtor has a substantial nonexempt interest in such property. The United States may not take possession of, dispose of, sell, or otherwise interfere with the debtor's normal use and enjoyment of an interest in property the United States knows or has reason to know is exempt.

(c) Debtors in joint cases.—Subject to the limitation in subsection (a), this section shall apply separately with respect to each debtor in a joint case.

Discovery as to Debtor's Financial Condition

Sec. 3015. (a) In general.—Except as provided in subsection (b), in an action or proceeding under subchapter B or C, the United States may have discovery regarding the financial condition of the debtor in the manner in which discovery is authorized by the Federal Rules of Civil Procedure in an action on a claim for a debt.

(b) Limitation.—Subsection (a) shall not apply with respect to an action or proceeding under subchapter B unless there is a reasonable likelihood that the debt involved exceeds $50,000.

Subchapter B — Prejudgment Remedies

Prejudgment Remedies

Sec. 3101. (a) Application.—

(1) The United States may, in a proceeding in conjunction with the complaint or at any time after the filing of a civil action on a claim for a debt, make application under oath to a court to issue any prejudgment remedy.

(2) Such application shall be filed with the court and shall set forth the factual and legal basis for each prejudgment remedy sought.

(3) Such application shall—

(A) state that the debtor against whom the prejudgment remedy is sought shall be afforded an opportunity for a hearing; and

(B) set forth with particularity that all statutory requirements under this chapter for the issuance of the prejudgment remedy sought have been satisfied.

(b) Grounds.—Subject to section 3102, 3103, 3104, or 3105, a prejudgment remedy may be granted by any court if the United States shows reasonable cause to believe that—

(1) the debtor—

(A) is about to leave the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States in its effort to recover a debt;

(B) has or is about to assign, dispose, remove, conceal, ill treat, waste, or destroy property with the effect of hindering, delaying, or defrauding the United States;

(C) has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States; or

(D) has evaded service of process by concealing himself or has temporarily withdrawn from the jurisdiction of the United States with the effect of hindering, delaying, or defrauding the United States; or

(2) a prejudgment remedy is required to obtain jurisdiction within the United States and the prejudgment remedy sought will result in obtaining such jurisdiction.

(c) Affidavit.—(1) The application under subsection (a) shall include an affidavit establishing with particularity to the court's satisfaction facts supporting the probable validity of the claim for a debt and the right of the United States to recover what is demanded in the application.

(2) The affidavit shall state—

(A) specifically the amount of the debt claimed by the United States and any interest or costs attributable to such debt;

(B) one or more of the grounds specified in subsection (b); and

(C) the requirements of section 3102(b), 3103(a), 3104(a), or 3105(b), as the case may be.

(3) No bond is required of the United States.

(d) Notice and hearing.—

(1) On filing an application by the United States as provided in this section, the counsel for the United States shall prepare, and the clerk shall issue, a notice for service on the debtor against whom the prejudgment remedy is sought and on any other person whom the United States reasonably believes, after exercising due diligence, has possession, custody, or control of property affected by such remedy. Three copies of the notice shall be served on each such person. The form and content of such notice shall be approved jointly by a majority of the chief judges of the Federal districts in the State in which the court is located and shall be in substantially the following form:

"Notice"

"You are hereby notified that this [property] is being taken by the United States Government ("the Government"), which says that [name of debtor] owes it a debt of $ [amount] for [reason for debt] and has filed a lawsuit to collect this debt. The Government says it must take this property at this time because [recite the pertinent ground or grounds from section 3101(b)]. The Government wants to make sure [name of debtor] will pay if the court determines that this money is owed.

"In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the Government if [name of debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

"[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a), and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

"If you are [name of debtor] and you disagree with the reason the Government gives for taking your property now, or if you think you do not owe the money to the Government that it says you do, or if you think the property the Government is taking qualifies under one of the above exemptions, you have a right to ask the court to return your property to you.

"If you want a hearing, you must promptly notify the court. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

"At the hearing you may explain to the judge why you think you do not owe the money to the Government, why you disagree with the reason the Government says it must take your property at this time, or why you believe the property the Government has taken is exempt or belongs to someone else. You may make any or all of these explanations as you see fit.

"If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

"Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information."

(2) By requesting, at any time before judgment on the claim for a debt, the court to hold a hearing, the debtor may move to quash the order granting such remedy. The court shall hold a hearing on such motion as soon as practicable, or, if requested by the debtor, within 5 days after receiving the request for a hearing or as soon thereafter as possible. The issues at such hearing shall be limited to—

(A) the probable validity of the claim for the debt for which such remedy was granted and of any defense or claim of exemption asserted by such person;

(B) compliance with any statutory requirement for the issuance of the prejudgment remedy granted;

(C) the existence of any ground set forth in subsection (b); and

(D) the inadequacy of alternative remedies (if any) to protect the interests of the United States.

(e) Issuance of writ.—On the court's determination that the requirements of subsections (a), (b), and (c) have been met, the court shall issue all process sufficient to put into effect the prejudgment remedy sought.

Attachment

Sec. 3102. (a) Property subject to attachment.—

(1) Any property in the possession, custody, or control of the debtor and in which the debtor has a substantial nonexempt interest, except earnings, may be attached pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The value of property attached shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and

(B) property garnished or in receivership, or income sequestered, under this subchapter.

(b) Availability of attachment.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to attach property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

(1) in an action on a contract, express or implied, against the debtor for payment of money, only if the United States shows reasonable cause to believe that—

(A) the contract is not fully secured by real or personal property; or

(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

(2) in an action against the debtor for damages in tort;

(3) if the debtor resides outside the jurisdiction of the United States; or

(4) in an action to recover a fine, penalty, or tax.

(c) Issuance of writ; contents.—

(1) Subject to subsections (a) and (b), a writ of attachment shall be issued by the court directing the United States marshal of the district

where property described in subsection (a) is located to attach the property.

(2) Several writs of attachment may be issued at the same time, or in succession, and sent to different judicial districts until sufficient property is attached.

(3) The writ of attachment shall contain—

(A) the date of the issuance of the writ;

(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

(C) the name and last known address of the debtor;

(D) the amount to be secured by the attachment; and

(E) a reasonable description of the property to be attached.

(d) Levy of attachment.—

(1) The United States marshal receiving the writ shall proceed without delay to levy upon the property specified for attachment if found within the district. The marshal may not sell property unless ordered by the court.

(2) In performing the levy, the United States marshal may enter any property owned, occupied, or controlled by the debtor, except that the marshal may not enter a residence or other building unless the writ expressly authorizes the marshal to do so or upon specific order of the court.

(3) Levy on real property is made by entering the property and posting the writ and notice of levy in a conspicuous place upon the property.

(4) Levy on personal property is made by taking possession of it. Levy on personal property not easily taken into possession or which cannot be taken into possession without great inconvenience or expense may be made by affixing a copy of the writ and notice of levy on it or in a conspicuous place in the vicinity of it describing in the notice of levy the property by quantity and with sufficient detail to identify the property levied on.

(5) The United States marshal shall file a copy of the notice of levy in the same manner as provided for judgments in section 3201(a)(1). The United States marshal shall serve a copy of the writ and notice of levy on—

(A) the debtor against whom the writ is issued; and

(B) the person who has possession of the property subject to the writ; in the same manner that a summons is served in a civil action and make the return thereof.

(e) Return of writ; duties of marshal; further return.—

(1) A United States marshal executing a writ of attachment shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days after the date of the levy.

(2) The return shall describe the property attached with sufficient certainty to identify it and shall state the location where it was attached, the date and time it was attached, and the disposition made of the property. If no property was attached, the return shall so state.

(3) If the property levied on is claimed, replevied under subsection (j)(2), or sold under section 3007 after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the property.

(4) If personal property is replevied, the United States marshal shall deliver the replevin bond to the clerk of the court to be filed in the action.

(f) Levy of attachment as lien on property; satisfaction of lien.—

(1) A levy on property under a writ of attachment under this section creates a lien in favor of the United States on the property or, in the case of perishable property sold under section 3007, on the proceeds of the sale.

(2) Such lien shall be ranked ahead of any other security interests perfected after the later of the time of levy and the time a copy of the notice of levy is filed under subsection (d)(5).

(3) Such lien shall arise from the time of levy and shall continue until a judgment in the action is obtained or denied, or the action is otherwise dismissed. The death of the debtor whose property is attached does not terminate the attachment lien. Upon issuance of a judgment in the action and registration under this chapter, the judgment lien so created relates back to the time of levy.

(g) Reduction or dissolution of attachment.—

(1) If an excessive or unreasonable attachment is made, the debtor may submit a motion to the court for a reduction of the amount of the attachment or its dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the property to be released, if after a hearing the court finds that the amount of the attachment is excessive or unreasonable or if the attachment is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the attachment if the amount of the debt is unliquidated and unascertainable by calculation.

(4) If any property claimed to be exempt is levied on, the debtor may, at any time after such levy, request that the court vacate such levy. If it appears to the court that the property so levied upon is exempt, the court shall order the levy vacated and the property returned to the debtor.

(h) Replevin of attached property by debtor; bond.—If attached property is not sold before judgment, the debtor may replevy such property or any part thereof by giving a bond approved by counsel for the United States or the court and payable to the United States in double the reasonable value of the property to be replevied or double the value of the claim, whichever is less.

(i) Preservation of personal property under attachment.—If personal property in custody of the United States marshal under a writ of attachment is not replevied, claimed, or sold, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(j) Judgment and disposition of attached property.—

(1) Judgment for the United States.—On entry of judgment for the United States, the court shall order the proceeds of personal property sold pursuant to section 3007 to be applied to the satisfaction of the judgment, and shall order the sale of any remaining personal property and any real property levied on to the extent necessary to satisfy the judgment.

(2) Judgment for the United States when personal property replevied.—With respect to personal property under attachment that is replevied, the judgment which may be entered shall be against the debtor against whom the writ of attachment is issued and also against the sureties on the debtor's replevin bond for the value of the property.

(3) Restoration of property and exoneration of replevin bond.—If the attachment is vacated or if the judgment on the claim for the debt

is for the person against whom the writ attachment is issued, the court shall order the property, or proceeds of perishable property sold under section 3007, restored to the debtor and shall exonerate any replevin bond.

Receivership

Sec. 3103. (a) Appointment of a receiver.—If the requirements of section 3101 are satisfied, a court may appoint a receiver for property in which the debtor has a substantial nonexempt interest if the United States shows reasonable cause to believe that there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, concealed, materially injured or damaged, or mismanaged.

(b) Powers of receiver.—

(1) The appointing court may authorize a receiver—

(A) to take possession of real and personal property and sue for, collect, and sell obligations upon such conditions and for such purposes as the court shall direct; and

(B) to administer, collect, improve, lease, repair or sell pursuant to section 3007 such real and personal property as the court shall direct.

A receiver appointed to manage residential or commercial property shall have demonstrable expertise in the management of these types of property.

(2) Unless expressly authorized by order of the court, a receiver shall have no power to employ attorneys, accountants, appraisers, auctioneers, or other professional persons.

(c) Duration of receivership.—A receivership shall not continue past the entry of judgment, or the conclusion of an appeal of such judgment, unless the court orders it continued under section 3203(e) or unless the court otherwise directs its continuation.

(d) Accounts; requirement to report.—A receiver shall keep written accounts itemizing receipts and expenditures, describing the property and naming the depository of receivership funds. The receiver's accounts shall be open to inspection by any person having an apparent interest in the property. The receiver shall file reports at regular intervals as directed by the court and shall serve the debtor and the United States with a copy thereof.

(e) Modification of powers; removal.—On motion of the receiver or on its own initiative, the court which appointed the receiver may remove the receiver or modify the receiver's powers at any time.

(f) Priority.—If more than one court appoints a receiver for particular property, the receiver first qualifying under law shall be entitled to take possession, control, or custody of the property.

(g) Compensation of receivers.—

(1) A receiver is entitled to such commissions, not exceeding 5 percent of the sums received and disbursed by him, as the court allows unless the court otherwise directs.

(2) If, at the termination of a receivership, there are no funds in the hands of a receiver, the court may fix the compensation of the receiver in accordance with the services rendered and may direct the party who moved for the appointment of the receiver to pay such compensation in addition to the necessary expenditures incurred by the receiver which remain unpaid.

(3) At the termination of a receivership, the receiver shall file a final accounting of the receipts and disbursements and apply for compensation setting forth the amount sought and the services rendered by the receiver.

Garnishment

Sec. 3104. (a) In general.—If the requirements of section 3101 are satisfied, a court may issue a writ of garnishment against property (excluding earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor in order to satisfy a claim for a debt. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in section 3205(c)(10).

(b) Writ.—

(1) Subsections (b)(2) and (c) of section 3205 shall apply with respect to garnishment under this section, except that for purposes of this section—

(A) earnings of the debtor shall not be subject to garnishment; and

(B) a reference in such subsections to a judgment debtor shall be deemed to be a reference to a debtor.

(2) The United States shall include in its application for a writ of garnishment—

(A) the amount of the claim asserted by the United States for a debt; and

(B) the date the writ is issued.

(c) Limitation.—The value of property garnished shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(1) property securing the debt; and

(2) property attached or in receivership, or income sequestered, under this subchapter. (28 U.S.C. 3104)

Sequestration

Sec. 3105. (a) Property subject to sequestration.—

(1) Any income from property in which the debtor has a substantial nonexempt interest may be sequestered pursuant to a writ of sequestration in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

(2) The amount of income sequestered shall not exceed the amount by which the sum of the amount of the debt claimed by the United States and the amount of interest and costs reasonably likely to be assessed against the debtor by the court exceeds the aggregate value of the nonexempt interest of the debtor in any—

(A) property securing the debt; and

(B) property attached, garnished, or in receivership under this subchapter.

(b) Availability of sequestration.—If the requirements of section 3101 are satisfied, a court shall issue a writ authorizing the United States to sequester income from property in which the debtor has a substantial nonexempt interest, as security for such judgment (and interest and costs) as the United States may recover on a claim for a debt—

(1) in an action on a contract, express or implied, against the debtor for payment of money, only if

the United States shows reasonable cause to believe that—

(A) the contract is not fully secured by real or personal property; or

(B) the value of the original security is substantially diminished, without any act of the United States or the person to whom the security was given, below the amount of the debt;

(2) in an action against the debtor for damages in tort;

(3) if the debtor resides outside the jurisdiction of the United States; or

(4) in an action to recover a fine, penalty, or tax.

(c) Issuance of writ; contents.—

(1) Subject to subsections (a) and (b), a writ of sequestration shall be issued by the court directing the United States marshal of the district where income described in subsection (a) is located to sequester the income.

(2) Several writs of sequestration may be issued at the same time, or in succession, and sent to different judicial districts until sufficient income is sequestered.

(3) The writ of sequestration shall contain—

(A) the date of the issuance of the writ;

(B) the identity of the court, the docket number of the action, and the identity of the cause of action;

(C) the name and last known address of the debtor;

(D) the amount to be secured by the sequestration; and

(E) a reasonable description of the income to be sequestered.

(d) Execution of writ.—

(1) The United States marshal receiving the writ shall proceed without delay to execute the writ.

(2) The United States marshal shall file a copy of the notice of sequestration in the same manner as provided for judgments in section 3201(a)(1). The United States marshal shall serve a copy of the writ and notice of sequestration on—

(A) the debtor against whom the writ is issued; and

(B) the person who has possession of the income subject to the writ; in the same manner that a summons is served in a civil action and make the return thereof.

(e) Deposit of sequestered income.—A person who has possession of the income subject to a writ of sequestration shall deposit such income with the clerk of the court, accompanied by a statement in writing stating the person's name, the name of the debtor, the amount of such income, the property from which such income is produced, and the period during which such income is produced.

(f) Return of writ; duties of marshal; further return.—

(1) A United States marshal executing a writ of sequestration shall return the writ with the marshal's action endorsed thereon or attached thereto and signed by the marshal, to the court from which it was issued, within 5 days alter the date of the execution.

(2) The return shall describe the income sequestered with sufficient certainty to identify it and shall state the location where it was sequestered, and the date and time it was sequestered. If no income was sequestered, the return shall so state.

(3) If sequestered income is claimed after the return, the United States marshal shall immediately make a further return to the clerk of the court showing the disposition of the income.

(g) Reduction or dissolution of sequestration.—

(1) If an excessive or unreasonable sequestration is made, the debtor may submit a motion to the court for a reduction of the amount of the sequestration or its

dissolution. Notice of such motion shall be served on the United States.

(2) The court shall order a part of the income to be released, if after a hearing the court finds that the amount of the sequestration is excessive or unreasonable or if the sequestration is for an amount larger than the sum of the liquidated or ascertainable amount of the debt and the amount of interest and costs likely to be taxed.

(3) The court shall dissolve the sequestration if the amount of the debt is unliquidated and unascertainable by calculation.

(h) Preservation of income under sequester.—If personal property in custody of the United States marshal under a writ of sequestration is not claimed, the court may make such order for its preservation or use as appears to be in the interest of the parties.

(i) Judgment and disposition of sequestered income.—

(1) Judgment for the United States.—On entry of judgment for the United States, the court shall order the sequestered income to be applied to the satisfaction of the judgment.

(2) Restoration of income.—If the sequestration is vacated or if the judgment on the claim for the debt is for the person against whom the writ of sequestration is issued, the court shall order the income restored to the debtor.

Subchapter C — Postjudgment Remedies

Judgment Liens

Sec. 3201. (a) Creation.—A judgment in a civil action shall create a lien on all real property of a judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) ofsection 6323(f) of the Internal Revenue Code of 1986. A lien created under this paragraph is for the amount necessary to satisfy the judgment, including costs and interest.

(b) Priority of lien.—A lien created under subsection (a) shall have priority over any other lien or encumbrance which is perfected later in time.

(c) Duration of lien; renewal.—(1) Except as provided in paragraph (2), a lien created under subsection (a) is effective, unless satisfied, for a period of 20 years.

(2) Such lien may be renewed for one additional period of 20 years upon filing a notice of renewal in the same manner as the judgment is filed and shall relate back to the date the judgment is filed if—

(A) the notice of renewal is filed before the expiration of the 20-year period to prevent the expiration of the lien; and

(B) the court approves the renewal of such lien under this paragraph.

(d) Release of judgment lien.—A judgment lien shall be released on the filing of a satisfaction of judgment or release of lien in the same manner as the judgment is filed to obtain the lien.

(e) Effect of lien on eligibility for federal grants, loans or programs.—A debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The agency of the United States that is responsible

for such grants and loans may promulgate regulations to allow for waiver of this restriction on eligibility for such grants, loans, and funds.

(f) Sale of property subject to judgment lien.—

(1) On proper application to a court, the court may order the United States to sell, in accordance with sections 2001 and 2002, any real property subject to a judgment lien in effect under this section.

(2) This subsection shall not preclude the United States from using an execution sale pursuant to section 3203(g) to sell real property subject to a judgment lien.

Enforcement of Judgments

Sec. 3202. (a) Enforcement remedies.—A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.

(b) Notice.—On the commencement by the United States of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

"Notice"

"You are hereby notified that this [property] is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of $[amount] for [reason of debt].

"In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

"[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

"If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.

"If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

"At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.

"If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

"Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information."

(c) Service.—A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

(d) Hearing.—By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—

(1) to the probable validity of any claim of exemption by the judgment debtor;

(2) to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; and

(3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—

(A) the probable validity of the claim for the debt which is merged in the judgment; and

(B) the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.

(e) Sale of property.—The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing.

Execution

Sec. 3203. (a) Property subject to execution.—All property in which the judgment debtor has a substantial nonexempt interest shall be subject to levy pursuant to a writ of execution. The debtor's earnings shall not be subject to execution while in the possession, custody, or control of the debtor's employer. Co-owned property shall be subject to execution to the extent such property is subject to execution under the law of the State in which it is located.

(b) Creation of execution lien.—A lien shall be created in favor of the United States on all property levied on under a writ of execution and shall date from the time of the levy. Such lien shall have priority over all subsequent liens and shall be for the aggregate amount of the judgment, costs, and interest. The execution lien on any real property as to which the United States has a judgment lien shall relate back to the judgment lien date.

(c) Writ of execution.—

(1) Issuance.—On written application of counsel for the United States, the court may issue a writ of execution. Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

(2) Form of writ.—

(A) General contents.—A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of postjudgment interest, the name of the judgment debtor, and the judgment debtor's last known address.

(B) Additional contents.—

(i) Except as provided in clauses (ii) and (iii), the writ shall direct the United States marshal to satisfy the judgment by levying on and selling property in which the judgment debtor has a substantial nonexempt interest, but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest.

(ii) A writ of execution issued on a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.

(iii) A writ of execution on a judgment for the recovery of personal property or its value shall direct the marshal, in case a delivery of the specific property cannot be had, to levy and collect such value out of any property in which the judgment debtor has a substantial nonexempt interest.

(d) Levy of execution.—

(1) In general.—Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d).

(2) Death of judgment debtor.—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ shall be recognized and enforced by the court for the district in which the estate of the deceased is located. The execution lien may be enforced—

(A) against the executor, administrator, or personal representative of the estate of the deceased; or

(B) if there be none, against the deceased's property coming to the heirs or devisees or at their option against cash in their possession, but only to the extent of the value of the property coming to them.

(3) Records of United States marshal.—

(A) A United States marshal receiving a writ of execution shall endorse thereon the exact hour and date of receipt.

(B) The United States marshal shall make a written record of every levy, specify the property on which levy is made, the date on which levy is made, and the marshal's costs, expenses, and fees.

(C) The United States marshal shall make a written return to the court on each writ of execution stating concisely what is done pursuant to the writ and shall deliver a copy to counsel for the United States who requests the writ. The writ shall be returned not more than—

(i) 90 days after the date of issuance if levy is not made; or

(ii) 10 days after the date of sale of property on which levy is made.

(e) Appointment of receiver.—Pending the levy of execution, the court may appoint a receiver to manage property described in such writ if there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, or mismanaged.

(f) Replevy; redemption.—

(1) Before execution sale.—

(A) Before execution sale, the United States marshal may return property to the judgment debtor any personal property taken in execution, on—

(i) satisfaction of the judgment, interest, and costs, and any costs incurred in connection with scheduling the sale; or

(ii) receipt from the judgment debtor of a bond—

(I) payable to the United States, with 2 or more good and sufficient sureties to be approved by the marshal, conditioned on the delivery of the property to the marshal at the time and place named in the bond to be sold under subsection (g); or

(II) for the payment to the marshal of a fair value thereof which shall be stated in the bond.

(B) A judgment debtor who sells or disposes of property replevied under subparagraph (A) shall pay the United States marshal the stipulated value of such property.

(C) If the judgment debtor fails to deliver such property to the United States marshal pursuant to the terms of the delivery described in subparagraph (A)(ii)(I) and fails to pay the United States marshal the stipulated value of such property, the United States marshal shall endorse the bond "forfeited" and return it to the court from which the writ of execution issued. If the judgment is not fully satisfied, the court shall issue a writ of execution against the judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, on which execution no delivery bond shall be taken, which instruction shall be endorsed on the writ.

(2) After execution sale.—The judgment debtor shall not be entitled to redeem the property after the execution sale.

(g) Execution sale.—

(1) General procedures.—An execution sale under this section shall be conducted in a commercially reasonable manner—

(A) Sale of real property.—

(i) In general.—

(I) Except as provided in clause (ii), real property, or any interest therein, shall be sold, after the expiration of the 90-day period beginning on the date of levy under subsection (d), for cash at public auction at the courthouse of the county, parish, or city in which the greater part of the property is located or on the premises or some parcel thereof.

(II) The court may order the sale of any real property after the expiration of the 30-day period beginning on the date of levy under subsection (d) if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during the 90-day period beginning on the date of levy.

(III) The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first publication shall appear not less than 25 days preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, the time and place of sale, and a brief description of the property to be sold, sufficient to identify the property (such as a street address for urban property and the survey identification and location for rural property), but it shall not be necessary for the notice to contain field notes. Such property shall be open for inspection and appraisal, subject to the judgment debtor's reasonable objections, for a reasonable period before the day of sale.

(IV) The United States marshal shall serve written notice of public sale by personal delivery, or certified or registered mail, to each person whom the marshal has reasonable cause to believe, after a title search is conducted by the United States, has an interest in property under execution, including lienholders, co-owners, and tenants, at least 25 days before the day of sale, to the last known address of each such person.

(ii) Sale of city lots.—If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel shall be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

(iii) Sale of rural property.—If the real property is not located in a city or town, the judgment debtor may—

(I) divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court

(II) furnish a survey of such prepared by a registered surveyor; and

(III) designate the order in which those lots shall be sold. When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

(B) Sale of personal property.—

(i) Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, at the courthouse of the county, parish or city wherein it is located, or at another location if ordered by the court. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale unless—

(I) the property consists of shares of stock in corporations;

(II) by reason of the nature of the property, it is impractical to exhibit it; or

(III) the debtor's interest in the property does not include the right to the exclusive possession.

(ii)(I) Except as provided in subclause (II), personal property, or any interest therein, shall be sold after the expiration of the 30-day period beginning on the date of levy under subsection (d).

(II) The court may order the sale of any personal property before the expiration of such 30-day period if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during such 30-day period.

(iii) Notice of the time and place of the sale of personal property shall be given by the United States marshal by posting notice thereof for not less than 10 days successively immediately before the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made.

(iv) The United States marshal shall serve written notice of public sale by personal delivery, or registered or certified mail at their last known addresses, on the judgment debtor and other persons who the marshal has reasonable cause to believe, after diligent inquiry, have a substantial interest in the property.

(2) Postponement of sale.—The United States marshal may postpone an execution sale from time to time by continuing the required posting or publication of notice until the date to which the sale is postponed, and appending, at the foot of each such notice of a current copy of the following:

"The above sale is postponed until _____ the day of 19___, at o'clock _____ ___.M., _____, United States Marshal for the District of _____, _____ by Deputy, dated _____.

(3) Sale procedures.—

(A) Bidding requirements.—A bidder at an execution sale of property, may be required by the United States marshal to make a cash deposit of as much as 20 percent of the sale price proposed before the bid is accepted.

(B) Resale of property.—If the terms of the sale are not complied with by the successful bidder, the United States marshal shall proceed to sell the property again on the same day if there is sufficient time. If there is insufficient time, the marshal shall schedule and notice a subsequent sale of the property as provided in paragraphs (1) and (2).

(4) Rights and liabilities of purchasers.—

(A) Transfer of title after sale.—

(i) If property is sold under this subsection and the successful bidder complies with the terms of the sale, the United States marshal shall execute and deliver all documents necessary to transfer to the successful bidder, without warranty, all the rights, titles, interests, and claims of the judgment debtor in the property.

(ii) If the successful bidder dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the successful bidder's estate. Such delivery to the estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(B) Purchaser considered innocent purchaser without notice.—The purchaser of property sold under execution shall be deemed to be an innocent purchaser

without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the judgment debtor.

(C) Liability of successful bidder who fails to comply.—A successful bidder at an execution sale who fails to comply with the terms of the sale shall forfeit to the United States the cash deposit or, at the election of the United States, shall be liable to the United States, on a subsequent sale of the property, for all net losses incurred by the United States as a result of such failure.

(h) Disposition of proceeds; further levy.—

(1) Distribution of sale proceeds.—

(A) The United States marshal shall first deliver to the judgment debtor such amounts to which the judgment debtor is entitled from the sale of partially exempt property.

(B) The United States marshal shall next deduct from the proceeds of an execution sale of property an amount equal to the reasonable expenses incurred in making the levy of execution and in keeping and maintaining the property.

(C) Except as provided in subparagraph (D), the United States marshal shall deliver the balance of the proceeds to the counsel for the United States as soon as practicable.

(D) If more proceeds are received from the execution sale than is necessary to satisfy the executions held by the United States marshal, the marshal shall pay the surplus to the judgment debtor.

(2) Further levy if execution not satisfied.—If the proceeds of the execution sale of the property levied on are insufficient to satisfy the execution, the United States marshal shall proceed on the same writ of execution to levy other property of the judgment debtor.

Installment Payment Order

Sec. 3204. (a) Authority to issue order.—Subject to subsection (c), if it is shown that the judgment debtor—

(1) is receiving or will receive substantial nonexempt disposable earnings from self employment that are not subject to garnishment; or

(2) is diverting or concealing substantial earnings from any source, or property received in lieu of earnings;

then upon motion of the United States and notice to the judgment debtor, the court may, if appropriate, order that the judgment debtor make specified installment payments to the United States. Notice of the motion shall be served on the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested. In fixing the amount of the payments, the court shall take into consideration after a hearing, the income, resources, and reasonable requirements of the judgment debtor and the judgment debtor's dependents, any other payments to be made in satisfaction of judgments against the judgment debtor, and the amount due on the judgment in favor of the United States.

(b) Modification of order.—On motion of the United States or the judgment debtor, and upon a showing that the judgment debtor's financial circumstances have changed or that assets not previously disclosed by the judgment debtor have been discovered, the court may modify the amount of payments, alter their frequency, or require full payment.

(c) Limitation.—

(1) An order may not be issued under subsection (a), and if so

issued shall have no force or effect, against a judgment debtor with respect to whom there is in effect a writ of garnishment of earnings issued under this chapter and based on the same debt.

(2) An order may not be issued under subsection (a) with respect to any earnings of the debtor except nonexempt disposable earnings.

Garnishment

Sec. 3205. (a) In general.—A court may issue a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor. Co-owned property shall be subject to garnishment to the same extent as co-owned property is subject to garnishment under the law of the State in which such property is located. A court may issue simultaneous separate writs of garnishment to several garnishees. A writ of garnishment issued under this subsection shall be continuing and shall terminate only as provided in subsection (c)(10).

(b) Writ.—

(1) General requirements.—The United States shall include in its application for a writ of garnishment—

(A) the judgment debtor's name, social security number (if known), and last known address;

(B) the nature and amount of the debt owed and the facts that not less than 30 days has elapsed since demand on the debtor for payment of the debt was made and the judgment debtor has not paid the amount due; and

(C) that the garnishee is believed to have possession of property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest.

(2) Proper garnishee for particular property.—

(A) If the property consists of a right to or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the president or treasurer of the association shall be the garnishee.

(B) If the property consists of an interest in a partnership interest, any partner other than the debtor shall be the garnishee on behalf of the partnership.

(C) If the property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document, or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee, except that—

(i) subject to clause (ii), in the case of a security which is transferable in the manner set forth in State law, the entity that carries on its books an account in the name of the debtor in which is reflected such security shall be the garnishee; and

(ii) notwithstanding clause (i), the pledgee shall be the garnishee if such security is pledged.

(c) Procedures applicable to writ.—

(1) Court determination.—If the court determines that the requirements of this section are satisfied, the court shall issue appropriate writ of garnishment.

(2) Form of writ.—The writ shall state—

(A) The nature and amount of the debt, and any cost and interest owed with respect to the debt.

(B) The name and address of the garnishee.

(C) The name and address of counsel for the United States.

(D) The last known address of the judgment debtor.

(E) That the garnishee shall answer the writ within 10 days of service of the writ.

(F) That the garnishee shall withhold and retain any property in which the debtor has a substantial nonexempt interest and for which the garnishee is or may become indebted to the judgment debtor pending further order of the court.

(3) Service of writ.—The United States shall serve the garnishee and the judgment debtor with a copy of the writ of garnishment and shall certify to the court that this service was made. The writ shall be accompanied by—

(A) an instruction explaining the requirement that the garnishee submit a written answer to the writ; and

(B) instructions to the judgment debtor for objecting to the answer of the garnishee and for obtaining a hearing on the objections.

(4) Answer of the garnishee.—In its written answer to the writ of garnishment, the garnishee shall state under oath—

(A) whether the garnishee has custody, control or possession of such property;

(B) a description of such property and the value of such interest;

(C) a description of any previous garnishments to which such property is subject and the extent to which any remaining property is not exempt; and

(D) the amount of the debt the garnishee anticipates owing to the judgment debtor in the future and whether the period for payment will be weekly or another specified period.

The garnishee shall file the original answer with the court issuing the writ and serve a copy on the debtor and counsel for the United States.

(5) Objections to answer.—Within 20 days after receipt of the answer, the judgment debtor or the United States may file a written objection to the answer and request a hearing. The party objecting shall state the grounds for the objection and bear the burden of proving such grounds. A copy of the objection and request for a hearing shall be served on the garnishee and all other parties. The court shall hold a hearing within 10 days after the date the request is received by the court, or as soon thereafter as is practicable, and give notice of the hearing date to all the parties.

(6) Garnishee's failure to answer or pay.—If a garnishee fails to answer the writ of garnishment or to withhold property in accordance with the writ, the United States may petition the court for an order requiring the garnishee to appear before the court to answer the writ and to so withhold property before the appearance date. If the garnishee fails to appear, or appears and fails to show good cause why the garnishee failed to comply with the writ, the court shall enter judgment against the garnishee for the value of the judgment debtor's nonexempt interest in such property (including nonexempt disposable earnings). The court may award a reasonable attorney's fee to the United States and against the garnishee if the writ is not answered within the time specified therein and a petition requiring the garnishee to appear is filed as provided in this section.

(7) Disposition order.—After the garnishee files an answer and if no hearing is requested within the required time period, the court shall

promptly enter an order directing the garnishee as to the disposition of the judgment debtor's nonexempt interest in such property. If a hearing is timely requested, the order shall be entered within 5 days after the hearing, or as soon thereafter as is practicable.

(8) Priorities.—Judicial orders and garnishments for the support of a person shall have priority over a writ of garnishment issued under this section. As to any other writ of garnishment or levy, a garnishment issued under this section shall have priority over writs which are issued later in time.

(9) Accounting.—

(A) While a writ of garnishment is in effect under this section, the United States shall give an annual accounting on the garnishment to the judgment debtor and the garnishee.

(B) Within 10 days after the garnishment terminates, the United States shall give a cumulative written accounting to the judgment debtor and garnishee of all property it receives under a writ of garnishment. Within 10 days after such accounting is received, the judgment debtor or garnishee may file a written objection to the accounting and a request for hearing. The party objecting shall state grounds for the objection. The court shall hold a hearing on the objection within 10 days after the court receives the request for a hearing, or as soon thereafter as is practicable.

(10) Termination of garnishment.—A garnishment under this chapter is terminated only by—

(A) a court order quashing the writ of garnishment;

(B) exhaustion of property in the possession, custody, or control of the garnishee in which the debtor has a substantial nonexempt interest (including nonexempt disposable earnings), unless the garnishee reinstates or reemploys the judgment debtor within 90 days after the judgment debtor's dismissal or resignation; or

(C) satisfaction of the debt with respect to which the writ is issued.

Discharge

Sec. 3206. A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.

Subchapter D — Fraudulent Transfers Involving Debts

Definitions

Sec. 3301. As used in this subchapter:

(1) "Affiliate" means—

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities—

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the

debtor, other than the person who holds securities—

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but does not include—

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or co-owner.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Insider" includes—

(A) if the debtor is an individual—

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in clause (ii); or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in clause (iv); or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in clause (iii); or

(v) a person in control of the debtor.

(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(E) a managing agent of the debtor.

(4) "Lien" means a charge against or an interest in property to secure payment of a debt and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien, or a statutory lien.

(5) "Relative" means an individual related, by consanguinity or adoption, within the third degree as determined by the common law, a spouse, or an individual so related to a spouse within the third degree as so determined.

(6) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(7) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained in legal or equitable proceeding.

Insolvency

Sec. 3302. (a) In general.—Except as provided in subsection (c), a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) Presumption.—A debtor who is generally not paying debts as they become due is presumed to be insolvent.

(c) Calculation.—A partnership is insolvent under subsection (a) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of—

(1) all of the partnership's assets; and

(2) the sum of the excess of the value of each general partner's non-partnership assets over the partner's non-partnership debts.

(d) Assets.—For purposes of this section, assets do not include property that is transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this subchapter.

(e) Debts.—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

Value for Transfer or Obligation

Sec. 3303. (a) Transaction.—Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) Reasonably equivalent value.—For the purposes of sections 3304 and 3307, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, nonconclusive foreclosure sale or execution of a power of sale for the acquisition or disposition of such interest upon default under a mortgage, deed of trust, or security agreement.

(c) Present Value.—A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Transfer Fraudulent as to a Debt to the United States

Sec. 3304. (a) Debt arising before transfer.—Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if—

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes

insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) Transfers without regard to date of judgment.—

(1) Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(2) In determining actual intent under paragraph (1), consideration may be given, among other factors, to whether—

(A) the transfer or obligation was to an insider;

(B) the debtor retained possession or control of the property transferred after the transfer;

(C) the transfer or obligation was disclosed or concealed;

(D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(E) the transfer was of substantially all the debtor's assets;

(F) the debtor absconded;

(G) the debtor removed or concealed assets;

(H) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(I) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(J) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(K) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

When Transfer is Made or Obligation is Incurred

Sec. 3305. For the purposes of this subchapter:

(1) A transfer is made—

(A) with respect to an asset that is real property (other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset), when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire, otherwise than under this subchapter, a judicial lien that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as approved in paragraph (1) and the transfer is not so perfected before the commencement of an action or proceeding for relief under this subchapter, the transfer is deemed made immediately before the commencement of the action or proceeding.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred—

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing executed by the obligor, when such writing is delivered to or for the benefit of the obligee.

Remedies of the United States

Sec. 3306. (a) In general.—In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain—

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;

(2) a remedy under this chapter against the asset transferred or other property of the transferee; or

(3) any other relief the circumstances may require.

(b) Limitation.—A claim for relief with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought—

(1) under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant

(2) under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; or

(3) under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred.

Defenses, Liability, and Protection of Transferee

Sec. 3307. (a) Good faith transfer.—A transfer or obligation is not voidable under section 3304(b) with respect to a person who took in good faith and for a reasonably equivalent value or against any transferee or obligee subsequent to such person.

(b) Limitation.—Except as provided in subsection (d), to the extent a transfer is voidable in an action or proceeding by the United States under section 3306(a)(1), the United States may re- cover judgment for the value of the asset transferred, but not to exceed the judgment on a debt. The judgment may be entered against—

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee, other than a good faith transferee who took for value or any subsequent transferee of such good-faith transferee.

(c) Value of assessment.—For purposes of subsection (b), the value of the asset is the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Rights of good faith transferees and obligees.— Notwithstanding voidability of a transfer or an obligation under this subchapter, a

good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to—

(1) a lien on or a right to retain any interest in the asset transferred;

(2) enforcement of any obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) Exceptions.—A transfer is not voidable under section 3304(a) or section 3304(b)(2) if the transfer results from—

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9 of the Uniform Commercial Code or its equivalent in effect in the State where the property is located.

(f) Limitation of voidability.—A transfer is not voidable under section 3304(a)(2)—

(1) to the extent the insider gives new value to or for the benefit of the debtor after the transfer is made unless the new value is secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured both present value given for that purpose and an antecedent debt of the debtor.

Supplementary Provision

Sec. 3308. Except as provided in this subchapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause shall apply to actions and proceedings under this subchapter.

ISTEA
(Intermodal Surface Transportation Efficiency Act of 1991)

- **Act of December 18, 1991 (P.L. 102-240, 105 Stat. 1930; 23 U.S.C. 101 et seq.)**

Title I – Surface Transportation (related to highways)
Title II – Highway Safety
Title III – Federal Transit Act Amendments of 1991
Title IV – Motor Carrier Act of 1991
Title V – Intermodal Transportation
Title VI – Research
Title VII – Air Transportation
Title VIII – Extension of Highway–Related Taxes and Highway Trust Fund

Note—Title I covers the Federal–aid Highway Program including highways and bridges, Federal lands highways, and special projects such as Rural and Urban Access, Priority Intermodal and Innovative Projects. The Scenic Byways Programs and the National Recreational Trails Funding Program are also part of this Title.

The Forest Service is primarily involved in the provisions of Title I as it relates to Statewide strategic planning (23 U.S.C. 135), the Federal Lands Highways Program (23 U.S.C. 204), Forest Development Roads and Trails (23 U.S.C. 205), the Bicycle Transportation and Pedestrian Walkways Program (23 U.S.C. 217), the Highway Bridge Replacement and Rehabilitation Program (23 U.S.C. 144), the Scenic Byways Program and the National Recreational Trails Funding Program (included below). The forest highway provisions are incorporated into P.L. 85–767, Forest Highways. For Highway Safety Act see P.L. 89–564

Scenic Byways
(Intermodal Surface Transportation Efficiency Act of 1991)

- **Act of December 18, 1991 (P.L. 102-240, Title I, Part A, 105 Stat. 1996; 23 U.S.C. 101(note))**

Scenic Byways Program

Sec. 1047. (a) Scenic Byways Advisory Committee.—

(1) Establishment.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish in the Department of Transportation an advisory committee to assist the Secretary with respect to establishment of a national scenic byways program under title 23, United States Code.

(2) Membership.—The advisory committee established under this section shall be composed of 17 members as follows:

(A) The Administrator of the Federal Highway Administration or the designee of the Administrator who shall serve as chairman of the advisory committee.

(B) The Chief of the Forest Service of the Department of Agriculture or the designee of the Chief.

(C) The Director of the National Park Service of the Department of the Interior or the designee of the Director.

(D) The Director of the Bureau of Land Management of the Department of the Interior or the designee of the Director.

(E) The Under Secretary for Travel and Tourism of the Department of Commerce or the designee of the Under Secretary.

(F) The Assistant Secretary for Indian Affairs of the Department of the Interior or the designee of the Assistant Secretary.

(G) 1 individual appointed by the Secretary who is specially qualified to represent the interest of conservationists on the advisory committee.

(H) 1 individual appointed by the Secretary of Transportation who is specially qualified to represent the interests of recreational users of scenic byways on the advisory committee.

(I) 1 individual appointed by the Secretary who is specially qualified to represent the interests of the tourism industry on the advisory committee.

(J) 1 individual appointed by the Secretary who is specially qualified to represent the interest of historic preservationists on the advisory committee.

(K) 1 individual appointed by the Secretary who is specially qualified to represent the interest of highway users on the advisory committee.

(L) 1 individual appointed by the Secretary to represent State highway and transportation officials.

(M) 1 individual appointed by the Secretary to represent local highway and transportation officials.

(N) 1 individual appointed by the Secretary who is specially qualified to serve on the advisory committee as a planner.

(O) 1 individual appointed by the Secretary who is specially qualified to represent the motoring public.

(P) 1 individual appointed by the Secretary who is specially qualified to represent groups interested in scenic preservation.

(Q) 1 individual appointed by the Secretary who represents the outdoor advertising industry.

Individuals appointed as members of the advisory committee under subparagraphs (G) through (P) may be State and local government officials. Members shall serve without compensation other than for reasonable expenses incident to functions of the advisory committee.

(3) Functions.—The advisory committee established under this subsection shall develop and make to the Secretary recommendations regarding minimum criteria for use by State and Federal agencies in designation highways as scenic byways and as all-American roads for purposes of a national scenic byways program to be established under title 23, United States Code. Such recommendations shall include recommendations on the following:

(A) Consideration of the scenic beauty and historic significance of highways proposed for designation as scenic byways and all-American roads and the areas surrounding such highways.

(B) Operation and management standards for highways designated as scenic byways and all-American roads, including strategies for maintaining or improving the qualities for which a highway is designated as a scenic byway or all-American road, for protecting and enhancing the landscape and view corridors surrounding such a highway, and for minimizing traffic congestion on such a highway.

(C)(i) Standards for scenic byway-related signs, including those which identify highways as scenic byways and all-American roads.

(ii) The advisability of uniform signs identifying highways as components of the scenic byway system.

(D) Standards for maintaining highway safety on the scenic byway system.

(E) Design review procedures for location of highway facilities, landscaping, and travelers' facilities on the scenic byway system.

(F) Procedures for reviewing and terminating the designation of a highway designated as a scenic byway.

(G) Such other matters as the advisory committee may deem appropriate.

(H) Such other matters for which the Secretary may request recommendations.

(4) Report.—Not later than 18 months after the date of the enactment of this Act, the advisory committee established under this section shall submit to the Secretary and Congress a report containing the recommendations described in paragraph (3).

(b) Technical and Financial Assistance.—The Secretary shall provide technical assistance to the States (as such term is defined under section 101 of title 23, United States Code) and shall make grants to the States for the planning, design, and development of State scenic byway programs.

(c) Federal Share.—The Federal share payable for the costs of planning, design, and development of State scenic byway programs under this section shall be 80 percent.

(d) Funding.—There shall be available to the Secretary for carrying out this section (other than subsection (f), out of the Highway Trust Fund (other than the Mass Transit Account), $1,000,000 for fiscal year 1992, $3,000,000 for fiscal year 1993, $4,000,000 for fiscal year 1994, and $14,000,000 for each of the fiscal years 1995,

1996, and 1997. Such sums shall remain available until expended.

(e) Contract Authority.—Notwithstanding any other provision of law, approval by the Secretary of a grant under this section shall be deemed a contractual obligation of the United States for payment of the Federal share of the cost of activities for which the grant is being made.

(f) Interim Scenic Byways Program.—

(1) Grant Program.—During fiscal years 1992, 1993, and 1994, the Secretary may make grants to any State which has a scenic highway program for carrying out eligible projects on highways which the State has designated as scenic byways.

(2) Priority Projects.—In making grants under paragraph (1), the Secretary shall give priority to—

(A) those eligible projects which are included in a corridor management plan for maintaining scenic, historic, recreational, cultural, and archeological characteristics of the corridor while providing for the accommodation of increased tourism and development of related amenities;

(B) those eligible projects for which a strong local commitment is demonstrated for implementing the management plans and protecting the characteristics for which the highway is likely to be designated as a scenic byway;

(C) those eligible projects which are included in programs which can serve as models for other States to follow when establishing and designing scenic byways on an intrastate or interstate basis; and

(D) those eligible projects in multi-State corridors where the States submit joint applications.

(3) Eligible projects.—The following are projects which are eligible for Federal assistance under this subsection:

(A) Planning, design, and development of State scenic byway programs.

(B) Making safety improvements to a highway designated as a scenic byway under this subsection to the extent such improvements are necessary to accommodate increased traffic, and changes in the types of vehicles using the highway, due to such designation.

(C) Construction along the highway of facilities for the use of pedestrians and bicyclists, rest areas, turnouts, highway shoulder improvements, passing lanes, overlooks, and interpretive facilities.

(D) Improvements to the highway which will enhance access to an area for the purpose of recreation, including water-related recreation.

(E) Protecting historical and cultural resources in areas adjacent to the highway.

(F) Developing and providing tourist information to the public, including interpretive information about the scenic byway.

(4) Federal Share.—The Federal share payable for the costs of carrying out projects and developing programs under this subsection with funds made available pursuant to this subsection shall be 80 percent.

(5) Funding.—There shall be available to the Secretary for carrying out this subsection, out of the Highway Trust Fund (other than the Mass Transit Account), $10,000,000 for fiscal year 1992, $10,000,000 for fiscal year 1993, and $10,000,000 for fiscal year 1994. Such sums shall remain available until expended.

(g) Limitation.—The Secretary shall not make a grant under this section for any project which would not protect the scenic, historic, recreational, cultural, natural, and archeological integrity of the highway and adjacent area. The Secretary may not use more than

10 percent of the funds authorized for each fiscal year under subsection (f)(5) for removal of any outdoor advertising sign, display, or device.

(h) Treatment of Scenic Highways in Oregon.—For purposes of this section, a highway designated as a scenic highway in the State of Oregon shall be treated as a scenic byway. (23 U.S.C. 101(note))

Symms National Recreational Trails Act of 1991 (Intermodal Surface Transportation Efficiency Act of 1991)

- **Act of December 18, 1991 (P.L. 102-240, Title I, Subpart B, 105 Stat. 2064; 16 U.S.C. 1261(note), 1261, 1262)**

PART B-NATIONAL RECREATIONAL TRAILS FUND ACT

Short Title

Sec. 1301. This part may be cited as the "Symms National Recreational Trails Act of 1991". (16 U.S.C. 1261(note))

National Recreational Trails Funding Program

Sec. 1302. (a) In general.—The Secretary, in consultation with the Secretary of the Interior, using amounts available in the Fund, shall administer a program allocating moneys to the States for the purposes of providing and maintaining recreational trails.

(b) Statement of Intent.—Moneys made available under this part are to be used on trails and trail-related projects which have been planned and developed under the otherwise existing laws, policies and administrative procedures within each State, and which are identified in, or which further a specific goal of, a trail plan included or referenced in a Statewide Comprehensive Outdoor Recreation Plan required by the Land and Water Conservation Fund Act.

(c) State Eligibility.—

(1) Transitional provision.—Until the date that is 3 years after the date of enactment of this part, a State shall be eligible to receive moneys under this Act only if such State's application proposes to use the moneys as provided in subsection (e).

(2) Permanent provision.—On and after the date that is three years after the date of the enactment of this Act, a State shall be eligible to receive moneys under this part only if—

(A) a recreational trail advisory board on which both motorized and nonmotorized recreational trail users are represented exists within the State;

(B) in the case of a State that imposes a tax on nonhighway recreational fuel, the State by law reserves a reasonable estimation of the revenues from that tax for use in providing and maintaining recreational trails;

(C) the Governor of the State has designated the State official or officials who will be responsible for administering moneys received under this Act; and

(D) the State's application proposes to use moneys received under this part as provided in subsection (e).

(d) Allocation of Moneys in the Fund.—

(1) Administrative costs.—No more than 3 percent of the expenditures made annually from the Fund may be used to pay the cost to the Secretary for—

(A) approving applications of States for moneys under this part;

(B) paying expenses of the National Recreational Trails Advisory Committee;

(C) conducting national surveys of nonhighway recreational fuel consumption by State, for use in making determinations and

estimations pursuant to this part; and

(D) if any such funds remain unexpended, research on methods to accommodate multiple trail uses and increase the compatibility of those uses, information dissemination, technical assistance, and preparation of a national trail plan as required by the National Trails System Act (16 U.S.C. 1241 et al.).

(2) Allocation to States.—

(A) Amount.—Amounts in the Fund remaining after payment of the administrative costs described in paragraph (1), shall be allocated and paid to the States annually in the following proportions:

(i) Equal amounts.—50 percent of such amounts shall be allocated equally among eligible States.

(ii) Amounts Proportionate to Nonhighway Recreational Fuel Use.—50 percent of such amounts shall be allocated among eligible States in proportion to the amount of nonhighway recreational fuel use during the preceding year in each such States respectively.

(B) Use of data.—In determining amounts of nonhighway recreational fuel use for the purpose of subparagraph (A)(ii), the Secretary may consider data on off-highway vehicle registrations in each State.

(3) Limitation on obligations.—The provisions of paragraphs (1) and (2) notwithstanding, the total of all obligations for recreational trails under this section shall not exceed-

(A) $30,000,000 for fiscal year 1992;

(B) $30,000,000 for fiscal year 1993;

(C) $30,000,000 for fiscal year 1994;

(D) $30,000,000 for fiscal year 1995;

(E) $30,000,000 for fiscal year 1996; and

(F) $30,000,000 for fiscal year 1997;

(e) Use of allocated moneys.—

(1) Permissible uses.—A State may use moneys received under this part for-

(A) in an amount not exceeding 7 percent of the amount of moneys received by the State, administrative costs of the State;

(B) in an amount not exceeding 5 percent of the amount of moneys received by the State, operation of environmental protection and safety education programs relating to the use of recreational trails;

(C) development of urban trail linkages near homes and workplaces;

(D) maintenance of existing recreational trails, including the grooming and maintenance of trails across snow;

(E) restoration of areas damaged by usage of recreational trails and back country terrain;

(F) development of trail-side and trail-head facilities that meet goals identified by the National Recreational Trails Advisory Committee;

(G) provision of features which facilitate the access and use of trails by persons with disabilities;

(H) acquisition of easements for trails, or for trail corridors identified in a State trail plan;

(I) acquisition of fee simple title to property from a willing seller, when the objective of the acquisition cannot be accomplished by acquisition of an easement or by other means;

(J) construction of new trails on State, county, municipal, or private lands, where a recreational need for such construction is shown; and

(K) only as otherwise permissible, and where necessary and required by a State Comprehensive Outdoor Recreation plan, construc-

tion of new trails crossing Federal lands, where such construction is approved by the administering agency of the State, and the Federal agency or agencies charged with management of all impacted lands, such approval to be contingent upon compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.).

(2) Use not permitted.—A State may not use moneys received under this part for—

(A) condemnation of any kind of interest in property;

(B)(i) construction of any recreational trail on National Forest System lands for motorized uses unless such lands—

(I) have been allocated for uses other than wilderness by an approved Forest land and resource management plan or have been released to uses other than wilderness by an Act of Congress, and

(II) such construction is otherwise consistent with the management direction in such approved land and resource management plan; or

(ii) construction of any recreational trail on Bureau of Land Management lands for motorized uses unless such lands—(I) have been allocated for uses other than wilderness by an approved Bureau of Land Management resource management plan or have been released to uses other than wilderness by an Act of Congress, and

(II) such construction is otherwise consistent with the management direction in such approved management plans; or

(C) upgrading, expanding, or otherwise facilitating motorized use or access to trails predominantly used by nonmotorized trail users and on which, as of May 1, 1991, motorized use is either prohibited or has not occurred.

(3) Grants.—

(A) In general.—A State may provide moneys received under this part to make grants to private individuals, organizations, city and county governments, and other government entities as approved by the State after considering guidance from the recreational trail advisory board satisfying the requirements of subsection (c)(2)(A), for uses consistent with this section.

(B) Compliance.—A State that issues such grants under subparagraph

(A) shall establish measures to verify that recipients comply with the specified conditions for the use of grant moneys.

(4) Assured access to funds.—Except as provided under paragraphs (6) and (8)(B), not less than 30 percent of the moneys received annually by a State under this part shall be reserved for uses relating to motorized recreation, and not less than 30 percent of those moneys shall be reserved for uses relating to non-motorized recreation.

(5) Diversified trail use.—(A) Requirement.—To the extent practicable and consistent with other requirements of this section, a State shall expend moneys received under this part in a manner that gives preference to project proposals which—

(i) provide for the greatest number of compatible recreational purposes including, but not limited to, those described under the definition of "recreational trail" in subsection (g)(5); or

(ii) provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use.

This paragraph shall remain effective until such time as a State has allocated not less than 40 percent of moneys received under this part in the aforementioned manner.

(B) Compliance.—The State shall receive guidance for determining compliance with subparagraph (A) from the recreational trail advisory board satisfying the requirements of subsection (c)(2)(A).

(6) Small state exclusion.—Any State with a total land area of less than 3,500,000 acres, and in which nonhighway recreational fuel use accounts for less than 1 percent of all such fuel use in the United States, shall be exempted from the requirements of paragraph (4) of this subsection upon application to the Secretary by the State demonstrating that it meets the conditions of this paragraph.

(7) Continuing recreational use.—At the option of each State, moneys made available pursuant to this part may be treated as Land and Water Conservation Fund moneys for the purposes of section 6(f)(3) of the Land and Water Conservation Fund Act.

(8) Return of moneys not expended.—

(A) Except as provided in subparagraph (B), moneys paid to a State that are not expended or dedicated to a specific project within 4 years after receipt for the purposes stated in this subsection shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (d).

(B) If approved by the State recreational trail advisory board satisfying the requirements of subsection (c)(2)(A), may be exempted from the requirements of paragraph (4) and expended or committed to projects for purposes otherwise stated in this subsection for a period not to extend beyond 4 years after receipt, after which any remaining moneys not expended or dedicated shall be returned to the Fund and shall thereafter be reallocated under the formula stated in subsection (d).

(f) Coordination of Activities.—

(1) Cooperation by Federal Agencies.—Each agency of the United States Government that manages land on which a State proposes to construct or maintain a recreation trail pursuant to this part is encouraged to cooperate with the State and the Secretary in planning and carrying out the activities described in subsection (e). Nothing in this part diminishes or in any way alters the land management responsibilities, plans and policies established by such agencies pursuant to other applicable laws.

(2) Cooperation by private persons.—

(A) Written assurances.—As a condition to making available moneys for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the property will cooperate with the State and participate as necessary in the activities to be conducted.

(B) Public access.—Any use of a State's allocated moneys on private lands must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by those moneys.

(g) Definitions.—For the purposes of this section—

(1) Eligible State.—The term "eligible State" means a State that meets the requirements stated in subsection (c).

(2) Fund.—The term "Fund" means the National Recreational Trails Trust Fund established by

section 9511 of the Internal Revenue Code of 1986.

(3) Nonhighway Recreational Fuel.—The term "nonhighway recreational fuel" has the meaning stated in section 9503(c)(6) of the Internal Revenue Code of 1986.

(4) Secretary.—The term "Secretary" means the Secretary of Transportation.

(5) Recreational trail.—The term "recreational trail" means a thoroughfare or track across land or snow, used for recreational purposes such as bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, aquatic or water activity and vehicular travel by motorcycle, four-wheel drive or all-terrain off-road vehicles, without regard to whether it is a "National Recreation Trail" designated under section 4 of the National Trails System Act (16 U.S.C. 1243).

(6) Motorized recreation.—The term "motorized recreation" may not include motorized conveyances used by persons with disabilities, such as self-propelled wheelchairs, at the discretion of each State. (16 U.S.C. 1261)

National Recreational Trails Advisory Committee

Sec. 1303. (a) Establishment.—There is established the National Recreational Trails Advisory Committee.

(b) Members.—There shall be 11 members of the advisory committee, consisting of-

(1) 8 members appointed by the Secretary from nominations submitted by recreational trail user organizations, one each representing the following recreational trail uses:

(A) hiking,

(B) cross-country skiing,

(C) off-highway motorcycling,

(D) snowmobiling,

(E) horseback riding,

(F) all-terrain vehicle riding,

(G) bicycling, and

(H) four-wheel driving;

(2) an appropriate official of government with a background in science or natural resources management, including any official of State or local government, designated by the Secretary;

(3) 1 member appointed by the Secretary from nominations submitted by water trail user organizations; and

(4) 1 member appointed by the Secretary from nominations submitted by hunting and fishing enthusiast organizations.

(c) Chairman.—The Chair of the advisory committee shall be the government official referenced in subsection (b)(2), who shall serve as a non-voting member.

(d) Support for committee action.—Any action, recommendation, or policy of the advisory committee must be supported by at least five of the members appointed under subsection (b)(1).

(e) Terms.—Members of the advisory committee appointed by the Secretary shall be appointed for terms of three years, except that the members filling five of the eleven positions shall be initially appointed for terms of two years, with subsequent appointments to those positions extending for terms of three years.

(f) Duties.—The advisory committee shall meet at least twice annually to-

(1) review utilization of allocated moneys by States;

(2) establish and review criteria for trail-side and trail-head facilities that qualify for funding under this part; and

(3) make recommendations to the Secretary for changes in Federal policy to advance the purposes of this part.

(g) Annual report.—The advisory committee shall present to the Secretary an annual report on its activities.

(h) Reimbursement for expenses.—Nongovernmental members of the advisory committee shall serve without pay, but, to the extent funds are available pursuant to section 1302(d)(1)(B), shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

(i) Report to Congress.— Not later than 4 years after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives, a study which summarizes the annual reports of the National Recreational Trails Advisory Committee, describes the allocation and utilization of moneys under this part, and contains recommendations for changes in Federal policy to advance the purposes of this part. (16 U.S.C. 1262)

Pacific Yew Act

- **Act of January 3, 1992 (P.L. 102-335, 106 Stat. 859; 16 U.S.C. 4804(note), 4804-4807)**

Short Title

Sec. 1. This Act may be cited as the "Pacific Yew Act". (16 U.S.C. 4804(note))

Findings, Purposes, and Definitions

Sec. 2. (a) Findings.—Congress finds the following:

(1) Over 12,000 women die each year from ovarian cancer and 44,500 women die from breast cancer.

(2) Taxol, a drug made from the Pacific yew (Taxus brevifolia), has been successful in treating ovarian cancer in clinical trials and shows promise in the treatment of breast cancer and other types of cancer.

(3) The production of small amounts of taxol currently requires the use of large numbers of Pacific yew.

(4) The Pacific yew is a slow-growing tree species found in the Western United States.

(5) Significant numbers of Pacific yew trees are found in old-growth forests on Federal lands in the Pacific Northwest.

(6) Before the importance of taxol was discovered, the Pacific yew was considered a trash tree and was often burned in slash piles after timber operations.

(7) Remaining Pacific yew resources must be carefully managed in order to ensure a steady supply of taxol for the treatment of cancer, while also providing for the long-term conservation of the species.

(8) Appropriate management guidelines must be implemented promptly in order to prevent any wasting of the Pacific yew in current and future timber sales on Federal lands, while successful and affordable alternative methods of manufacturing taxol are being developed.

(b) Purposes.—The purposes of this Act are to contribute to the successful treatment of cancer by ensuring that Pacific yew trees located on lands of the National Forest System and on public lands administered by the Bureau of Land Management are managed to—

(1) provide for the efficient collection and utilization of those parts of the Pacific yew that can be used in the manufacture of taxol for the treatment of cancer;

(2) provide for the sale of Pacific yew from such lands for the commercial production and subsequent sale of taxol at a reasonable cost to cancer patients;

(3) ensure the long-term conservation of the Pacific yew; and

(4) prevent the wasting of Pacific yew resources while successful and affordable alternative methods of manufacturing taxol are being developed.

(c) Secretary concerned defined.—For purposes of this Act, the term "Secretary concerned" means—

(1) the Secretary of Agriculture, with respect to lands and interests in lands under the jurisdiction of the Forest Service; and

(2) the Secretary of the Interior, with respect to lands and interests in lands under the jurisdiction

of the Bureau of Land Management. (16 U.S.C. 4801)

Pacific Yew Conservation and Management

Sec. 3. (a) Pacific yew policy.—The Secretary of Agriculture and the Secretary of the Interior shall pursue a conservation and management policy with respect to lands and interests in lands under the jurisdiction of the Forest Service or the Bureau of Land Management, which contain the Pacific yew in order to—

(1) provide for the sustainable harvest of Pacific yew, or Pacific yew parts, in accordance with relevant land and resource management plans for the manufacture of taxol; and

(2) provide for the long-term conservation of the Pacific yew in the wild.

(b) Content of policy.—The conservation and management policy required by subsection (a) shall ensure that—

(1) in planning harvests of the Pacific yew, priority be given first to areas in which timber has been cut but Pacific yew trees have not been removed, second to areas in which timber is already sold but remains uncut, third to areas scheduled for timber sale in the near future, and fourth to those other areas where commercial and salvage timber sales are allowed under existing laws;

(2) individual Pacific yew trees are utilized with little or no waste;

(3) to the extent that timber harvesters' health and safety will not be jeopardized, the bark is harvested from Pacific yew trees in timber sale areas before the harvest of other timber resources;

(4) whenever Pacific yew trees are harvested, they are—

(A) cut using methods designed to allow for resprouting from the stump; and

(B) replanted where necessary to maintain the species in the ecosystem; and

(5) timber management and harvest activities are carried out in a manner that will minimize any adverse effects on the survival and regeneration of Pacific yew trees.

(c) Application of policy to timber harvesting.—

(1) Application.—The Secretary concerned shall ensure that timber sales awarded after the date of the enactment of this Act, and timber sales completed before that date but still unharvested on that date, are conducted in accordance with—

(A) the policy expressed in subsection (a); and

(B) the relevant land and resource management plans of the Secretary concerned.

(2) Consultation under endangered species act.—If the Secretary concerned foresees the need to harvest Pacific yew in an area for which an opinion issued under subsection (b)(3)(A) of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) has concluded that a commercial timber sale is likely to jeopardize the continued existence of an endangered or threatened species or destroy or adversely modify critical habitat identified for the species under that Act, the Secretary concerned shall immediately initiate consultation under that section to determine the effect on endangered and threatened species and critical habitat of harvesting only Pacific yew trees.

(d) Inventory of Pacific yew.—Not later than 6 months after the date of the enactment of this Act, each Secretary concerned shall complete the ongoing inventory of

Pacific yew on lands under the jurisdiction of the Secretary concerned. (16 U.S.C. 4802)

Research

Sec. 4. Each Secretary concerned shall encourage and, where appropriate, assist in research regarding—

(1) the ecology of the Pacific yew;

(2) the development of alternative methods of procuring taxol, including utilization of other yew parts in addition to bark, the sustainable harvest of yew needles, and the utilization of other yew species; and

(3) the propagation of Pacific yew and other yew species in agricultural or commercial settings. (16 U.S.C. 4803)

Collection and Sale of Pacific Yew Resources

Sec. 5. (a) Enforcement and access.—The Secretary concerned shall ensure the development, implementation, and enforcement of processes for the collection and sale of Pacific yew resources that will minimize the illegal harvest and sale of such resources. The Secretary shall also ensure that access to Pacific yew resources is allowed in a timely manner such that collection of Pacific yew parts can occur before the taxol properties of such parts are degraded.

(b) Negotiated sales.—

(1) Forest Service sales.—Notwithstanding section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a), the Secretary of Agriculture may negotiate sales of Pacific yew on lands under the jurisdiction of the Forest Service at not less than appraised value, to parties manufacturing taxol in the United States in accordance with section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in humans.

(2) Bureau of land management sales.—Notwithstanding the Materials Act of 1947 (30 U.S.C. 601-604), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and Act of August 28, 1937 (43 U.S.C. 1181a–1181f), the Secretary of the Interior may negotiate sales of Pacific yew on lands under the jurisdiction of the Bureau of Land Management at not less than appraised value, to parties manufacturing taxol in the United States in accordance with section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in humans.

(3) Disposition of unutilized material.—The Secretary concerned shall, to the extent practicable, make material unutilized by purchasers of Pacific yew available to others.

(4) Limits on other sales.—Except as provided in paragraphs (1), (2), and (3), the Secretary concerned shall not sell Pacific yew for commercial use.

(5) Use of receipts.—The Secretary concerned may use amounts received from the sale of Pacific yew under this section to pay the costs incurred by the Secretary concerned associated with the harvest and sale of Pacific yew.

(c) Record keeping.—The Secretary concerned shall keep accurate records of all sales, bark removal, or other harvest of the Pacific yew. The records shall include the following information:

(1) The date of sale (where applicable) and the date of harvest.

(2) The names of the persons performing the harvest.

(3) The record of authorization for the harvest.

(4) The location and size of the area in which the harvest occurred.

(5) The quantity of Pacific yew harvested, including, to the extent practicable, the number of trees harvested, volume of bark harvested, and weight of bark harvested.

(d) Effect on prior sales.—With respect to Pacific yew harvested before the date of the enactment of this Act on lands under the jurisdiction of the Forest Service or the Bureau of Land Management, the Secretary concerned may permit taxol derived from that Pacific yew to be used for purposes other than research if the Secretary of Health and Human Services certifies to the Secretary concerned that such permission—

(1) will increase patient access to taxol treatment; and

(2) will not result in insufficient supplies of taxol for clinical research. (16 U.S.C. 4804)

Relation to Other Laws

Sec. 6. Nothing in this Act shall be interpreted as modifying the provisions of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), except as explicitly provided in section 3. (16 U.S.C. 4805)

Report to Congress

Sec. 7. Not later than one year after the date of the enactment of this Act (and annually thereafter), each Secretary concerned shall submit to the Committee on Merchant Marine and Fisheries, the Committee on Interior and Insular Affairs, and the Committee on Agriculture of the House of Representatives, and the Committee on Environment and Public Works, the Committee on Energy and Natural Resources, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the following:

(1) A judgment as to whether sufficient amounts of Pacific yew have been harvested, and can continue to be harvested for the next year, to supply necessary amounts of taxol required for medicinal purposes, together with a summary of the information on which the judgment is based.

(2) The results of the Pacific yew inventory required by section 3(d). (16 U.S.C. 4806)

Expiration of Requirements

Sec. 8. The Secretary of Health and Human Services shall determine when quantities of taxol sufficient to satisfy medicinal demands are available from sources other than Pacific yew trees harvested on Federal lands and notify each Secretary concerned upon making such determination. If the Secretaries concerned concur, they shall jointly notify the relevant congressional committees, as listed in section 7, at which time the requirements of this Act shall expire. (16 U.S.C. 4807)

Tourism Policy and Export Promotion Act of 1992

- **Act of September 30, 1992 (P.L. 102-372, 106 Stat. 1170; 22 U.S.C. 2121 note, 22 U.S.C. 2124c)**

Note.—This Act created the Rural Tourism Development Foundation and provides for the involvement of the Forest Service in the Board of the Foundation as Ex-Officio members (Sec. 4(c) (2)). The purpose of the Act is to assist in the growth of international travel and tourism in the United States. The National Forests are a key focus of many State's tourism promotion. The management of our recreation program in rural areas needs to be closely coordinated with State and local government's tourism promotion plans.

Findings

Sec. 2. The Congress finds that—

(1) the travel and tourism industry is the second largest retail or service industry in the United States;

(2) travel and tourism receipts make up over 6.7 percent of the United States gross national product;

(3) in 1991, the travel and tourism industry generated about six million jobs directly and about two million five hundred thousand indirectly;

(4) travel and tourism expenditures in 1991 were approximately $352,000,000,000;

(5) forty-two million international visitors spent approximately $64,700,000,000 in the United States in 1991;

(6) travel and tourism services ranked as the largest United States business services export in 1991, providing a United States travel trade balance of $16,800,000,000;

(7) many local communities with significant tourism potential are unable to realize the economic and employment opportunities that tourism provides because they lack the necessary local resources and expertise needed to induce tourism trade;

(8) increased efforts directed at the promotion of rural tourism will contribute to the economic development of rural America and further the conservation and promotion of natural, scenic, historic, scientific, educational, inspirational, and recreational resources for future generations of Americans and foreign visitors;

(9) foreign tourists entering the United States are frequently faced with unnecessary delays at the United States border;

(10) advanced technologies, industrial targeting, the industrialization of the Third World, and the fight of some United States manufacturing capacity to overseas locations have affected the international competitiveness of the United States;

(11) exporting those goods and services which United States industry can produce at a comparative cost advantage, such as travel and tourism services, will be in the Nation's long-term strategic interest; and

(12) the emergence of democratic governments in the formerly Communist nations of Eastern Europe and in the former Soviet Union provide new opportunities for United States firms engaged in both the

inbound and outbound tourism markets.

* * * *

Rural Tourism Development Foundation

Sec. 4. (a) Establishment of Foundation.—In order to assist in the development and promotion of rural tourism, there is established a charitable and nonprofit corporation to be known as the Rural Tourism Development Foundation (hereafter in this section referred to as the "Foundation")

(b) Functions.—The functions of the Foundation shall be the planning, development, and implementation of projects and programs which have the potential to increase travel and tourism export revenues by attracting foreign visitors to rural America. Initially, such projects and programs shall include—

(1) participation in the development and distribution of educational and promotional materials pertaining to both private and public attractions located in rural areas of the United States, including Federal parks and recreational lands, which can be used by foreign visitors;

(2) development of educational resources to assist in private and public rural tourism development; and

(3) participation in Federal agency outreach efforts to make such resources available to private enterprises, State and local governments, and other persons and entities interested in rural tourism development.

(c) Board of Directors.—

(1) Composition.—

(A) The Foundation shall have a Board of Directors (hereafter in this section referred to as the "Board") that—

(i) during its first two years shall consist of nine voting members; and

(ii) thereafter shall consist of those nine members plus up to six additional voting members as determined in accordance with the bylaws of the Foundation.

(B)(i) The Under Secretary of Commerce for Travel and Tourism shall, within six months after the date of enactment of this Act, appoint the initial nine voting members of the Board and thereafter shall appoint the successors of each of three such members, as provided by such bylaws.

(ii) The voting members of the Board, other than those referred to in clause (i), shall be appointed in accordance with procedures established by such bylaws.

(C) The voting members of the Board shall be individuals who are not Federal officers or employees and who have demonstrated an interest in rural tourism development. Of such voting members, at least a majority shall have experience and expertise in tourism trade promotion, at least one shall have experience and expertise in resource conservation, at least one shall have experience and expertise in financial administration in a fiduciary capacity, at least one shall be a representative of an Indian tribe who has experience and expertise in rural tourism on Indian reservation, at least one shall represent a regional or national organization or association with a major interest in rural tourism development or promotion, and at least one shall be a representative of a State who is responsible for tourism promotion.

(D) Voting members of the Board shall each serve a term of six years, except that—

(i) initial terms shall be staggered to assure continuity of administration;

(ii) if a person is appointed to fill a vacancy occurring prior to the expiration of the term of the person's predecessor, that person shall serve only for the remainder of the predecessor's term; and

(iii) any such appointment to fill a vacancy shall be made within sixty days after the vacancy occurs.

(2) Ex-Officio members.—The Under Secretary of Commerce for Travel and Tourism and representatives of Federal agencies with responsibility for Federal recreational sites in rural areas (including the National Park Service, Bureau of Land Management, Forest Service, Corps of Engineers, Bureau of Indian Affairs, Tennessee Valley Authority, and such other Federal agencies as the Board determines appropriate) shall be nonvoting ex-officio members of the Board.

(3) Chair.—The Chairman and Vice Chairman of the Board shall be elected by the voting members of the Board for terms of two years.

(4) Meeting.—The Board shall meet at the call of the Chairman and there shall be at least two meetings each year. A majority of the voting members of the Board serving at any one time shall constitute a quorum for the transaction of business. The Foundation shall have an official seal, which shall be judicially noticed. Voting membership on the Board shall not be deemed to be an office within the meaning of the laws of the United States.

(d) Compensation and expenses.—No compensation shall be paid to the members of the Board for their services as members, but they may be reimbursed for actual and necessary traveling and subsistence expenses incurred by them in the performance of their duties as such members out of Foundation funds available to the Board for such purposes.

(e) Acceptance of gifts, devises, and bequests.—

(1) In general.—The Foundation is authorized to accept, receive, solicit, hold, administer, and use any gifts, devises, or bequests, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein for the benefit of or in connection with rural tourism, except that the Foundation may not accept any such gift, devise, or bequest which entails any expenditure other than from the resources of the Foundation. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of rural tourism.

(2) Indians.—A gift, devise, or bequest accepted by the Foundation for the benefit of or in connection with rural tourism on Indian reservations, pursuant to the Act of February 14, 1931 (25 U.S.C. 451), shall be maintained in a separate accounting for the benefit of Indian tribes in the development of tourism on Indian reservations.

(f) Investments.—Except as otherwise required by the instrument of transfer, the Foundation may sell, lease, invest, reinvest, retain, or otherwise dispose of or deal with any property or income thereof as the Board may from time to time determine. The Foundation shall not engage in any business, nor shall the Foundation make any investment that may not lawfully be made by a trust company in the District of Columbia, except that the Foundation may make any investment authorized by the instrument of transfer and may retain any property accepted by the Foundation.

(g) Perpetual succession; liability of Board Members.—The Foundation shall have perpetual succession, with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and to be sued in its own name, but the members of the Board shall not be personally liable, except for malfeasance.

(h) Contractual power.—The Foundation shall have the power to enter into contracts, to execute instruments, and generally to do any and all lawful acts necessary or appropriate to its purposes.

(i) Administration.—

(1) In general.—In carrying out the provisions of this section, the Board may adopt bylaws, rules, and regulations necessary for the administration of its functions and may hire officers and employees and contract for any other necessary services. Such officers and employees shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and may be paid without regard to the provisions of chapters 51 and 53 of such title relating to classification and General Schedule pay rates.

(2) Services.—The Secretary of Commerce may accept the voluntary and uncompensated services of the Foundation, the Board, and the officers and employees of the Foundation in the performance of the functions authorized under this section, without regard to section 1342 of title 31, United States Code, or the civil service classification laws, rules, or regulations.

(3) Construction.—Neither an officer or employee hired under paragraph (1) nor an individual who provides services under paragraph (2) shall be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, relating to compensation for work injuries, and chapter 171 of title 28, United States Code, relating to tort claims.

(j) Exemption from taxes; contributions.—The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of the Board, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of this subsection or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

(k) Liability of United States.—The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

(l) Annual report.—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

(m) Definitions.—As used in this section—

(1) the term "Indian reservation" has the meaning given the term "reservation" in section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d));

(2) the term "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e));

(3) the term "local government" has the meaning given that term in section 3371(2) of title 5, United States Code; and

(4) the term "rural tourism" has the meaning given that term by the Secretary of Commerce and shall include activities related to travel and tourism that occur on Federal recreational sites, on Indian reservations, and in the territories, possessions, and commonwealths of the United States.

(n) Assistance by Secretary of Commerce.—Section 202(a) of the International Travel Act of 1961 (22 U.S.C. 2123(a)) is amended by striking paragraph (15) and inserting in lieu thereof the following new paragraph:

"(15) may assist the Rural Tourism Development Foundation, established under section 4 of the Tourism Policy and Export Promotion Act of 1992, in the development and promotion of rural tourism."

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